

until the concurrent resolution on the budget for such fiscal year (or, in the Senate, a concurrent resolution on the budget covering such fiscal year)³⁰⁷ has been agreed to³⁰⁸ pursuant

³⁰⁶(...continued)

³⁰⁶ Section 3(1) defines "outlays." See *supra* p. 11.

³⁰⁷ Section 13205(a)(4) of the Budget Enforcement Act added the parenthetical "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)." See *infra* p. 720. Thus, for Senate committees other than the Appropriations Committee (for which subsection (b)(2) provides an explicit exception), no point of order will lie if the spending provided begins in any one of the five years covered by the most recent budget resolution.

³⁰⁸ On a number of occasions, the House and the Senate have passed simple resolutions providing that the Congress shall be deemed to have agreed to a budget resolution for the fiscal year. As a consequence of these resolutions, points of order would not lie under section 303, but would lie under sections 302 and 311.

On July 16, 1985, the House passed H. Res. 221, which waived points of order under section 303(a) against consideration of any appropriations bill. That resolution stated (in relevant part):

Sec. 2. All points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived against the consideration of any general appropriation bill making appropriations for fiscal year 1986 reported by the Committee on Appropriations before July 12, 1985.

H. Res. 221, 99th Cong., 1st Sess., 131 CONG. REC. H5666-75 (July 16, 1985).

Eight days later, the House passed H. Res. 231, which deemed the Congress to have adopted the House-passed budget resolution for purposes of applying points of order in the House. H. Res. 231 stated:

H. RES. 231

Resolved, That, for the purposes of the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), as they apply to the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 152, revising the congressional budget for the United States Government for the fiscal year 1985 and setting forth the congressional budget for the United States Government for the fiscal years 1986, 1987, and 1988, as adopted by the House on May 23, 1985. For the purposes of this resolution, the allocations of budget authority and new entitlement authority printed in the Congressional Record of July 23, 1985 by Representative Gray of Pennsylvania, shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 (Public Law 93-344).

(continued...)

²⁰⁰(...continued)

SEC. 2. This resolution shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for the applicable fiscal year or years.

H. Res. 231, 99th Cong., 1st Sess., 131 CONG. REC. H6171 (daily ed. July 24, 1985).

On June 17, 1987, the House Rules Committee reported to the House H. Res. 197, a similar resolution. H. Res. 197, 100th, 1st Sess., 134 CONG. REC. H5212, D837 (daily ed. June 17, 1987). The next day, however, the Rules Committee reported a rule (H. Res. 201) for the consideration of the conference report on the budget resolution for that year (H. Con. Res. 93) that also provided for laying H. Res. 197 on the table. See 134 CONG. REC. D847-48 (daily ed. June 18, 1987). The House passed that rule on June 23. See *id.* at H5398-407 (daily ed. June 24, 1987).

On June 19, 1990, the House passed another resolution, H. Res. 413, to deem the House-passed budget resolution to govern the House. H. Res. 413 stated (in relevant part):

Sec. 3. (a) For purposes of sections 302 and 311 of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177) as they apply to the Committee on Appropriations and consideration of general appropriation bills, amendments thereto or conference reports thereon, in the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 310, setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, as adopted by the House on May 1, 1990. For purposes of this resolution, the allocations of spending and credit responsibility to the Committee on Appropriations printed in the star print of H. Rept. 101-455 shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974, as amended.

(b) This section shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for fiscal year 1991.

H. Res. 413, 101st Cong., 2d Sess., 136 CONG. REC. H3733 (daily ed. June 19, 1990).

The Senate followed suit on July 12, 1990, as the Senate Budget Committee reported and the Senate passed by unanimous consent S. Res. 308, a simple resolution to give the Appropriations Committee its allocations. S. Res. 308 stated:

RESOLUTION

To provide budget allocations for fiscal year 1991 to the Senate Committee on Appropriations under section 302(a) of the Congressional Budget Act of 1974.

(continued...)

³⁰⁸(...continued)

Resolved, That (a) for purposes of section 302(a) of the Congressional Budget Act of 1974 the estimated allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations shall be —

(1) \$690,606,000,000 in total budget outlays; and

(2) \$680,512,000,000 in total new budget authority,

until a concurrent resolution on the budget for fiscal year 1991 is agreed to by the Senate and House of Representatives pursuant to section 301 of Congressional Budget Act of 1974.

(b) Notwithstanding the provisions of subsection (a) and if the Bipartisan Executive-Congressional Economic Summit reaches an agreement on appropriate levels of budget totals different from those contained in subsection (a) and the Congress adopts such levels, the levels agreed to by the Bipartisan Executive-Congressional Economic Summit shall supersede the levels contained in subsection (a).

S. Res. 308, 101st Cong., 2d Sess., 136 CONG. REC. S9642-43 (daily ed. July 12, 1990).

In related legislation, the Spending Reduction Act of 1984, a reconciliation bill created in response to instructions in a budget resolution adopted during the previous calendar year, stated the sense of the House that in the absence of agreement on a budget resolution, the House would abide by the House-passed budget resolution (H. Con. Res. 280). Similar provisions stated the sense of the Senate regarding defense and non-defense ceilings for appropriations activity, but the Senate did not give these ceilings the status of an allocation to the Appropriations Committee under section 302(a). The Spending Reduction Act provides (in relevant part):

TITLE I — GENERAL PROVISIONS

SENSE OF SENATE STATEMENT

SEC. 2101. It is the sense of the Senate that ceilings on fiscal year 1985 appropriation bills shall not exceed, in the aggregate, \$139.8 billion for non-defense, discretionary accounts, and shall not exceed \$299 billion for defense accounts. Further, it is the sense of the Senate that the allocations of these sums, normally done through the section 302(b) process under the Congressional Budget and Impoundment Control Act of 1974, in the absence of a first concurrent budget resolution for fiscal year 1985 will be done by the Senate Appropriations Committee to guide its subcommittees in their separate deliberations on individual appropriation bills for fiscal year 1985.

SENSE OF HOUSE STATEMENT

(continued...)

to section 301.³⁰⁹

§ 303(b)(1) (b) **EXCEPTIONS. — (1) In the House of Representatives,³¹⁰ subsection (a)³¹¹ does not apply to any bill or resolution —**

§ 303(b)(1)(A) (A)³¹² **providing new budget authority³¹³ which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or**

³⁰⁸(...continued)

SEC. 2102. (a) It is the Sense of the House that in fiscal year 1985, 1986, and 1987, Federal deficits can be reduced by \$182 billion as a result of the first concurrent resolution on the budget for fiscal year 1985 and the Deficit Reduction Act of 1984. Further, it is the sense of the House that these deficit reductions shall be divided among revenue increases, domestic spending reductions, and limits on the growth in military spending.

(b) It is the sense of the House that in the absence of agreement on a first concurrent resolution on the budget for fiscal year 1985 that the House will continue to abide by House Concurrent Resolution 280, as passed the House.

(c) It is the sense of the House that the Congress shall immediately adopt a conference report on the first concurrent resolution on the budget for fiscal year 1985 and that the Congress shall enforce the aggregate levels of revenue and spending provided in such resolution.

Pub. L. No. 98-369, §§ 2101-2102, 98 Stat. 494, 1057-58 (1984).

³⁰⁹ See *supra* pp. 50-87.

³¹⁰ Section 13205(b)(1) of the Budget Enforcement Act added the words "(1) In the House of Representatives." See *infra* p. 720. Thus, these exceptions no longer apply in the Senate.

³¹¹ See *supra* pp. 106-112.

³¹² Section 13205(b)(1) of the Budget Enforcement Act changed this number from "(1)" to "(A)" to conform to the addition of the words "(1) In the House of Representatives," above. See *infra* p. 720.

³¹³ Section 3(2) defines "budget authority." See *supra* pp. 11-13.