

TITLE III

CONGRESSIONAL BUDGET PROCESS

TIMETABLE

§ 300 **SEC. 300.**¹¹⁵ The timetable with respect to the congressional budget process for any fiscal year is as follows:¹¹⁶

¹¹⁵ Section 300 is codified as amended at 2 U.S.C. § 631 (Supp. IV 1992).

¹¹⁶ As the Congress has enacted this timetable as an exercise of its rule-making powers (to the extent that it sets dates for the Congress), *see* section 904 *infra* p. 357, no illegality flows from its violation. Furthermore, the failure to comply with a deadline has no effect on points of order under the Congressional Budget Act. *See* 132 CONG. REC. S10,694 (daily ed. Aug. 7, 1986).

Section 201(b) of Gramm-Rudman-Hollings revised section 300. *See infra* p. 413. As originally enacted in 1974, section 300 read as follows:

SEC. 300. The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
November 10	President submits current services budget.
15th day after	
Congress meets	President submits his budget.
March 15	Committees and joint committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
May 15	Congress completes action on concurrent resolution on the budget.
7th day after	
Labor Day	Congress completes action on bills and resolutions providing new budget authority and new

(continued...)

On or before:

Action to be completed:

First Monday

in February¹¹⁷ President submits his budget.¹¹⁸

¹¹⁶(...continued)

	spending authority.
September 15	Congress completes action on second required concurrent resolution on the budget.
September 25	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1	Fiscal year begins.

¹¹⁷ Section 13112(a)(4) of the Budget Enforcement Act changed this reference from "First Monday after January 3" to "First Monday in February" (*see infra* p. 708) to conform to the change that section 13112(c)(1) of the Budget Enforcement Act made to section 1105(a) of title 31 of the United States Code. *See infra* p. 710. Where section 1105(a) used to require the President to submit the budget "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" it now requires the President to submit the budget "On or after the first Monday in January but not later than the first Monday in February of each year." *Id.*

Notwithstanding the requirement under the law prior to enactment of the Budget Enforcement Act, Congress provided for a delay of the submission of the President's budget in 1988 from January 4 to February 16. *See* 133 CONG. REC. S18,689 (daily ed. Dec. 21, 1987) (colloquy between the Chairman of the Budget Committee, Senator Chiles, and the Majority Leader, Senator Byrd). On the date of the deadline for that fiscal year 1989 budget, OMB Director Miller sent instead a letter to Congress. *See* Executive Communication No. EC-2455. He explained that the lateness of Congress's final action on appropriations for fiscal year 1988 (Pub. L. No. 100-202 (1987)), as well as the Omnibus Reconciliation Act of 1987 (Pub. L. No. 100-203 (1987)) and the Bipartisan Budget Summit Agreement made it impossible to transmit the President's budget by the statutory deadline.

Congress again provided for a delay of the submission of the President's budget in 1990 from January 8 to January 22. The adjournment resolution for the 101st Congress provided:

Notwithstanding the provisions of section 1105 of title 31, United States Code, the President shall transmit to the Congress not later than January 22, 1990, the Budget for fiscal year 1991.

H.J. Res. 449, 101st Cong., 1st Sess. § 4, 135 CONG. REC. S16,944 (daily ed. Nov. 21, 1989).

Similarly, Congress enacted extensions of deadlines for President Reagan's fiscal year 1986 budget (*see* Pub. L. No. 99-1 (Jan. 9, 1985) (extended to Feb. 4, 1985)), President
(continued...)

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- February 15** Congressional Budget Office submits report to Budget Committees.¹¹⁹
- February 25**¹²⁰ Committees submit views and estimates to Budget Committees.¹²¹
- April 1** Senate Budget Committee reports concurrent resolution on the budget.¹²²
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¹¹⁷(...continued)

Reagan's fiscal year 1984 budget (*see* Pub. L. No. 97-469 (Jan. 14, 1983) (extended to Jan. 31, 1983)), President Carter's fiscal year 1981 budget (*see* Pub. L. No. 96-186 (Jan. 8, 1980) (extended to Jan. 28, 1980)), President Nixon's fiscal year 1974 budget (*see* Pub. L. No. 93-1 (Jan. 19, 1973) (extended to Jan. 29, 1973)), and President Johnson's fiscal year 1966 budget (*see* Pub. L. No. 89-1 (Jan. 13, 1965) (extended to Jan. 25, 1965)).

¹¹⁸ Section 1105 of title 31 of the United States Code sets forth this requirement. *See infra* pp. 788-798.

¹¹⁹ Section 202(f)(1) sets forth this requirement. *See supra* p. 37.

¹²⁰ This should read "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code." Section 13112(a)(5) of the Budget Enforcement Act (*see infra* p. 708) changed the deadline for committees' views and estimates in section 301(d) of the Congressional Budget Act (*see infra* pp. 70-74) from "[o]n or before February 25 of each year" to "[w]ithin 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code," as section 13112(c)(1) of the Budget Enforcement Act (*see infra* p. 710) changed the deadline for the President's budget submission in section 1105(a) of title 31 of the United States Code from "[o]n or before the first Monday after January 3 of each year" to "[o]n or after the first Monday in January but not later than the first Monday in February of each year."

¹²¹ Section 301(d) sets forth this requirement. *See infra* p. 70.

¹²² If the Senate Budget Committee has not completed action on the budget resolution by this date, then on that date, the Senate will discharge the Committee of any budget resolution that the presiding officer had referred to the Committee and place it on the calendar. *See* 136 CONG. REC. S3696 (daily ed. Apr. 2, 1990); 1984 SEN. J. 216 (Apr. 18, 1984); 129 CONG. REC. S4726 (daily ed. Apr. 15, 1983). The Senate will also discharge and place on the calendar any budget resolution submitted after April 1 until the Budget Committee has reported a resolution. *See* 137 CONG. REC. S4489 (daily ed. Mar. 29, 1990); 136 CONG. REC. S4287 (daily ed. Apr. 5, 1990).

As originally enacted in 1974 and as in force on April 15, 1983, section 300 contained
(continued...)

¹²²(...continued)

an entry for April 15 stating: "Budget Committees report first concurrent resolution on the budget to their Houses." See *supra* note 116. (Section 201(b) of Gramm-Rudman-Hollings changed the entry to read as it does now. See *infra* p. 413.) On March 24, 1983, the Senate received the fiscal year 1984 budget resolution, H. Con. Res. 91, 98th Cong., 1st Sess. (1983), from the House of Representatives, and the presiding officer referred it to the Budget Committee. 129 CONG. REC. S3969 (daily ed. Mar. 24, 1983). When, on April 15, 1983, the Senate Budget Committee had failed to act on the resolution, the Senate discharged the resolution from the Committee and placed it on the calendar. 129 CONG. REC. S4726 (daily ed. April 15, 1983).

On April 9, 1984, the Senate received the fiscal year 1985 budget resolution, H. Con. Res. 280, 98th Cong., 2d Sess. (1984), from the House of Representatives, and the presiding officer referred it to the Budget Committee. 130 CONG. REC. S4150 (daily ed. Apr. 9, 1984). When the Senate Budget Committee failed to act on the resolution by April 15, 1990 (on which date the Senate was adjourned), the Senate discharged the resolution from the Committee and placed it on the calendar. 1984 SEN. J. 216 (Apr. 18, 1984). (The Senate discharged H. Con. Res. 280 on April 18, 1984, the date provided for committees to report bills. April 18 was also, coincidentally, the date on which the Senate Budget Committee reported a budget resolution, S. Con. Res. 106. 130 CONG. REC. S4722 (daily ed. Apr. 24, 1984).)

On March 29, 1990, the Chairman of the Budget Committee, Senator Sasser, submitted a concurrent resolution on the budget, S. Con. Res. 110, 101st Cong., 2d Sess., 136 CONG. REC. S3555-60 (daily ed. Mar. 29, 1990), and the presiding officer referred it to the Budget Committee. *Id.* at S3555. When the Senate Budget Committee failed to act on the resolution by April 1, 1990 (a Sunday), the Senate discharged the resolution from the Committee "[p]ursuant to section 300 of the Congressional Budget Act of 1974," and placed it on the calendar. 136 CONG. REC. S3696 (daily ed. Apr. 2, 1990).

Also in 1990, on April 5, Senator Hollings submitted a concurrent resolution on the budget, S. Con. Res. 119, 101st Cong., 2d Sess., 136 CONG. REC. S4287-91 (daily ed. Apr. 5, 1990), and the presiding officer referred it to the Budget Committee. *Id.* at S4209, S4287. As it was after April 1 and the Budget Committee had not yet reported a budget resolution, the Senate discharged the resolution from the Committee and placed it on the calendar on the same day that Senator Hollings submitted it. *Id.* at S4287.

On April 16, 1990, the Chairman of the Budget Committee, Senator Sasser, submitted a concurrent resolution on the budget, S. Con. Res. 28, 102d Cong., 1st Sess., 137 CONG. REC. S4489-94 (daily ed. Mar. 29, 1990), and the presiding officer referred it to the Budget Committee. *Id.* at S4456, S4489. As it was after April 1 and the Budget Committee had not yet reported a budget resolution, the Senate discharged the resolution from the Committee and placed it on the calendar on the same day that Senator Sasser submitted it. *Id.* at S4489.

On March 10, 1992, the Senate received the fiscal year 1993 budget resolution, H. Con. Res. 287, 102d Cong., 2d Sess., 138 CONG. REC. H976-82 (daily ed. Mar. 4, 1992),

(continued...)

April 15	Congress completes action on concurrent resolution on the budget.¹²³
May 15	Annual appropriation bills¹²⁴ may be considered in the House.¹²⁵
June 10	House Appropriations Committee reports last annual appropriation bill.¹²⁶
June 15	Congress completes action on reconciliation legislation.¹²⁷
June 30	House completes action on annual appropriation bills.

¹²²(...continued)

from the House of Representatives, and the presiding officer referred it to the Budget Committee. *Id.* at S3115 (daily ed. Mar. 10, 1992). On March 31, 1992, the Ranking Republican Member of the Budget Committee, Senator Domenici, submitted a concurrent resolution on the budget, S. Con. Res. 104, 102d Cong., 2d Sess., 138 CONG. REC. S4517-21 (daily ed. Mar. 31, 1992), and the presiding officer referred it to the Budget Committee. *Id.* at S4501, S4517. When the Senate Budget Committee failed to act on a budget resolution by April 1, 1990, the Senate discharged both H. Con. Res. 287 and S. Con. Res. 104 from the Committee "[p]ursuant to section 300 of the Congressional Budget Act of 1974, as amended," and placed them on the calendar. 138 CONG. REC. S4635 (daily ed. Apr. 1, 1992).

¹²³ Section 301(a) sets forth this requirement. *See infra* p. 50.

The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. 132 CONG. REC. S10,694 (Aug. 7, 1986).

For a table listing historical completion dates, *see infra* note 130.

¹²⁴ Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), *see supra* note 36.

¹²⁵ Section 303(b) provides this exception. *See infra* p. 113.

¹²⁶ Section 307 sets forth this requirement. *See infra* p. 149.

¹²⁷ Section 310(f)(1) used to set forth this requirement. *See infra* note 489.

For a table listing historical completion dates, *see infra* note 491.

October 1 Fiscal year begins.¹²⁸

¹²⁸ Section 254(a) of Gramm-Rudman-Hollings (*see infra* p. 541) and title 31 of the United States Code create the following additional deadlines:

Date:	Action to be completed:
January 21	Notification regarding optional adjustment of maximum deficit amount.
5 days before the President's budget submission	CBO sequestration preview report.
The President's budget submission	OMB sequestration preview report.
July 15	The President submits to Congress the mid-session budget review.
August 10	Notification regarding military personnel.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report; Presidential order.
30 days later	GAO compliance report.

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

§ 301(a) **SEC. 301.¹²⁹ (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.** — On or before April 15¹³⁰ of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on

¹²⁹ Section 301 is codified as amended at 2 U.S.C. § 632 (1988 & Supp. IV 1992). Section 201(b) of Gramm-Rudman-Hollings revised section 301. See *infra* p. 413.

¹³⁰ The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. See 132 CONG. REC. S10,694 (daily ed. Aug. 7, 1986).

Historically, Congress has completed budget resolutions on the dates in the following table. Until the enactment of Gramm-Rudman-Hollings, section 301 set forth a May 15 deadline for Congress to act. See *supra* note 116. Thus, Congress has met the deadline only in the first two years of the budget process, fiscal years 1976 and 1977, and with the most recent budget resolution, fiscal year 1994.

Adoption Dates of Budget Resolutions

<u>Fiscal year</u>	<u>Budget resolution adopted</u>
1976	May 14, 1975 (H. Con. Res. 218)
1977	May 13, 1976 (S. Con. Res. 109)
1978	May 17, 1977 (S. Con. Res. 19)
1979	May 17, 1978 (S. Con. Res. 80)
1980	May 24, 1979 (H. Con. Res. 107)
1981	June 12, 1980 (H. Con. Res. 307)
1982	May 21, 1981 (H. Con. Res. 115)
1983	June 23, 1982 (S. Con. Res. 92)
1984	June 23, 1983 (H. Con. Res. 91)
1985	October 1, 1984 (H. Con. Res. 280)
1986	August 1, 1985 (S. Con. Res. 32)
1987	May 15, 1986 (H. Con. Res. 337)
1988	June 25, 1987 (H. Con. Res. 93)
1989	June 6, 1988 (H. Con. Res. 268)
1990	May 18, 1989 (H. Con. Res. 106)
1991	October 9, 1990 (H. Con. Res. 310)
1992	May 22, 1991 (H. Con. Res. 121)
1993	May 21, 1992 (H. Con. Res. 287)
1994	April 1, 1993 (H. Con. Res. 64)

October 1 of such year.¹³¹ The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two

¹³¹ See, e.g., Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, H. Con. Res. 64, 103d Cong., 1st Sess., 139 CONG. REC. H1747 (daily ed. Mar. 31, 1993) (adopted); Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. 138 CONG. REC. H3602 (daily ed. May 20, 1992) (adopted); Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess., 105 Stat. 2414 (1991); Concurrent Resolution on the Budget — Fiscal Year 1991, H. Con. Res. 310, 101st Cong., 2d Sess., 104 Stat. 5163 (1990); Concurrent Resolution on the Budget — Fiscal Year 1990, H. Con. Res. 106, 101st Cong., 1st Sess., 103 Stat. 2540 (1989); Concurrent Resolution on the Budget — Fiscal Year 1989, H. Con. Res. 268, 100th Cong., 2d Sess., 102 Stat. 4875 (1988); Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess., 101 Stat. 1986 (1987); Concurrent Resolution on the Budget — Fiscal Year 1987, S. Con. Res. 120, 99th Cong., 2d Sess., 100 Stat. 4354 (1986); First Concurrent Resolution on the Budget — Fiscal Year 1986, S. Con. Res. 32, 99th Cong., 1st Sess., 99 Stat. 1941 (1985); First Concurrent Resolution on the Budget — Fiscal Year 1985, H. Con. Res. 280, 98th Cong., 2d Sess., 98 Stat. 3484 (1984); First Concurrent Resolution on the Budget — Fiscal Year 1984, H. Con. Res. 91, 98th Cong., 1st Sess., 97 Stat. 1501 (1983); First Concurrent Resolution on the Budget — Fiscal Year 1983, S. Con. Res. 92, 97th Cong., 2d Sess., 96 Stat. 2647 (1982); Second Concurrent Resolution on the Budget, 1982, S. Con. Res. 50, 97th Cong., 1st Sess., 95 Stat. 1778 (1981); First Concurrent Resolution on the Budget — Fiscal Year 1982, H. Con. Res. 115, 97th Cong., 1st Sess., 95 Stat. 1743 (1981); Second Concurrent Resolution on the Budget — Fiscal Year 1981, H. Con. Res. 448, 96th Cong., 2d Sess., 94 Stat. 3680 (1980); First Concurrent Resolution on the Budget — Fiscal Year 1981, H. Con. Res. 307, 96th Cong., 2d Sess., 94 Stat. 3655 (1980); Third Concurrent Resolution on the Budget, Fiscal Year 1980, S. Con. Res. 53, 96th Cong., 1st Sess., 93 Stat. 1428 (1979); Second Concurrent Resolution on the Budget — Fiscal Year 1980, S. Con. Res. 36, 96th Cong., 1st Sess., 125 CONG. REC. 30,796 (1979) (adopted); First Concurrent Resolution on the Budget — Fiscal Year 1980, H. Con. Res. 107, 96th Cong., 1st Sess., 93 Stat. 1413 (1979); Second Concurrent Resolution on the Budget — Fiscal Year 1979, H. Con. Res. 683, 95th Cong., 2d Sess., 92 Stat. 3878 (1978); First Concurrent Resolution on the Budget, Fiscal Year 1979, S. Con. Res. 80, 95th Cong., 2d Sess., 92 Stat. 3870 (1978); Second Concurrent Resolution on the Budget — Fiscal Year 1978, H. Con. Res. 341, 95th Cong., 1st Sess., 91 Stat. 1683 (1977); First Concurrent Resolution on the Budget: Fiscal Year 1978, S. Con. Res. 19, 95th Cong., 1st Sess., 91 Stat. 1670 (1977); Third Concurrent Resolution on the Budget — Fiscal Year 1977, S. Con. Res. 10, 95th Cong., 1st Sess., 91 Stat. 1666 (1977); Second Concurrent Resolution on the Budget — Fiscal Year 1977, S. Con. Res. 139, 94th Cong., 2d Sess., 90 Stat. 3044 (1976); First Concurrent Resolution on the Budget — Fiscal Year 1977, S. Con. Res. 109, 94th Cong., 2d Sess., 90 Stat. 3029 (1976); Second Concurrent Resolution on the Budget — Fiscal Year 1976, H. Con. Res. 466, 94th Cong., 1st Sess., 89 Stat. 1209 (1975); First Concurrent Resolution on the Budget — Fiscal Year 1976, H. Con. Res. 218, 94th Cong., 1st Sess., 89 Stat. 1197 (1975).

ensuing fiscal years,¹³² for the following¹³³ —

- § 301(a)(1) (1) totals of new budget authority,¹³⁴ budget outlays,¹³⁵ direct loan obligations, and primary loan guarantee commitments;
- § 301(a)(2) (2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

¹³² At least for fiscal years through 1998, section 606 provides that the "resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of the calendar year in which it is reported and for each of the 4 succeeding fiscal years for the matters described in section 301(a)." *See infra* p. 333.

¹³³ The Chair will not look to the effect of language contained in a concurrent resolution on the budget reported by the Budget Committee, but will look to its form. 127 CONG. REC. S2754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed the following parliamentary inquiry of the Chair (Senator Humphrey of New Hampshire):

Mr. HATFIELD. . . . First, before that, would the Chair also comment or observe that the changing of those three words in no way changes the results of the resolution?

The PRESIDING OFFICER. The Chair cannot look to the results of the resolution, only to the language.

Mr. HATFIELD. Will the chair speak louder?

The PRESIDING OFFICER. The Chair could not look to the results of the resolution only to the language. When the language conforms to the Budget Act then no point of order lies as to the language.

Mr. HATFIELD. The Chair, in effect, then was commenting on form rather than substance, is that correct?

The PRESIDING OFFICER. That is the function of the Chair.

127 CONG. REC. S2754 (daily ed. Mar. 26, 1981).

¹³⁴ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹³⁵ Section 3(1) defines "budget outlays." *See supra* p. 11.

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- § 301(a)(3) (3) the surplus¹³⁶ or deficit¹³⁷ in the budget;
- § 301(a)(4) (4) new budget authority,¹³⁸ budget outlays,¹³⁹ direct loan obligations, and primary loan guarantee commitments for each major functional category,¹⁴⁰ based on allocations of the total levels set forth pursuant to paragraph (1);
- § 301(a)(5) (5) the public debt;¹⁴¹
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¹³⁶ Section 3(7) defines "surplus." *See supra* p. 17.

¹³⁷ Section 3(6) defines "deficit." *See supra* p. 16.

¹³⁸ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹³⁹ Section 3(1) defines "budget outlays." *See supra* p. 11.

¹⁴⁰ Section 911(b) of title 42 of the United States Code provides for a separate major functional category for Medicare. Note that the content of that functional category changed in fiscal year 1993. *See infra* note 1651.

Section 802, as originally enacted, while not addressing the congressional budget, did address the alteration of functional categories in the President's budget. *See infra* note 939. The substance of section 802 is codified at section 1104(c) of title 31 of the United States Code, which now states:

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

31 U.S.C. § 1104(c) (1988).

¹⁴¹ The public debt limit is set at 31 U.S.C. § 3101 (Supp. III 1991), amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13411, 107 Stat. 312 (1993). The Omnibus Budget Reconciliation Act of 1993 raised the limit to \$4.9 trillion. *Id.*

Rule XLIX of the Rules of the House of Representatives provides that the House automatically passes a joint resolution increasing the statutory limit on the public debt
(continued...)

¹⁴¹(...continued)

whenever it adopts a budget resolution that includes an increase in the limit. Rule XLIX provides:

RULE XLIX.
ESTABLISHMENT OF STATUTORY LIMIT
ON THE PUBLIC DEBT

1. Upon the adoption by Congress (under section 301 or 304 of the Congressional Budget Act of 1974) of any concurrent resolution on the budget setting forth as the appropriate level of the public debt for the period to which such concurrent resolution relates an amount which is different from the amount of the statutory limit on the public debt that would otherwise be in effect for such period, the enrolling clerk of the House of Representatives shall prepare an engrossment of a joint resolution, in the form prescribed in clause 2, increasing or decreasing the statutory limit on the public debt. The vote by which the conference report on the concurrent resolution on the budget was agreed to in the House (or by which the concurrent resolution itself was adopted in the House, if there is no conference report) shall be deemed to have been a vote in favor of such joint resolution upon final passage in the House of Representatives. Upon the engrossment of such joint resolution it shall be deemed to have passed the House of Representatives and been duly certified and examined; the engrossed copy shall be signed by the Clerk and transmitted to the Senate for further legislative action; and (upon final passage by both Houses) the joint resolution shall be signed by the presiding officers of both Houses and presented to the President for his signature (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

2. The matter after the resolving clause in any joint resolution described in clause 1 shall be as follows: "That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '\$ _____', with the blank being filled in with a limitation equal to the appropriate level of the public debt as set forth, pursuant to section 301(a)(5) of the Congressional Budget Act of 1974, in the concurrent resolution on the budget (whether such resolution was adopted under section 301, 304, or 310 of such Act). Only one joint resolution shall be prepared under clause 1 upon the adoption of any concurrent resolution on the budget; and, if the concurrent resolution set forth a different appropriate level of the public debt (pursuant to such section 301(a)(5)) for each of two separate periods, the blank referred to in the preceding sentence shall be filled in with both the limitation which is to apply for the later of the two periods (specifying the date on which that limitation is to take effect) and the limitation which is to apply for the earlier of such periods.

3. The report of the Committee on the Budget of the House of Rep-
(continued...)

§ 301(a)(8)

(6)¹⁴² For purposes of Senate enforcement under this title, outlays¹⁴³ of the old-age, survivors, and disability insurance program established under title II¹⁴⁴ of the Social Security Act for the fiscal year of the resolution and

¹⁴¹(...continued)

representatives accompanying any concurrent resolution on the budget under section 301(d) of the Congressional Budget Act of 1974, as well as the joint explanatory statement accompanying the conference report on any concurrent resolution on the budget, shall contain a clear statement of the effect under this rule that the adoption by both the House and the Senate of such concurrent resolution in the form in which it is being reported (and the adoption of the joint resolution thereupon prepared and enrolled under clause 1) would have upon the statutory limit on the public debt. It shall not be in order in the House of Representatives at any time to consider or adopt any concurrent resolution on the budget (or agree to any conference report thereon) if at that time the report accompanying such concurrent resolution (or the joint statement accompanying such conference report) does not comply with the requirements of this clause.

4. Nothing in this rule shall be construed as limiting or otherwise affecting the power of the House of Representatives or the Senate to consider and pass a bill which (without regard to the procedures under clause 1) changes the statutory limit on the public debt most recently established under this rule or otherwise; and the rights of Members and committees of the House with respect to the introduction, consideration, and reporting of any such bill shall be determined as though this rule had not been adopted.

5. As used in this rule, the term "statutory limit on the public debt" means the maximum face amount of obligations issued under authority of chapter 31 of title 31, United States Code and obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), determined under section 3101(b) of title 31 after the application of section 3101(a), title 31 which may be outstanding at any one time.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XLIX (1993).

¹⁴² Section 13303(a) of the Budget Enforcement Act added this paragraph. *See infra* p. 756.

¹⁴³ This paragraph implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act."

¹⁴⁴ Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433 (1988 & Supp. III 1991).

for each of the 4 succeeding fiscal years; and

- § 301(a)(7) (7)¹⁴⁵ For purposes of Senate enforcement under this title, revenues¹⁴⁶ of the old-age, survivors, and disability insurance program established under title II¹⁴⁷ of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.

The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus¹⁴⁸ or deficit¹⁴⁹ totals required by this subsection or in any other surplus or deficit totals required by this title.¹⁵⁰

- § 301(b) (b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION.
— The concurrent resolution on the budget may —

- § 301(b)(1) (1) set forth, if required by subsection (f),¹⁵¹ the calendar year in which, in the opinion of the Congress, the

¹⁴⁵ Section 13303(a) of the Budget Enforcement Act added this paragraph. *See infra* p. 756.

¹⁴⁶ This paragraph implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)."

¹⁴⁷ Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433 (1988 & Supp. III 1991).

¹⁴⁸ Section 3(7) defines "surplus." *See supra* p. 17.

¹⁴⁹ Section 3(6) defines "deficit." *See supra* p. 16.

¹⁵⁰ Section 13301(b) of the Budget Enforcement Act added this last sentence. *See infra* p. 745.

¹⁵¹ *See infra* pp. 77-81.

goals for reducing unemployment set forth in section 4(b)¹⁵² of the Employment Act of 1946 should be achieved;

¹⁵² Section 4(b) of the Employment Act of 1946 provides (as amended):

(b) Interim numerical goals for Initial Economic Reports

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d) of this section, in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for —

(1) reducing the rate of unemployment, as set forth pursuant to section 3(d) of this Act, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment; and

(3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

15 U.S.C. § 1022a(b) (1988).

Section 4(d) of the Employment Act of 1946 (to which section 4(b) refers) states:

(d) Review by President; report to Congress; modification of timetables.

In the second Economic Report after October 27, 1978, the President shall review the numerical goals and timetables for the reduction of unemployment, inflation, and Federal outlays as a proportion of gross national product,
(continued...)

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(2) include reconciliation directives described in section 310;¹⁵³¹⁵³(...continued)

and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for in subsection (b) and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3131 et seq.].

15 U.S.C. § 1022a(d) (1988).

Section 3(d) of the Employment Act of 1946 (to which section 4(b)(1) of that Act refers) states :

(d) Rate of Unemployment.

For the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.], the percentage rate of unemployment [is] a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of the date of enactment of this Act.

15 U.S.C. § 1022(d) (1988). The enactment date to which section 3(d) refers is October 27, 1978.

¹⁵³ See *infra* pp 158-177. Section 310 sets forth the reconciliation process in the context of Congress's annual cycle of concurrent resolutions on the budget. See *supra* pp. 158-177. For other budget process legislation dealing with reconciliation, see section 300, *supra* p. 47 (budget timetable, including that for reconciliation); section 301(b)(3), *infra* p. 59 (empowering budget resolutions to include a provision providing for delayed enrollment of legislation pending completion of reconciliation); section 305, *infra* pp. 120-142 (procedures for budget resolutions and reconciliation bills); section 313, *infra* pp. 198-228 (the Byrd Rule prohibiting extraneous matter in reconciliation); section 604, *infra* pp. 325-327 (providing an optional reconciliation process in the House of Representatives to make up the net losses created by tax-cutting legislation); section 904(c) & (d), *infra* pp. 361-368 (supermajority requirements for points of order and appeals, including those for reconciliation); Gramm-Rudman-Hollings section 258C, *infra* pp. 658-662 (providing a special Gramm-Rudman-Hollings reconciliation process to achieve savings in lieu of an impending sequester); section 5 of Executive Order 12857, *infra* pp. 826-827 (reconciliation (continued...))

§ 301(b)(2)

(3) require a procedure¹⁵⁴ under which all or certain bills or resolutions providing new budget authority¹⁵⁵

¹⁵³(...continued)

recommendations in special direct spending message); and section 16005 of H.R. 2264, 103d Cong., 1st Sess., 139 CONG. REC. H3029, H3199-201 (daily ed. May 27, 1993) (as passed by the House of Representatives) as applied to the House by H. Res. 235, 103d Cong., 1st Sess., 139 CONG. REC. H6122 (daily ed. Aug. 3, 1993)), *infra* pp. 844-848 (reconciliation procedures in response to special direct spending message).

Budget resolutions for fiscal years 1981, 1982, 1983, 1984, 1986, 1987, 1988, 1990, 1991, and 1994 have included reconciliation instructions. *See* Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, H. Con. Res. 64, 103d Cong., 1st Sess. § 7, 139 CONG. REC. H1747, H1750-51 (daily ed. Mar. 31, 1993) (adopted); Concurrent Resolution on the Budget — Fiscal Year 1991, H. Con. Res. 310, 101st Cong., 2d Sess. § 4, 104 Stat. 5163, 5176-80 (1990); Concurrent Resolution on the Budget — Fiscal Year 1990, H. Con. Res. 106, 101st Cong., 1st Sess. § 5, 103 Stat. 2540, 2549-52 (1989); Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 4, 101 Stat. 1986, 1995-99 (1987); Concurrent Resolution on the Budget — Fiscal Year 1987, S. Con. Res. 120, 99th Cong., 2d Sess. § 2, 100 Stat. 4354, 4362-66 (1986); First Concurrent Resolution on the Budget — Fiscal Year 1986, S. Con. Res. 32, 99th Cong., 1st Sess. § 2, 99 Stat. 1941 (1985); First Concurrent Resolution on the Budget — Fiscal Year 1984, H. Con. Res. 91, 98th Cong., 1st Sess. § 3, 97 Stat. 1501 (1983); First Concurrent Resolution on the Budget — Fiscal Year 1983, S. Con. Res. 92, 97th Cong., 2d Sess. § 2, 96 Stat. 2647, 2656-59 (1982); First Concurrent Resolution on the Budget — Fiscal Year 1982, H. Con. Res. 115, 97th Cong., 1st Sess. §§ 301-304, 95 Stat. 1743, 1751-58 (1981); First Concurrent Resolution on the Budget — Fiscal Year 1981, H. Con. Res. 307, 96th Cong., 2d Sess. § 3, 94 Stat. 3655, 3657-59 (1980).

¹⁵⁴ For example:

SEC. 7. No bill or resolution providing new budget authority for fiscal year 1983 or providing new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 in excess of the allocation to or report by a committee or subcommittee pursuant to section 302 of the Budget Act shall be enrolled until Congress has completed action on the Second Budget Resolution for that year as required to be reported under section 310(a) of the Budget Act.

S. Con. Res. 92, 97th Cong., 2d Sess. § 7, 96 Stat. 2647, 2660 (1982).

Budget resolutions for 1981, 1982, 1983, and 1984 contained delayed enrollment provisions. The first 1983 budget resolution exempted legislation dealing with certain trust funds from its delayed enrollment provision.

¹⁵⁵ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

or new entitlement authority¹⁵⁶ for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution¹⁵⁷ or both required by such concurrent resolution to be reported in accordance with section 310(b);¹⁵⁸

§ 301(b)(4)

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act;¹⁵⁹

¹⁵⁶ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252). For a discussion of language that ensures that authority will not constitute entitlement authority, *see infra* note 652.

¹⁵⁷ Section 310(b) defines "reconciliation resolution." *See infra* pp. 163-166.

¹⁵⁸ *See infra* pp. 163-166. Sections 310(b) and 301(b)(3) empower reconciliation provisions in a budget resolution to direct the development of a reconciliation resolution. Such a reconciliation resolution could direct the Clerk of the House or the Secretary of the Senate to revise certain bills on which enrollment has been delayed pursuant to section 301(b)(3). Congress has not included this reconciliation resolution procedure in any budget resolution.

¹⁵⁹ Some refer to this paragraph as the "elastic clause." Section 2 sets forth the purposes of this Act as:

- (1) to assure effective congressional control over the budgetary process;
- (2) to provide for congressional determination each year of the appropriate level of Federal revenues and expenditures;
- (3) to provide a system of impoundment control;
- (4) to establish national budget priorities; and
- (5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

See supra p. 10.

Process Changes in Budget Resolutions

The Constitution preserves to each House of Congress the power to change the rules governing its procedure. Article I, which sets forth the powers of the legislative branch,
(continued...)

¹⁵⁹(...continued)

provides that "[e]ach House may determine the Rules of its Proceedings" U.S. CONST. art.-I, § 5, cl. 2. Pursuant to this power, Congress may by concurrent resolution supersede rule-making statutes, such as the Congressional Budget Act of 1974, insofar as they establish congressional procedures. Section 904(a), *see infra* pp. 357-358, restates this constitutional power of Congress (and each of its Houses) to change the Budget Act's provisions. Section 301(b)(4) provides an affirmative statement of the same reservation of powers.

The legislative history of section 301(b)(4) makes clear that the drafters of the Budget Act intended that the section would grant later Congresses broad authority to revise the budget rules in budget resolutions. As passed by the House of Representatives, the Act provided a general grant of authority to include miscellaneous budgetary matters:

(b) MATTERS REQUIRED TO BE SET FORTH IN CONCURRENT RESOLUTION. The concurrent resolution referred to in subsection (c) shall set forth, for the fiscal year concerned

...

(5) such other matters relating to the budget as may be appropriate to carry out the purposes of this Act.

H.R. 7130, 93d Cong., 2d Sess. § 121(b) (1974) (as passed by the House). As passed by the House, the Act had no explicit statement of its purposes.

As amended in the Senate, the Act provided two general provisions:

SEC. 301. (a) ACTION TO BE COMPLETED BY JUNE 1. — On or before June 1 of each year, the Congress shall complete action on the first concurrent resolution on the budget The concurrent resolution shall set forth —

...

(7) OTHER MATTERS. — Such other matters relating to the budget as may be appropriate to carry out the purposes of this Act.

(b) ADDITIONAL MATTER IN CONCURRENT RESOLUTION. — The first concurrent resolution on the budget may also include provisions relating to one of the following procedures:

...

(4) any other procedure which is considered appropriate to carry out the purposes of this Act.

H.R. 7130, 93d Cong., 2d Sess. § 301 (1974) (as amended by the Senate). The other
(continued...)

¹⁵⁰(...continued)

procedures explicitly listed included a procedure to make all spending contingent on the passage of a wrap-up funding bill, a procedure providing for delayed enrollment of spending bills until after Congress completed reconciliation, and a procedure for including all appropriations measures in one omnibus bill. *See id.*

The most authoritative legislative history for the Act, the joint statement of managers in the conference report accompanying the Act, includes a detailed discussion of section 301(b)(4), plainly indicating the drafters's intent that future Congresses have broad authority to make temporary changes in the process governing spending legislation during the period covered by the budget resolution:

SECTION 301 (a) and (b). ADOPTION AND CONTENT OF FIRST
CONCURRENT RESOLUTION

The House bill provided for adoption of the first concurrent resolution The budget resolution also could contain other matters relating to the budget. The Senate amendment provided for adoption of the first resolution The Senate amendment also provided that the budget resolution would contain . . . and other matters deemed appropriate for the congressional budget. The Senate amendment further provided that the budget resolution could mandate additional procedures relating to the consideration of spending measures.

The conference substitute provides for adoption of the first concurrent resolution This resolution shall set forth: . . . and other matters deemed appropriate to the congressional budget. . . .

. . . .

The managers conceive of the first budget resolution as a major annual opportunity for considering budget policies and priorities. The budget process must combine an optimum amount of information in committee reports and other sources with attention to the key aggregates and priorities in the budget resolution. . . .

The managers recognize that as it acquires experience with its new budget process, Congress may desire to establish additional procedures to facilitate the coordination of its separate budget and appropriation decisions. Section 301(b) authorizes Congress to require in the first budget resolution that appropriation and entitlement legislation not be enrolled until the reconciliation stage of the budget process is completed. Congress may devise any other procedure relating to the budget process and prescribe its implementation for the ensuing fiscal year. It is intended that the authority to prescribe "any other procedure which is considered appropriate to carry out the purposes of this Act" applies only to the specific procedures for the enactment of budget authority and spending authority legislation for the
(continued...)

¹³⁹(...continued)

coming fiscal year and not to the jurisdiction of committees, the authorization of budget authority, or to permanent changes in congressional procedure. The Budget Committees are directed to report to Congress on the implementation of such procedures no later than the end of the 95th Congress.

S. CONF. REP. NO. 924, 93d Cong., 2d Sess. 57-58 (1974), *reprinted in* 1974 U.S.C.C.A.N. 3591, 3599-600.

Budget resolutions have included numerous provisions making changes in the budget process. Those provisions have included:

Maximum Deficit Amount: One budget resolution included an explicit exception for appropriations measures to the maximum deficit amount point of order under sections 311(a) and 605 of the Congressional Budget Act. *See* Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 10 (1992) (adopted).

Social Security "Fire Wall": One budget resolution included a provision extending the reach of a 60-vote point of order against budget resolutions that would worsen the Social Security Trust Fund balances. This section implicitly amended section 301(i) of the Congressional Budget Act. *See* Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 12(b) (1992) (adopted). *See also* the related provisions of *id.* § 12(a); Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess. § 8, 105 Stat. 2414 (1991) (adopted) (requiring use of baseline levels for Social Security for purposes of sections 302 and 311 of the Congressional Budget Act).

Reserve Funds. Several budget resolutions have included what are called "reserve funds" that allow deficit-neutral legislation on specified subjects to proceed in excess of aggregates and committee allocations. These provisions implicitly waive sections 302(f), 311(a), and 602(c) of the Congressional Budget Act for the purposes of considering specific initiative areas. While section 301(b)(7) of the Budget Act codified this practice in 1990, earlier budget resolutions since 1983 had included this type of language. *See* Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 9 (1992) (adopted) (initiatives to improve the health and nutrition of children and to provide for services to protect children and strengthen families; economic growth initiatives (including for unemployment compensation or other, related programs); continuing improvements in ongoing health care programs and phasing-in of health insurance coverage for all Americans; initiatives to improve educational opportunities for individuals at the early childhood, elementary, secondary, or higher education levels, or to invest in America's children); Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess. § 9, 105 Stat. 2414 (daily ed. May 21, 1991) (adopted) (initiatives to improve the health and nutrition of children and to provide for services to protect children and strengthen families, economic recovery initiatives, continuing improvements in ongoing health care programs and phasing-in of health insurance coverage for all Americans, to expand access to early childhood development services for low-income pre-schoolers, and to fund surface transportation); Concurrent Resolution on the Budget — Fiscal Year 1991, (continued...)

¹⁹⁹(...continued)

H. Con. Res. 310, 101st Cong., 2d Sess. § 6, 104 Stat. 5163 (1990) (children, including funding through tax credits); Concurrent Resolution on the Budget — Fiscal Year 1990, H. Con. Res. 106, 101st Cong., 1st Sess. §§ 7 & 8, 103 Stat. 2540 (1989) (children, including funding through tax credits; and medicaid); Concurrent Resolution on the Budget — Fiscal Year 1989, H. Con. Res. 268, 100th Cong., 2d Sess. §§ 5 & 6, 102 Stat. 4875 (1988) (the welfare reform initiative, the medicare catastrophic health insurance initiative, and the anti-drug initiative); Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 9, 101 Stat. 1986 (1987) (the welfare reform initiative and the medicare catastrophic health insurance initiative); Concurrent Resolution on the Budget — Fiscal Year 1987, S. Con. Res. 120, 99th Cong., 2d Sess. §§ 3 & 4, 100 Stat. 4354 (1986) (unmet critical needs requested by the President and a general revenue sharing extension); First Concurrent Resolution on the Budget — Fiscal Year 1984, H. Con. Res. 91, 98th Cong., 1st Sess. § 2, 97 Stat. 1501 (1983) (loan foreclosure relief to farmers; direct loans for farm ownership, operating, or economic emergency programs; and for other purposes); *see also* the related provisions of Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 5, 101 Stat. 1986 (1987) (funding for defense).

Asset Sales: Budget resolutions have prohibited the counting of the proceeds from asset sales and loan prepayments. These provisions altered the functioning of points of order under sections 302, 310, 311, 601(b), 602, 604, and 605 of the Congressional Budget Act. *See* Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 8 (1992) (adopted); Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess. § 7, 105 Stat. 2414 (1991) (adopted); Concurrent Resolution on the Budget — Fiscal Year 1991, H. Con. Res. 310, 101st Cong., 2d Sess. § 5, 104 Stat. 5163 (1990); Concurrent Resolution on the Budget — Fiscal Year 1990, H. Con. Res. 106, 101st Cong., 1st Sess. § 6, 103 Stat. 2540 (1989); Concurrent Resolution on the Budget — Fiscal Year 1989, H. Con. Res. 268, 100th Cong., 2d Sess. § 4, 102 Stat. 4875 (1988); Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. §§ 7 & 8, 101 Stat. 1986 (1987).

House Exception to Aggregate Point of Order: One recent budget resolution also clarified the application of the exception that applies in the House to the point of order under section 311 of the Congressional Budget Act (2 U.S.C. § 642(b) (1988)) implicitly amending that section. *See* Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 11 (1992) (adopted).

Automatic Second Budget Resolution: When the Congressional Budget Act still provided for first and second resolutions on the budget, budget resolutions have provided that the first resolution be considered to be the second resolution if the Congress had not adopted the second one by a date certain. Those provisions also provided an exception in the House to the aggregate point of order under section 311 of the Congressional Budget Act. *See* First Concurrent Resolution on the Budget — Fiscal Year 1986, S. Con. Res. 32, 99th Cong., 1st Sess. § 3, 99 Stat. 1941 (1985); First Concurrent Resolution on the Budget — Fiscal Year 1985, H. Con. Res. 280, 98th Cong., 2d Sess. § 4, 98 Stat. 3484 (1984); First Concurrent Resolution on the Budget — Fiscal Year 1984, H. Con. Res. 91, 98th Cong., 1st Sess. § 5, 97 Stat. 1501 (1983).

(continued...)

¹⁵⁹(...continued)

Point of Order Where Committees Fail To Suballocate: One resolution created a new point of order in the House against the consideration of legislation before the committee of jurisdiction had completed its suballocation of spending. See First Concurrent Resolution on the Budget — Fiscal Year 1985, H. Con. Res. 280, 98th Cong., 2d Sess. § 5, 98 Stat. 3484 (1984).

Revised Aggregates and Allocations in the House: One budget resolution has empowered the Chairman of the House Budget Committee to revise aggregates and allocations under the budget resolution, affecting the enforcement of sections 302, 311, and 602 of the Congressional Budget Act. See Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess. § 12, 105 Stat. 2414 (1991) (adopted). See also Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 13, 101 Stat. 1986 (1987) (empowering the House Budget Committee Chairman to file original allocations at a later date); Concurrent Resolution on the Budget — Fiscal Year 1987, S. Con. Res. 120, 99th Cong., 2d Sess. § 13, 100 Stat. 4354 (1986) (same).

In summary, under the Constitution, each House of Congress has the power to alter its procedure, including rule-making statutes such as the Congressional Budget Act. Section 904(a) of that Act explicitly restates this power, while section 301(b)(4) of the Act makes an affirmative statement of the principle, providing for inclusion in budget resolutions of "such other matters, and . . . such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act." The legislative history of the law makes clear that the drafters of the Act intended that the section would grant later Congresses broad authority to revise the budget process. In practice, Congress has included a variety of budget process provisions in budget resolutions, and many of these have (explicitly and implicitly) altered the application of points of order under the Congressional Budget Act.

Sense of the Congress Provisions

In addition, the concurrent resolution on the budget, like any concurrent resolution, may include "sense of the Congress" and "sense of the Senate" provisions. These provisions state the opinion of the Congress or the Senate and have no binding effect. They must be within the jurisdiction of the Budget Committee in order for the Committee to report the language. Thus, the budget resolution may include any "sense of the Congress" or "sense of the Senate" provision dealing with budgetary policy. —

Many "sense of the Congress" and "sense of the Senate" provisions have been included in budget resolutions, including provisions on:

- tax reform;
- tax law enforcement;

(continued...)

§ 301(b)(5)

(5)¹⁶⁰ include a heading entitled "Debt Increase as Measure of Deficit"¹⁶¹ in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code¹⁶²) has increased or would increase in each of the

¹⁵⁹(...continued)

- monetary policy;
- Federal employment policy;
- Congressional Budget Office scorekeeping;
- farm loss deductions;
- limitations on benefits to aliens;
- military retirement programs;
- limiting the level of credit activities through the appropriations process;
- coverage of off-budget and credit activities in budget resolutions;
- Federal Financing Bank activities;
- international monetary conference;
- the Grace Commission;
- the National Commission on Social Security Reform;
- early action by Senate committees to meet reconciliation instructions; and
- inflationary effects of Federal regulations.

¹⁶⁰ Section 13203 of the Budget Enforcement Act added this paragraph. *See infra* p. 717. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for display of the increase in the debt as a measure of the deficit . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.A.N. 2374, 2875.

¹⁶¹ Section 3(6) defines "deficit." *See supra* p. 16.

¹⁶² The public debt limit is set at 31 U.S.C. § 3101 (Supp. III 1991), *amended by* the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13411, 107 Stat. 312 (1993).

relevant fiscal years;

§ 301(b)(6)

(6)¹⁶³ include a heading entitled "Display of Federal Retirement Trust Fund Balances" in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds;

§ 301(b)(7)

(7)¹⁶⁴ set forth pay-as-you-go procedures for the Senate whereby —

§ 301(b)(7)(A)

(A) budget authority¹⁶⁵ and outlays¹⁶⁶ may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit¹⁶⁷ (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concur-

¹⁶³ Section 13203 of the Budget Enforcement Act added this paragraph. *See infra* p. 717. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for . . . display of Federal retirement trust fund balances . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2374, 2875.

¹⁶⁴ Section 13204 of the Budget Enforcement Act added this paragraph. *See infra* p. 718. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for . . . the creation in budget resolutions of pay-as-you-go provisions similar to reserve funds established in budget resolutions since 1987." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2374, 2875.

¹⁶⁵ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹⁶⁶ Section 3(1) defines "budget outlays." *See supra* p. 11.

¹⁶⁷ Section 3(6) defines "deficit." *See supra* p. 16.

rent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

§ 301(b)(7)(B)

(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

§ 301(b)(7)(C)

(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

§ 301(b)(7)(C)

(D) the appropriate committee shall report appropriately revised allocations pursuant to section 302(b) to carry out this paragraph;¹⁶⁸ and

¹⁶⁸ For the text of reserve funds created pursuant to this paragraph, see Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, H. Con. Res. 64, 103d Cong., 1st Sess. § 9, 139 CONG. REC. H1747, H1751-53 (daily ed. Mar. 31, 1993) (adopted) (initiatives to improve the health and nutrition of children and to provide for services to support and protect children, and to improve the well-being of families; economic growth initiatives; continuing improvements in ongoing health care programs and comprehensive health care reform; initiatives to improve educational opportunities for individuals at the early childhood, elementary, secondary, or higher education levels, or to invest in the health or education of America's children; initiatives to preserve and rebuild the United States maritime industry; initiatives to reform the financing of federal elections; trade-related legislation); Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 9, 138 CONG. REC. H3602, H3608 (daily ed. May 20, 1992) (adopted) (initiatives to improve the health and nutrition of children and to provide for services to protect children and strengthen families; economic growth initiatives (including for unemployment compensation or other, related programs); continuing improvements in ongoing health care programs and phasing-in of health insurance coverage for all Americans; initiatives to improve educational opportunities for individuals at the early

(continued...)

§ 301(b)(8) (8)¹⁶⁹ set forth procedures to effectuate pay-as-you-go in the House of Representatives.

§ 301(c) (c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES. — If the Committee on the

¹⁶⁹(...continued)

childhood, elementary, secondary, or higher education levels, or to invest in America's children); Concurrent Resolution on the Budget — Fiscal Year 1992, H. Con. Res. 121, 102d Cong., 1st Sess. § 9, 105 Stat. 2414, 2430-32 (1991) (adopted) (initiatives to improve the health and nutrition of children and to provide for services to protect children and strengthen families, economic recovery initiatives, continuing improvements in ongoing health care programs and phasing-in of health insurance coverage for all Americans, to expand access to early childhood development services for low-income pre-schoolers, and to fund surface transportation). For similar reserve fund language before enactment of this section, see Concurrent Resolution on the Budget — Fiscal Year 1991, H. Con. Res. 310, 101st Cong., 2d Sess. § 6, 104 Stat. 5163 (1990) (children, including funding through tax credits); Concurrent Resolution on the Budget — Fiscal Year 1990, H. Con. Res. 106, 101st Cong., 1st Sess. §§ 7 & 8, 103 Stat. 2540 (1989) (children, including funding through tax credits; and medicaid); Concurrent Resolution on the Budget — Fiscal Year 1989, H. Con. Res. 268, 100th Cong., 2d Sess. §§ 5 & 6, 102 Stat. 4875 (1988) (the welfare reform initiative, the medicare catastrophic health insurance initiative, and the anti-drug initiative); Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 9, 101 Stat. 1986 (1987) (the welfare reform initiative and the medicare catastrophic health insurance initiative); Concurrent Resolution on the Budget — Fiscal Year 1987, S. Con. Res. 120, 99th Cong., 2d Sess. §§ 3 & 4, 100 Stat. 4354 (1986) (unmet critical needs requested by the President and a general revenue sharing extension); First Concurrent Resolution on the Budget — Fiscal Year 1984, H. Con. Res. 91, 98th Cong., 1st Sess. § 2, 97 Stat. 1501 (1983) (loan foreclosure relief to farmers; direct loans for farm ownership, operating, or economic emergency programs; and for other purposes). See also the related provisions of Concurrent Resolution on the Budget — Fiscal Year 1988, H. Con. Res. 93, 100th Cong., 1st Sess. § 5, 101 Stat. 1986 (1987) (funding for defense).

For instances on which the Chairman of the Budget Committee has invoked reserve funds created pursuant to this paragraph, see 137 CONG. REC. S18,663 (daily ed. Nov. 27, 1991) (statement of Sen. Sasser on transportation bill); *id.* at S7511-12 (daily ed. June 11, 1991) (same); 138 CONG. REC. S2951 (Mar. 10, 1992) (statement of Sen. Sasser on S. 2325); *id.* at S4055 (Mar. 20, 1992) (statement of Sen. Sasser on the conference report on the Economic Growth and Tax Relief bill, H.R. 4210); *id.* at S10,742-44 (daily ed. July 29, 1992) (statement of Sen. Sasser on the Comprehensive National Energy Policy Act, H.R. 776); *id.* at S11,222 (daily ed. Aug. 3, 1992) (same); *id.* at S12,247-49 (daily ed. Aug. 11, 1992) (statement of Sen. Sasser on the Revenue Act of 1992, H.R. 11); *id.* at S12,781-83 (daily ed. Sept. 8, 1992) (same, as modified).

¹⁶⁹ Section 13204 of the Budget Enforcement Act added this paragraph. See *infra* p. 718.

Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

§ 301(d) (d) **VIEWS AND ESTIMATES OF OTHER COMMITTEES. —** Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code,¹⁷⁰ each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a)¹⁷¹ and (b)¹⁷² which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of

¹⁷⁰ Section 13112(a)(5) of the Budget Enforcement Act (*see infra* p. 708) changed this deadline from "On or before February 25 of each year" to "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code," as section 13112(c)(1) of the Budget Enforcement Act (*see infra* p. 710) changed the deadline for the President's budget submission in section 1105(a) of title 31 of the United States Code from "[o]n or before the first Monday after January 3 of each year" to "[o]n or after the first Monday in January but not later than the first Monday in February of each year."

¹⁷¹ *See supra* pp. 50-56.

¹⁷² *See supra* pp. 56-60.

1946.¹⁷³ Any other committee of the House of Representatives

¹⁷³ In this connection, section 1021 of title 15 of the United States Code sets forth several Congressional statements of purposes:

§ 1021. Congressional declarations

(a) Generally.

The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 1022(b) of this title.

(b) Full opportunities for employment.

The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

(c) Inflation.

The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

(d) Coordination of Federal policies and programs.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

(continued...)

¹⁷³(...continued)

(e) Federal controls.

The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this Act shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

(f) Expansion of private employment.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth —

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act [15 U.S.C. § 3116]; and

(4) when recommended by the President under section 206 of such Act [15 U.S.C. § 3116] and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

(g) Trade deficits.

The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination

(continued...)

or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections

¹⁷³(...continued)

or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

(h) Balanced Federal budget.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 1022a of this title.

(i) Investment needs of private enterprise.

The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

(j) Reliance on private sector.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this Act to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

(a)¹⁷⁴ and (b)¹⁷⁵ which relate to matters within its jurisdiction or functions.

§ 301(e) (e) **HEARINGS AND REPORT.** — In developing the concurrent resolution on the budget referred to in subsection (a)¹⁷⁶ for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d)¹⁷⁷ may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority¹⁷⁸ and outlays¹⁷⁹ set forth in such concurrent resolution are designed to achieve any goals it is recommending. The report accompanying such concurrent resolution shall include, but not be limited to —

§ 301(e)(1) (1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;

§ 301(e)(2) (2) a comparison of the appropriate levels of total

¹⁷⁴ See *supra* pp. 50-56.

¹⁷⁵ See *supra* pp. 56-60.

¹⁷⁶ See *supra* pp. 50-56.

¹⁷⁷ See *supra* pp. 70-74.

¹⁷⁸ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

¹⁷⁹ Section 3(1) defines "outlays." See *supra* p. 11.

budget outlays¹⁸⁰ and total new budget authority,¹⁸¹ total direct loan obligations, total primary loan guarantee commitments, as set forth in such concurrent resolution, with those estimated or requested in the budget submitted by the President;

§ 301(e)(3)

(3) with respect to each major functional category, an estimate of budget outlays¹⁸² and an appropriate level of new budget authority¹⁸³ for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts,¹⁸⁴ and with each such division being subdivided between controllable amounts and all other amounts;

§ 301(e)(4)

(4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

§ 301(e)(5)

(5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives which the committee considered;

§ 301(e)(6)

(6) projections (not limited to the following), for the period of five fiscal years beginning with such fiscal year,

¹⁸⁰ Section 3(1) defines "budget outlays." *See supra* p. 11.

¹⁸¹ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹⁸² Section 3(1) defines "budget outlays." *See supra* p. 11.

¹⁸³ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹⁸⁴ Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), *see supra* note 36.

of the estimated levels of total budget outlays¹⁸⁵ and total new budget authority,¹⁸⁶ the estimated revenues to be received, and the estimated surplus¹⁸⁷ or deficit,¹⁸⁸ if any, for each fiscal year in such period, and the estimated levels of tax expenditures¹⁸⁹ (the tax expenditures budget) by major functional categories;

§ 301(e)(7) (7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

§ 301(e)(8) (8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution; and

§ 301(e)(9) (9) allocations described in section 302(a).¹⁹⁰

¹⁸⁵ Section 3(1) defines "budget outlays." *See supra* p. 11.

¹⁸⁶ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

¹⁸⁷ Section 3(7) defines "surplus." *See supra* p. 17.

¹⁸⁸ Section 3(6) defines "deficit." *See supra* p. 16.

¹⁸⁹ Section 3(3) defines "tax expenditures." *See supra* p. 13.

¹⁹⁰ *See infra* pp. 88-90.

Section 5302 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, § 5302, 102 Stat. 1462-63 (Aug. 23, 1988)) added a paragraph (10) which section 5303 of that Act provided "shall be effective for fiscal years 1989, 1990, 1991, and 1992." Pub. L. 100-418, § 5303, 102 Stat. 1463 (Aug. 23, 1988). Compare the parallel temporary requirements for the President's budget submission set forth at 31 U.S.C. § 1105(a)(26) (1988). *See infra* note 1850. For fiscal years 1989 through 1992, section 301(e)(10) required:

(10) an analysis, prepared after consultation with the Director of the Congressional Budget Office, of the concurrent resolution's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based
(continued...)

§ 301(f) **(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT. —**

§ 301(f)(1) **(1) If, pursuant to section 4(c)¹⁹¹ of the Employ-**

¹⁹⁰(...continued)

upon the best information available at the time, for the fiscal year covered by the concurrent resolution —

(A) the amount of borrowing by the Government in private credit markets;

(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

(C) net private domestic investment;

(D) the merchandise trade and current accounts;

(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.

¹⁹¹ Section 4(c) of the Employment Act of 1946 states:

(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports.

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1) of this section, each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2) of this section, each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (continued...)

ment Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b)¹⁹² of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

§ 301(f)(2)

(2) After the Congress has expressed its opinion pursuant to paragraph (1)¹⁹³ as to the year in which the goals for reducing unemployment set forth in section 4(b)¹⁹⁴ of the Employment Act of 1946 can be achieved, if, pursuant to section 4(e)¹⁹⁵ of such Act, the President

¹⁹¹(...continued)

(b)(3), each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) of this section for the reduction of unemployment.

15 U.S.C. § 1022a(c) (1988). The references to subsection (b) refer to section 4(b), set forth *supra* note 57.

¹⁹² See *supra* note 152.

¹⁹³ See *supra* pp. 77-78.

¹⁹⁴ See *supra* note 152.

¹⁹⁵ Section 4(e) of the Employment Act of 1946 states:

(e) Interim numerical goals for succeeding Economic Reports.

If, after achievement of the 3 and 4 per centum goals specified in subsection (b) of this section, the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate

(continued...)

recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1)¹⁹⁶ or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

§ 301(f)(3)

(3) It shall be in order to amend¹⁹⁷ the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)¹⁹⁸) set forth in

¹⁹⁵(...continued)

is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) of this section as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (d), recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

15 U.S.C. § 1022a(c) (1988). Of the sections to which section 4(c) refers, subsections (b) and (d) and section 1022(d) appear *supra* note 152, while section 304 of the Full Employment and Balanced Growth Act of 1978 added relevant sections of the Congressional Budget Act.

¹⁹⁶ See *supra* pp. 77-78.

¹⁹⁷ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *infra* note 295 (regarding section 303(a)).

¹⁹⁸ See *supra* pp. 50-56.

such resolution in germane¹⁹⁹ fashion in order to be consistent with the economic goals (as described in section 3(a)(2)²⁰⁰ and 4(b)²⁰¹ of the Employment Act of 1946)

¹⁹⁹ For a discussion of germaneness, see *infra* note 352.

²⁰⁰ Section 3(a)(2) of the Employment Act of 1946 states:

Sec. 1022. Economic Report of President; coverage; supplementary reports; reference to congressional joint committee; percentage rate of unemployment; definitions

(a) Time of submission; contents.

The President shall annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this Act referred to as the "Economic Report" together with the annual report of the Council of Economic Advisers submitted in accord with section 1023(c) of this title, setting forth —

...

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and —

(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;

....

15 U.S.C. § 1022(a)(2) (1988 & Supp. IV 1992).

²⁰¹ See *supra* note 152.

which such amendment proposes can be achieved by the year specified in such amendment.

§ 301(g) (g)²⁰² ECONOMIC ASSUMPTIONS. —

§ 301(g)(1) (1) It shall not be in order²⁰³ in the Senate to consider any concurrent resolution on the budget for a fiscal year,²⁰⁴ or any amendment thereto,²⁰⁵ or any conference report thereon, that sets forth amounts and levels that are determined on the basis of more than one set of economic and technical assumptions.



§ 301(g)(2) (2) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the confer-

²⁰² Section 201(b) of Gramm-Rudman-Hollings added what is now section 301(g)(2) as section 301(g). See *infra* p. 413. Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added sections 301(g)(1) and 301(g)(3) and changed the title of the subsection from "COMMON ECONOMIC ASSUMPTIONS" to "ECONOMIC ASSUMPTIONS." Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(g) (1988)).

²⁰³ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. Cf. *infra* note 293 (regarding section 303(a)).

²⁰⁴ Section 304(b) applies section 301(g) to revisions of budget resolutions. See *infra* p. 117.

²⁰⁵ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *infra* note 295 (regarding section 303(a)).

ees in the case of technical disagreement,²⁰⁶ is based.

§ 301(g)(3) (3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under titles III²⁰⁷ and IV²⁰⁸ of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.

§ 301(h) (h) BUDGET COMMITTEE CONSULTATION WITH COMMITTEES. — The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees

§ 301(i) (i)²⁰⁹ It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported²¹⁰ to the

²⁰⁶ Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added the comma here. Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (1987) (codified at 2 U.S.C. § 632(g) (1988)).

²⁰⁷ See pp. 43-194.

²⁰⁸ See *infra* pp. 247-272.

²⁰⁹ Section 13303(b) of the Budget Enforcement Act amended subsection (i) to read as it does now. See *infra* p. 756. The Congressional Budget Act now addresses in section 606(c) (see *infra* p. 334) the matter that the old section 301(i) used to address. For the text of section 301(i) as it used to read, see *infra* note 912 (at the end of section 606(c)).

Sections 904(c) of the Congressional Budget Act (see *infra* pp. 361-363) and 271(b) of Gramm-Rudman-Hollings (see *infra* p. 671) provide that the Senate may waive or suspend section 301(i) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. See *infra* p. 690.

²¹⁰ Note that, by its terms, section 301(i) does not apply to amendments to budget resolutions or resolutions as amended. Cf. *infra* note 514 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill (continued...))

²¹⁰(...continued)

that has been amended by an amendment that reduces revenues below the revenue floor). The drafters of the Budget Enforcement Act rewrote section 301(i) in this fashion to allow a debate of a payroll tax cut proposal that was not distorted by procedural impediment. *See* 137 CONG. REC. S4198-200 (daily ed. Apr. 9, 1991) (statements of Sens. Sasser, Moynihan & Domenici). The Senate conducted that debate on the budget resolution for fiscal year 1992, rejecting the payroll tax cut proposal offered by Senator Moynihan. *See id.* at S4825-34 (daily ed. Apr. 23, 1991); *id.* at S4933-58 (daily ed. Apr. 24, 1991).

Section 12(b) of the fiscal year 1993 budget resolution then plugged the loophole:

SEC. 12. SOCIAL SECURITY FIRE WALL. POINT OF ORDER IN THE SENATE.

....

(b) APPLICATION OF SECTION 301(i). — Notwithstanding any other rule of the Senate, in the Senate, the point of order established under section 301(i) of the Congressional Budget Act of 1974 shall apply to any concurrent resolution on the budget for any fiscal year (as reported and as amended), amendments thereto, or any conference report thereon.

Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess., § 12(b), 138 CONG. REC. H3602, H3609 (daily ed. May 20, 1992) (adopted); *see also* Concurrent Resolution Setting Forth the Congressional Budget for the United States Government for the Fiscal Years 1994, 1995, 1996, 1997, and 1998, H. Con. Res. 64, 103d Cong., 1st Sess., § 10(b), 139 CONG. REC. H1747, H1753 (daily ed. Mar. 31, 1993) (adopted) (readopting the provision).

The joint explanatory statement of the committee of conference explained the change:

SOCIAL SECURITY

Section 11 of the Senate amendment sets forth two provisions designed to ensure that 60-vote hurdles impede legislation that would worsen the Social Security Trust Fund balances. . . . Section 11(b) of the Senate amendment is designed to ensure that such amendments offered to future resolutions will confront a 60-vote hurdle.

Section 301(a)(6) and (7) of the Congressional Budget Act (2 U.S.C. § 632(a)(6) & (7) (Supp. II 1990)) requires the budget resolution to provide two numbers for each year for Social Security enforcement in the Senate: a ceiling on outlays and a floor for revenues. Under existing law, if the budget resolution increases the outlay ceiling, then legislation that raises Social Security outlays would be in order in the Senate later in the year. Under existing law, if the budget resolution lowers the revenue floor, then legislation that cut Social Security revenues would be in order in the Senate later in the year.

(continued...)

²¹⁰(...continued)

In addition (under sections 302(f)(2) and 311(a)(2) of the Congressional Budget Act, 2 U.S.C. §§ 633(f)(2) & 642(a)(2) (Supp. II 1990)), if the budget resolution increases the outlay ceiling by some amount, then legislation that cuts Social Security revenues by an equal amount would also be in order in the Senate later in the year, and vice versa.

....

Section 11(b) of the Senate amendment extends the "fire wall" protecting the Social Security trust fund from legislation that would worsen that fund's balances. It does so by eliminating an exception in section 301(i) of the Congressional Budget Act (2 U.S.C. § 632(i) (Supp. II 1990)) to the requirement for 60 votes in the Senate to change the Social Security trust fund balances.

Prior to its removal from the budget, the budget process protected the Social Security Trust Fund through points of order against increasing the deficit (e.g., section 311(a) of the Congressional Budget Act) and the threat of across-the-board cuts under Gramm-Rudman-Hollings as a result of increasing the deficit. To protect the Social Security Trust Fund from depletion after its removal from the calculation of the deficit, sections 13302 and 13303 of the Budget Enforcement Act (104 Stat. at 1388-623 to -627) created new points of order — called "fire walls" — generally prohibiting worsening of the balances of the Social Security Trust Fund. Budget Enforcement Act section 13302 (2 U.S.C. § 632 note (Supp. II 1990)) creates the point of order in the House of Representatives. Budget Enforcement Act section 13303 amended sections 301(a)(6), 301(a)(7), 301(i), 302(a)(2), 302(f)(2), and 311(a) of the Congressional Budget Act (2 U.S.C. §§ 632(a)(6), 632(a)(7), 632(i), 633(a)(2), 633(f)(2) & 642(a) (Supp. II 1990)) to enforce the fire wall point of order in the Senate through the mechanisms of existing points of order.

In the Senate, under current law, waiver of the fire wall points of order generally requires the affirmative vote of 60 Senators. Specifically, sections 904(c) of the Congressional Budget Act (2 U.S.C. § 621 note (Supp. II 1990)) and 271(b) of Gramm-Rudman-Hollings (2 U.S.C. § 901 note (1988)) provide that the Senate may waive or suspend sections 301(i), 302(f), and 311(a) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. As amended by section 13208(b) of the Budget Enforcement Act (104 Stat. at 1388-619), section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995.

As amended by section 13303(b) of the Budget Enforcement Act, the first sentence of section 301(i) of the Congressional Budget Act of 1974 reads:

(continued...)

²¹⁰(...continued)

....

Section 301(a)(7) of the Congressional Budget Act (2 U.S.C. § 632(a)(7) (Supp. II 1990)) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." Section 301(a)(6) (2 U.S.C. § 632(a)(7) (Supp. II 1990)) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act."

Under current law, section 301(i) does not ensure that a 60-vote hurdle stands in the way of any changes in law that worsen the Social Security Trust Fund balances, as section 301(i) does not by its terms apply to amendments from the floor to budget resolutions or to conference reports on those resolutions. Under current law, by virtue of the words "as reported" in section 301, a point of order will not lie under the section against a resolution that has been amended by an amendment that worsens the Social Security trust fund balances. This is so because of precedents in the application of similar language in section 311(a) of the Congressional Budget Act. *See* 131 CONG. REC. S8806 (June 26, 1985) (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database); William G. Dauster, *Budget Process Law Annotated* 148-52 n. 488 (1991) (S. Print 102-22).

Section 11(b) of the Senate amendment applies the point of order under section 301(i) of the Congressional Budget Act to any concurrent resolution on the budget for any fiscal year (as reported and as amended), amendments thereto, or any conference report thereon. Thus, section 301(i) will apply throughout the consideration of the budget resolution.

The Senate added section 11 of the Senate amendment as an amendment during consideration of the resolution on the Senate floor.

Section 11(b) of the Senate amendment is intended to make a permanent change in the rules of the Senate. Congress may by concurrent resolution supersede the Congressional Budget Act for the purposes of its application to the Congress. Article I, section 5, clause 2 of the Constitution provides: "Each House may determine the Rules of its Proceedings" Similarly, section 904(a) of the Congressional Budget Act provides:

[*see infra* pp. 357-358]

. . . . *See also* Congressional Budget Act § 301(b)(4); 2 U.S.C. § 632(b)(4)
(continued...)

Senate that would decrease the excess of social security revenues²¹¹ over social security outlays²¹² in any of the fiscal

²¹⁰(...continued)
(Supp. II. 1990).

The House resolution contains no provision similar to section 11 of the Senate amendment.

The conference agreement contains the language of section 11 of the Senate amendment (with a change in the section title to make clear its purpose).

H.R. CONF. REP. NO. 102-529, 102d Cong., 2d Sess. 64-67 (1992), *reprinted in* 138 CONG. REC. H3618 (daily ed. May 20, 1992). *See also* H.R. CONF. REP. NO. 103-48, 103d Cong., 1st Sess. 47 (1993), *reprinted in* 139 CONG. REC. H1747, H1760 (noting the readoption of the provision); S. REP. NO. 103-19, 103d Cong., 1st Sess. 58-61 (1993) (discussing at length the history and readoption of the provision).

For legislative history of efforts to alter section 301(i) to eliminate the exception at issue here, see 137 CONG. REC. S4239-41 (daily ed. Apr. 9, 1991) (statement of Sen. Domenici introducing S. 788, the Social Security Trust Fund Integrity Act of 1991; colloquy with Sen. Dole); *id.* at S4263 (statement of Sen. Seymour); *id.* at S4959-61 (daily ed. Apr. 24, 1991) (debate on and adoption of a Sasser-Domenici amendment similar to section 11(a) of the Senate amendment); H. CON. RES. 121, 102d Cong., 1st Sess., § 8(b), 137 CONG. REC. H3300, H3305 (daily ed. May 21, 1991) (resolution adopted including the Sasser-Domenici language).

For legislative history of the effort to remove Social Security from the budget, see generally Budget Enforcement Act subtitle C, *infra* pp. 745-764; H.R. CONF. REP. NO. 964, 101st Cong., 2d Sess. 1160-61 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2865-66; 136 CONG. REC. 15,777-81 (Oct. 18, 1990) (Senate debate on the related amendment to the Omnibus Budget Reconciliation Act of 1990); SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426, 101ST Cong. 2d Sess. (1990); CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY, MEDICARE, AND THE UNIFIED BUDGET, S. PRINT NO. 83, 99th Cong., 1st Sess. (Sen. Comm. on Budget Print 1985); *Concurrent Resolution on the Budget for Fiscal Year 1989: Hearings Before the Senate Comm. on the Budget*, 100th Cong., 2d Sess. 85-160 (1988) (S. Hrg. No. 578, Vol. III) (hearing March 24, 1988, on "Social Security, Deficits, and the Baby Boomers' Retirement").

²¹¹ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 145.

²¹² Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 143.

years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues²¹³ unless such provision changes the income tax treatment of social security benefits.

²¹³ The drafters of the Budget Enforcement Act intended this language to address the case where changes in income tax law had certain indirect effects on the Social Security trust fund because of the taxation of Social Security benefits. The drafters intended that these changes should not trigger a point of order under this section dealing with the levels in that trust fund. To achieve the intended result, however, the language should read "social security revenues or outlays." This is so because when revenues result from the taxation of Social Security benefits, the revenues flow into the Treasury and the Treasury then makes a payment to the Social Security Trust Funds. The payment is scored as a positive outlay when made by the Treasury and a negative outlay when received by Social Security. Therefore, any changes to the income tax law that indirectly affect the amount of revenue collected from the income taxation of Social Security benefits would affect Social Security outlays rather than revenues.

COMMITTEE ALLOCATIONS

§ 302(a) **SEC. 302.²¹⁴ (a) ALLOCATION OF TOTALS. —**

§ 302(a)(1) (1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays,²¹⁵ total new budget authority,²¹⁶ and total entitlement authority²¹⁷ among each committee of the House of Representatives which has jurisdiction over laws, bills and resolutions providing such new budget authority,²¹⁸ or such entitlement authority.²¹⁹ The allocation shall, for each commit-

²¹⁴ Section 302 is codified as amended at 2 U.S.C. § 633 (1988 & Supp. IV 1992). For fiscal years through 1998, section 602 (*see infra* pp. 314-322) supersedes much of section 302.

²¹⁵ Section 3(1) defines "budget outlays." *See supra* p. 11.

²¹⁶ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²¹⁷ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(i) of the Budget Enforcement Act struck a reference here to "total credit authority" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 3(10) defines "credit authority." *See supra* p. 19.)

²¹⁸ Section 13201(b)(3)(A)(ii) of the Budget Enforcement Act, which amended this language, should have struck this comma. *See infra* p. 714.

²¹⁹ Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(ii) of the Budget Enforcement Act struck a reference here to "such credit authority." *See infra* p. 714.

tee, divide new budget authority,²²⁰ and entitlement authority²²¹ between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

§ 302(a)(2)

(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of social security outlays²²² for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,²²³ total budget outlays²²⁴ and total new budget authority²²⁵ among each

²²⁰ Section 13201(b)(3)(A)(iii) of the Budget Enforcement Act, which amended this language, should have struck this comma. *See infra* p. 714.

²²¹ Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(iii) of the Budget Enforcement Act struck a reference here to "credit authority." *See infra* p. 714.

²²² Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 145.

²²³ Section 13303(c)(1) of the Budget Enforcement Act added the words "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years." *See infra* p. 757.

²²⁴ Section 3(1) defines "budget outlays." *See supra* p. 11.

²²⁵ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

Effective for fiscal year 1992 and after, section 13201(b)(3)(B) of the Budget Enforcement Act struck a reference here to "new credit authority" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

committee of²²⁶ the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

§ 302(b) (b) **REPORTS BY COMMITTEES.** — As soon as practicable after a concurrent resolution on the budget is agreed to —

§ 302(b)(1) (1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House,

§ 302(b)(1)(A) (A) subdivide among its subcommittees the allocation of budget outlays²²⁷ and new budget authority²²⁸ allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and

§ 302(b)(1)(B) (B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

§ 302(b)(2) (2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made,

²²⁶ Because this paragraph deals with procedures for the Senate, section 13112(a)(6) of the Budget Enforcement Act deleted the words "the House of Representatives and" that used to appear here. See *infra* p. 708.

²²⁷ Section 3(1) defines "budget outlays." See *supra* p. 11.

²²⁸ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

Effective for fiscal year 1992 and after, section 13201(b)(3)(C) of the Budget Enforcement Act struck a reference here to "new credit authority" (see *infra* p. 714), as title V now addresses credit (see *infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (see *infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (see *supra* p. 19).)

§ 302(b)(2)(A)

(A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and

§ 302(b)(2)(B)

(B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report²²⁹ to its House the subdivisions made by it pursuant to this subsection.²³⁰

²²⁹ Because this section here requires committees to "report," committees must comply with the provisions of rule XXVI(7)(a), which requires (among other things) that "no measure or matter or recommendation shall be *reported* from any committee unless a majority of the committee were physically present," (STANDING RULES OF THE SENATE Rule XXVI(7)(a)(1) (1992) (emphasis added)) and: "The vote of any committee to *report* a measure or matter shall require the concurrence of a majority of the members of the committee who are present." *Id.* Rule XXVI(7)(a)(3) (emphasis added).

²³⁰ See, e.g., 135 CONG. REC. S9051 (daily ed. July 27, 1989) (Agriculture, Nutrition & Forestry Comm., fiscal year 1990); *id.* at S8147-48 (daily ed. July 18, 1989) (Armed Services Comm., fiscal year 1990); *id.* at S7950 (daily ed. July 13, 1989) (Energy & Natural Resources Comm., fiscal year 1990); S. REP. NO. 101-75, 101st Cong., 1st Sess. (July 12, 1989) (Appropriations Comm., fiscal year 1990); S. REP. NO. 100-562, 100th Cong., 2d Sess. (Sept. 28, 1988) (Veterans' Affairs Comm., fiscal year 1989); S. REP. NO. 100-384, 100th Cong., 2d Sess. (June 10, 1988) (Appropriations Comm., fiscal year 1989); H.R. REP. NO. 100-687, 100th Cong., 2d Sess. (June 10, 1988) (House Appropriations Comm., fiscal year 1989); S. REP. NO. 100-217, 100th Cong., 1st Sess. (Nov. 12, 1987) (Banking & Urban Affairs Comm., fiscal year 1988); S. REP. NO. 100-144, 100th Cong., 1st Sess. (Aug. 6, 1987) (Appropriations Comm., fiscal year 1988); H.R. REP. NO. 100-253, 100th Cong., 1st Sess. (July 29, 1987) (House Appropriations Comm., fiscal year 1988); H.R. REP. NO. 100-228, 100th Cong., 1st Sess. (July 22, 1987) (Ways & Means Comm., fiscal year 1988); H.R. REP. NO. 100-227, 100th Cong., 1st Sess. (July 22, 1987) (Interior & Insular Affairs Comm., fiscal year 1988); S. REP. NO. 100-103, 100th Cong., 1st Sess. (July 8, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 99-533, 99th Cong., 2d Sess. (Oct. 6, 1986) (Energy & Natural Resources Comm., fiscal year 1987); S. REP. NO. 99-442, 99th Cong., 2d Sess. (Sept. 16, 1986) (Environment & Public Works Comm., fiscal year 1987); S. REP. NO. 99-416, 99th Cong., 2d Sess. (Aug. 15, 1986) (Rules & Administration Comm., fiscal year 1987); S. REP. NO. 99-398, 99th Cong., 2d Sess. (Aug. 13, 1986) (Labor & Human Resources Comm., fiscal year 1987); S. REP. NO. 99-387, 99th Cong., 2d Sess. (Aug. 8, 1986) (Veterans' Affairs Comm., fiscal year 1987); S. REP. NO. 99-346, 99th Cong., 2d Sess. (July 29, 1986) (Appropriations Comm., fiscal year 1987).

§ 302(c) (c) **POINT OF ORDER.**²³¹ — It shall not be in order²³² in the House of Representatives or the Senate to consider any bill,²³³ joint resolution, amendment,²³⁴ motion,²³⁵ or confer-

²³¹ Sections 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 302(c) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. (Section 211 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added section 302(c) to the list of points of order with this requirement. Pub. L. No. 101-119, § 211, 101 Stat. 754, 787 (1987) (codified at 2 U.S.C. § 900 note (Supp. IV 1992).) Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690.

²³² Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 293 (regarding section 303(a)).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 520 (regarding section 311(a)).

²³³ Because section 302(c) does not contain the words "as reported" here, points of order under section 302(c) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(c). *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)).

²³⁴ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 295 (regarding section 303(a)).

²³⁵ Section 13207(a)(1)(A) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. It is a rare instance when a motion can worsen the deficit. Two situations raise possibilities, however. First, a motion to recommit might include instructions specific enough that they would cause the deficit to increase.

Second, as the Chairman of the Appropriations Committee, Senator Robert C. Byrd, pointed out through his unanimous consent request in connection with the Dire Emergency Supplemental Appropriations bill for Fiscal Year 1989, H.R. 2072, where a Senate amendment reduces spending by striking the underlying text received from the House of Representatives, a motion to table the Senate amendment would result in increasing spending. Chairman Byrd avoided this threat to the fiscal integrity of the pending appropriations bill by seeking the following unanimous consent request:

Mr. BYRD. Mr. President, I ask unanimous consent that any motion, the effect of which, if adopted, would be to prevent the striking of the House language or any part thereof in chapter 1 of title I of the House bill, be

(continued...)

ence report,²³⁶ providing —

§ 302(o)(1)

(1) new budget authority²³⁷ for a fiscal year;

§ 302(o)(2)

(2) new spending authority as described in section 401(c)(2)²³⁸ for a fiscal year;²³⁹



²³⁵(...continued)

subject to any points of order authorized in titles III and IV of the Budget Act.

135 CONG. REC. S5898 (daily ed. June 1, 1989).

Section 13207(a)(1)(A) of the Budget Enforcement Act makes the result sought in the unanimous consent request the norm: Points of order apply to motions that in and of themselves caused the deficit to increase.

Note, however, that application of the point of order to motions to table also creates a paradox: A motion to table a money-saving amendment could be subject to a point of order, where the Senate could simply vote down the amendment by a straight up-or-down vote and achieve the same result as the tabling motion by a majority vote. Even so, in the case of most points of order (those that do not contain the words "as reported," *cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a))), a point of order would then lie against the bill or resolution after the Senate had defeated the amendment.

²³⁶ Section 13207(a)(1)(A) of the Budget Enforcement Act struck the words "bill or resolution, or amendment thereto" at this point and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 723.

²³⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²³⁸ *See infra* pp. 251-254.

²³⁹ *See, e.g.*, 132 CONG. REC. S10,693-94 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 302(c)); 132 CONG. REC. S10,145-46 (1986); Senate Precedent PRL19860801-003 (Aug. 1, 1986) (LEGIS, Rules database) (amendment providing entitlement authority within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry subject to section 302(c)); 132 CONG. REC. S10,017 (1986); Senate Precedent PRL19860731-002 (July 31, 1986) (LEGIS, Rules database) (same).

Effective for fiscal year 1992 and after, section 13201(b)(3)(D) of the Budget Enforcement Act struck a reference here to "new credit authority for a fiscal year" (*see* (continued...))

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a)²⁴⁰ for such fiscal year, unless and until such committee makes the allocation or subdivisions required by subsection (b),²⁴¹ in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

§ 302(d) (d) SUBSEQUENT CONCURRENT RESOLUTIONS. — In the case of a concurrent resolution on the budget referred to in section 304,²⁴² the allocations under subsection (a)²⁴³ and the subdivision under subsection (b)²⁴⁴ shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

§ 302(e) (e) ALTERATION OF ALLOCATIONS. — At any time after a committee reports the allocations required to be made under subsection (b),²⁴⁵ such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by

²³⁹(...continued)
infra p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

²⁴⁰ *See supra* pp. 88-90.

²⁴¹ *See supra* pp. 90-91.

²⁴² *See infra* pp. 117-119.

²⁴³ *See supra* pp. 88-90.

²⁴⁴ *See supra* pp. 90-91.

²⁴⁵ *See supra* pp. 90-91.

its House on legislation within the committee's jurisdiction.²⁴⁶

§ 302(f)

(f) LEGISLATION SUBJECT TO POINT OF ORDER.²⁴⁷ —

§ 302(f)(1)

(1) IN THE HOUSE OF REPRESENTATIVES. — After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill,

²⁴⁶ See, e.g., S. REP. NO. 103-141, 103d Cong., 1st Sess. (Sept. 14, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-140, 103d Cong., 1st Sess. (Sept. 14, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-128, 103d Cong., 1st Sess. (Aug. 6, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-99, 103d Cong., 1st Sess. (July 1, 1993) (Appropriations Comm., fiscal year 1994); S. REP. NO. 103-83, 103d Cong., 1st Sess. (July 1, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-60, 103d Cong., 1st Sess. (June 22, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 103-52, 103d Cong., 1st Sess. (June 8, 1993) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-455, 102d Cong., 2d Sess. (Oct. 5, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-449, 102d Cong., 2d Sess. (Oct. 1, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-421, 102d Cong., 2d Sess. (Sept. 24, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-396, 102d Cong., 2d Sess. (Sept. 10, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 102-350, 102d Cong., 2d Sess. (July 30, 1992) (Appropriations Comm., fiscal year 1993); S. REP. NO. 100-519, 100th Cong., 2d Sess. (Sept. 19, 1988) (Finance Comm., fiscal year 1989); S. REP. NO. 100-379, 100th Cong., 2d Sess. (June 7, 1988) (Finance Comm., fiscal year 1989); S. REP. NO. 100-252, 100th Cong., 1st Sess. (Dec. 10, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 100-199, 100th Cong., 1st Sess. (Oct. 9, 1987) (Finance Comm., fiscal year 1988); S. REP. NO. 100-190, 100th Cong., 1st Sess. (Oct. 6, 1987) (Appropriations Comm., fiscal year 1988); S. REP. NO. 99-540, 99th Cong., 2d Sess. (Oct. 6, 1986) (Appropriations Comm., fiscal year 1987).

²⁴⁷ Section 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 302(f) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. See also 132 CONG. REC. S14,202 (1986); Senate Precedent PRL19860929-002 (Sept. 29, 1986) (LEGIS, Rules database). Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. See *infra* p. 690.

Note also the provisions for the suspension of section 302(f) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. See *infra* pp. 619-630.

joint²⁴⁸ resolution, or amendment providing new budget authority²⁴⁹ for such fiscal year or new entitlement authority²⁵⁰ effective during such fiscal year,²⁵¹ or any conference report on any such bill or joint²⁵² resolution, if —

§ 302(f)(1)(A) (A) the enactment of such bill or resolution as reported;

§ 302(f)(1)(B) (B) the adoption and enactment of such amendment; or

§ 302(f)(1)(C) (C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (b)²⁵³ for such fiscal year of new discretionary budget authority or new entitlement authority²⁵⁴ to be

²⁴⁸ So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." *See infra* p. 723.

²⁴⁹ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²⁵⁰ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

²⁵¹ Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(i) of the Budget Enforcement Act struck a reference here to "new credit authority for such fiscal year" (*see infra* p. 714), as title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

²⁵² So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." *See infra* p. 723.

²⁵³ *See supra* pp. 90-91.

²⁵⁴ Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(ii) of the Budget Enforcement Act struck a reference here to "new credit authority" (*see infra* p. 715), as
(continued...)

exceeded.

§ 302(f)(2)

(2) IN THE SENATE. — At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 301(a)²⁵⁵ for a fiscal year, it shall not be in order²⁵⁶ in the Senate to consider any bill,²⁵⁷ joint resolution, amendment,²⁵⁸ mo-

²⁵⁴(...continued)

title V now addresses credit (*see infra* pp. 273-298), and the provision of credit authority has become the provision of either budget authority or entitlement authority.

²⁵⁵ *See supra* pp. 50-56.

²⁵⁶ *See, e.g.*, 132 CONG. REC. S14,716 (1986); Senate Precedent PRL19861002-003 (Oct. 2, 1986) (amendment causing allocation to Agriculture Subcommittee to be exceeded ruled out of order); 132 CONG. REC. S14,410 (1986); Senate Precedent PRL19861001-002 (Oct. 1, 1986) (amendment causing allocation to be exceeded ruled out of order).

Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 293 (regarding section 303(a)).

²⁵⁷ Because section 302(f) does not contain the words "as reported" here, points of order under section 302(f) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(f). *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)(1)).

²⁵⁸ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 295 (regarding section 303).

The Senate Budget Committee estimates the costs of an amendment based on the assumption that Congress has already enacted the pending bill (to which the amendment has been offered) into law. Thus, when the current level exceeds the appropriate allocation, and a bill is pending that would reduce spending by less than the amount by which the current level exceeds the appropriate allocation, an amendment that would increase spending at all (net of spending reductions in the amendment) will cause spending to exceed the appropriate allocation. Note, however, that an amendment to a *rescission bill* to restore funding resulting from appropriations enacted in a previous year does not give rise to a point of order under section 302, as the amendment does not (in the words of section 302(f)) "provide[] for budget outlays, new budget authority, or new spending authority." *See* 125 CONG. REC. 4987 (1981) (inquiry of Sen. Johnston regarding an amendment by Sen. Kennedy); Senate Precedent PRL19790314-001 (Mar. 14, 1979) (LEGIS, Rules database); ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 630 (1992); *infra* note 1104.

tion,²⁵⁹ or conference report,²⁶⁰ that provides²⁶¹ for budget outlays,²⁶² new budget authority,²⁶³ or new spending authority (as defined in section 401(c)(2))²⁶⁴ in excess of

§ 302(f)(2)(A)

(A)²⁶⁵ the appropriate allocation²⁶⁶ of such

²⁵⁹ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, *see supra* note 235.

²⁶⁰ Section 13207(a)(1)(B) of the Budget Enforcement Act struck the words "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 723.

²⁶¹ Senate Budget Committee staff have advised (for example, in August 1990) that legislation generally will not "provide[] for budget outlays, new budget authority, or new spending authority (as defined in section 401(c)(2)) in excess of . . . the appropriate allocation" unless it will, when added other legislation passed by the Senate, cause the appropriate allocation to be exceeded. Senate Budget Committee staff will generally not add into that calculation other legislation merely reported by a committee that the Senate has not passed.

²⁶² Section 3(1) defines "budget outlays." *See supra* p. 11.

A point of order lies under section 302(f) against an amendment that would increase outlays above the appropriate allocation by increasing an obligation ceiling. 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

²⁶³ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

²⁶⁴ Section 13207(a)(2) of the Budget Enforcement Act added the reference to "new spending authority (as defined in section 401(c)(2))." *See infra* p. 724.

Section 13201(b)(2) of the Budget Enforcement Act (*see infra* p. 713) added a reference here to new credit authority for fiscal year 1991 only, as a stopgap for the period before the fiscal year 1992 effective date for the credit reform provisions of title V. *See infra* pp. 273-298. The words "or new credit authority" then dropped from this paragraph after fiscal year 1991. *See infra* p. 713. Since then, the provision of credit authority has become the provision of either budget authority or entitlement authority. (Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).)

²⁶⁵ Section 13112(a)(7)(A) of the Budget Enforcement Act added the letter "(A)" here. *See infra* p. 709. Note that section 13303(c)(3) of the Budget Enforcement Act (*see infra* p. 757) added another subsection (A) below. *See infra* p. 103.

²⁰⁶ The appropriate allocation setting the ceiling may be an allocation of no dollars. See 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. Cf. *infra* note 520 (regarding section 311(a)).

Which committee's or subcommittee's is the "appropriate allocation"? Specifically, where a subcommittee reports a bill affecting spending in the jurisdiction of another subcommittee, or where a floor amendment to a bill in one jurisdiction affects spending in the jurisdiction of another committee or subcommittee, to which committee or subcommittee should the Budget Committee charge the effect?

Two differing solutions present themselves: A *bill rule*, under which the Budget Committee would score against the committee or subcommittee that reported the bill, and a *subject matter rule*, under which the Budget Committee would score against the committee or subcommittee in whose jurisdiction the subject matter of the provision falls. The Senate Budget Committee generally follows the bill rule and scores legislation against the committee or subcommittee that reported the bill.

In some circumstances, however, such as a continuing resolution or a supplemental appropriations bill, no single subcommittee is responsible for the legislation. In such cases, the Budget Committee has advised (for example, in October of 1986) that it will score legislative provisions against the subcommittee in whose jurisdiction the subject matter of the provision falls.

Sequential referral of legislation presents another exception calling for the application of the subject matter rule. In July of 1990, Veterans' Committee staff posed such a case to the Director of the Congressional Budget Office. Director Reischauer responded to the Chairman of the Veterans' Affairs Committee as follows:

A member of your staff has requested an explanation of the scoring of bills that are sequentially referred, such as S.190, a bill to permit certain service-disabled veterans who are retired from the Armed Forces to receive compensation concurrently with military retired pay without a reduction in either benefit. While CBO develops the cost of legislation, the Budget Committee determines how that cost will be charged to Committees. The general rule that has been followed traditionally on sequential referrals is that the committee taking the first action on a measure is scored with the cost of the measure, regardless of the jurisdiction of the affected programs. When the bill is sequentially referred to a second committee, an adjustment may be made to the first committee's scoring dependent upon the action of the second committee.

In the case of S.190, the 1991 outlays from programs under the jurisdiction of the Veterans' Affairs Committee are estimated to be \$2 million. The 1991 outlays from programs under the jurisdiction of the Armed Services

(continued...)

outlays or authority reported under subsection
(a),²⁶⁷ or

²⁶⁶(...continued)

Committee are estimated at \$420 million. Thus when the Veterans' Affairs Committee reports the bill, the entire \$422 million will be charged against the Veterans' Affairs Committee's allocation. If S.190 is sequentially referred to the Armed Services Committee and that Committee reports it unchanged, the \$420 million in cost to their programs would at that time be scored against the Armed Services Committee's allocation and would no longer be charged against that of the Veterans' Affairs Committee. If, however, the Armed Services Committee takes no action on the bill, the full \$422 million cost would remain a charge against the Veterans' Affairs Committee.

Letter from Robert D. Reischauer to Sen. Alan Cranston (July 31, 1990). Director Reischauer referred to the Matsunaga Veterans Disability Benefits Improvement Act of 1990, S. 190, 101st Cong., 1st Sess., 135 CONG. REC. S551-52 (daily ed. Jan. 25, 1989). On September 20, 1990, the Veterans Affairs Committee reported the bill (without a written report), 136 CONG. REC. S13,507-08 (daily ed. Sept. 20, 1990), and the Presiding Officer referred it to the Armed Services Committee.

When Director Reischauer stated that "when the Veterans' Affairs Committee reports the bill, the entire \$422 million will be charged against the Veterans' Affairs Committee's allocation," he wrote of the assignment of responsibility, rather than the timing of the charge. Senate Budget Committee staff have advised that they will generally not charge legislation against a committee's allocation before the legislation comes to the Senate floor. See *supra* note 261.

²⁶⁷ See *supra* pp. 88-90.

Note that a later sentence of this paragraph (see *infra* p. 102) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that would exceed either. See *infra* p. 709.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which a later sentence of this paragraph (see *infra* p. 102) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

(continued...)

§ 302(f)(2)(B)

(B)²⁶⁸ the appropriate allocation²⁶⁹ (if any) of such outlays or authority reported²⁷⁰ under subsection (b)²⁷¹ in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year

or provides for social security outlays²⁷² in excess of the appropriate allocation of social security outlays under subsection (a)²⁷³ for the fiscal year of the resolution or

²⁶⁷(...continued)

For examples of waiver of this point of order by unanimous consent, see, e.g., 138 CONG. REC. S15,365 (daily ed. Sept. 26, 1992) (Bentsen motion to waive points of order prospectively for a Chafee amendment creating a refundable tax credit); *id.* at S14,791 (daily ed. Sept. 23, 1992) (Bentsen motion to waive points of order prospectively for his health care amendment).

²⁶⁸ Section 13112(a)(7)(B) of the Budget Enforcement Act added the letter (B) and some of subparagraph (B) here. See *infra* p. 709. Note that section 13303(c)(3) of the Budget Enforcement Act (see *infra* p. 757) added another subsection (B) below. See *infra* p. 103.

²⁶⁹ For a discussion of what constitutes the "appropriate allocation," see *supra* note 266.

²⁷⁰ Section 13112(a)(7)(B) of the Budget Enforcement Act added the words "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported" here. See *infra* p. 709.

²⁷¹ See *supra* pp. 90-91.

²⁷² Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 145.

²⁷³ See *supra* pp. 88-90.

Note that the last sentence of this paragraph (see *infra* p. 102) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that
(continued...)

for the total of that year and the 4 succeeding fiscal years.²⁷⁴ Subparagraph (A)²⁷⁵ shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.²⁷⁶ In applying this paragraph²⁷⁷ —

²⁷⁴(...continued)
would exceed either. *See infra* p. 709.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which the last sentence of this paragraph (*see infra* p. 102) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

²⁷⁴ Section 13303(c)(2) of the Budget Enforcement Act added the words "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years." *See infra* p. 757.

²⁷⁵ There are two subparagraphs (A) in this paragraph, above and below. This reference relates to the subparagraph (A) above. *See supra* p. 98. Section 13112(a)(7) of the Budget Enforcement Act added both this sentence and the letter (A) above. *See infra* p. 709.

²⁷⁶ Section 13112(a)(7)(C) of the Budget Enforcement Act added this sentence. *See infra* p. 709.

The drafters of the Budget Enforcement Act thus intended that an appropriations bill would be subject to the point of order for exceeding the appropriate subcommittee allocation under section 302(b), but not for exceeding the full committee's allocation under section 302(a). The drafters intended this result notwithstanding the language of section 602(c), which could be read to cause some ambiguity on this point. *See infra* note 886. Note, however, that section 601(b) creates much the same result, at least for fiscal years through 1998, by providing a point of order for exceeding the total of all discretionary spending. *See infra* p. 303.

²⁷⁷ Section 13303(c)(3) of the Budget Enforcement Act added the balance of this paragraph. *See infra* p. 757.

§ 302(f)(2)(A)

(A)²⁷⁸ estimated social security outlays²⁷⁹ shall be deemed to be reduced by the excess of estimated social security revenues²⁸⁰ (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;²⁸¹

§ 302(f)(2)(B)

(B)²⁸² estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently

²⁷⁸ Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (A). See *infra* p. 757. Note that section 13112(a)(7)(A) of the Budget Enforcement Act (see *infra* p. 709) added another subparagraph (A) above. See *supra* p. 98.

²⁷⁹ Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 145.

²⁸⁰ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." See *supra* note 145.

²⁸¹ In other words, if Congress raises Social Security revenues in excess of those anticipated in the budget resolution, it may increase Social Security spending beyond that anticipated in the budget resolution by the amount of the excess. The drafters of the Budget Enforcement Act added this provision and subparagraph (B) of this section, as well as the provisions of section 311(a)(2)(B)(i) and (ii) (see *infra* pp. 189-191), to allow fungibility between Social Security revenues and outlays.

²⁸² Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (B). See *infra* p. 757. Note that section 13112(a)(7)(B) of the Budget Enforcement Act (see *infra* p. 709) added another subparagraph (B) above. See *supra* p. 101.

adopted concurrent resolution on the budget;²⁸³ and

§ 302(f)(2)(C)

(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues²⁸⁴ unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a)²⁸⁵ and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).²⁸⁶

²⁸³ In other words, if Congress cuts Social Security revenues below those anticipated in the budget resolution, it may not increase Social Security spending above the amount equal to the spending anticipated in the budget resolution minus the revenue shortfall. See also section 311(a)(2)(B)(ii)(I) *infra* p. 190.

²⁸⁴ The drafters of the Budget Enforcement Act intended this language to address the case where changes in income tax law had certain indirect effects on the Social Security trust fund. (See also section 311(a)(2)(B)(iii) *infra* p. 191 (to the same effect).) The drafters intended that these changes should not trigger a point of order under this section dealing with the levels in that trust fund. To achieve the intended result, however, the language should have read "social security revenues or outlays." This is so because when revenues result from the taxation of Social Security benefits, the revenues flow into the Treasury and the Treasury then makes a payment to the Social Security Trust Funds. The payment is scored as a positive outlay when made by the Treasury and a negative outlay when received by Social Security. Therefore, any changes to the income tax law that indirectly affect the amount of revenue collected from the income taxation of Social Security benefits would affect Social Security outlays rather than revenues.

²⁸⁵ See *supra* pp. 88-90.

²⁸⁶ See *supra* pp. 90-91.

§ 302(g)

(g) DETERMINATIONS BY BUDGET COMMITTEES. — For purposes of this section, the levels of new budget authority,²⁸⁷ spending authority as described in section 401(c)(2),²⁸⁸ outlays²⁸⁹ and new credit authority²⁹⁰ for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget²⁹¹ of the House of Representatives or the Senate, as the case may be.

²⁸⁷ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

²⁸⁸ See *infra* pp. 251-254.

²⁸⁹ Section 3(1) defines "outlays." See *supra* p. 11.

²⁹⁰ Section 402(b) defines "new credit authority" (see *infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (see *supra* p. 19).

²⁹¹ This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. See also section 201(g), *supra* p. 32; section 310(d)(4), *infra* p. 172; section 311(c), *infra* p. 194; section 313(e), *infra* p. 228; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 650.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, NEW CREDIT AUTHORITY, OR CHANGES IN REVENUES OR THE PUBLIC DEBT LIMIT IS CONSIDERED

§ 303(a) **SEC. 303.**²⁹² (a) **IN GENERAL.** — It shall not be in order²⁹³ in either the House of Representatives or the Senate to consider any bill,²⁹⁴ joint resolution, amendment,²⁹⁵ motion,²⁹⁶ or confer-



²⁹² Section 303 is codified as amended at 2 U.S.C. § 634 (1988 & Supp. IV 1992).

²⁹³ Although section 303 sets forth a prohibition, that prohibition is not self-enforcing, and requires a point of order from the floor for its enforcement. 130 CONG. REC. S7919 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. Cf. *infra* note 520 (regarding section 311(a)).

²⁹⁴ If a bill violates section 303, the point of order will lie notwithstanding that a complete substitute that would not violate section 303 is pending. 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues).

²⁹⁵ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. See 132 CONG. REC. S7973-74, S8169, S8207-09 (June 19, 23 & 24, 1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues in violation of section 303(a)).

²⁹⁶ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. See *infra* p. 723. For a discussion of the motivation for the addition, see *supra* note 235.

ence report²⁹⁷ as reported²⁹⁸ to the House or Senate which provides —

- § 303(a)(1) (1) new budget authority²⁹⁹ for a fiscal year;
- § 303(a)(2) (2) an increase or decrease in revenues³⁰⁰ to become effective during a fiscal year;
- § 303(a)(3) (3) an increase or decrease in the public debt

²⁹⁷ Section 13207(a)(1)(C) of the Budget Enforcement Act struck "bill or resolution (or amendment thereto)" here and inserted "bill, joint resolution, amendment, motion, or conference report." See *infra* p. 723. Before enactment of the Budget Enforcement Act, by virtue of its application to "amendments," section 303 also applied to conference reports by precedent where amendments made in conference contain new matter not previously considered by the Senate. 124 CONG. REC. S9383-403 (1978); Senate Precedent PRL19780410-001 (Apr. 10, 1978) (LEGIS, Rules database); see also 131 CONG. REC. S6367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (the Chair responded that a particular conference report would violate section 303(a)); 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report; point of order waived).

²⁹⁸ Cf. *infra* note 514 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

²⁹⁹ See, e.g., 133 CONG. REC. S5381-83 (1987) (point of order by Sen. Chiles on amendment by Sen. Boschwitz).

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

³⁰⁰ See, e.g., 132 CONG. REC. S8207-09 (1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues); 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues); 131 CONG. REC. S8806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues); 131 CONG. REC. S6367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; conference report that would raise revenues).

limit³⁰¹ to become effective during a fiscal year;

§ 303(a)(4) (4) new entitlement authority³⁰² to become effective during a fiscal year;

§ 303(a)(5) (5)³⁰³ in the Senate only, new spending authority (as defined in section 401(c)(2)³⁰⁴) for a fiscal year; or

§ 303(a)(6) (6)³⁰⁵ in the Senate only, outlays,³⁰⁶

³⁰¹ The public debt limit is set at 31 U.S.C. § 3101 (Supp. III 1991), *amended by the Omnibus Budget Reconciliation Act of 1993*, Pub. L. No. 103-66, § 13411, 107 Stat. 312 (1993).

³⁰² Section 303(a) prohibits legislation that would create entitlement authority that would become effective before Congress has agreed to a budget resolution for the appropriate fiscal year, and such legislation would not fall within an exception under section 303(b). 129 CONG. REC. S9826, S9845, S9852 (1983); Senate Precedent PRL19830713-004 (July 13, 1983) (LEGIS, Rules database). In other words, an entitlement that begins in a year beyond the budget resolution violates section 303(a). 130 CONG. REC. S7070-71, S7102-12, S7175, S7181 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database); *see also* 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report if that conference report contained entitlements to become effective in years beyond the resolution; point of order waived).

Entitlements begin in the year payments are made, not when benefits vest. 130 CONG. REC. S7107 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database) (inquiry of Sen. Armstrong).

Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252). For a discussion of language that ensures that authority will not constitute entitlement authority, *see infra* note 652.

³⁰³ Section 13205(a)(3) of the Budget Enforcement Act amended this paragraph to read as it does now. *See infra* p. 720. Section 13205(a)(1) of the Budget Enforcement Act repealed what used to be paragraph (5). *See infra* p. 720. Before enactment of the Budget Enforcement Act, paragraph (5) read as follows: "(5) new credit authority for a fiscal year." Effective for fiscal year 1992 and after, title V addresses credit (*see infra* pp. 273-298), and the provision of what was credit authority has become the provision of either budget authority or entitlement authority.

³⁰⁴ *See infra* pp. 251-254.

³⁰⁵ Section 13205(a)(3) of the Budget Enforcement Act added this paragraph. *See infra* p. 720.

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.

§ 303(b)(1)(B)

(B)³¹⁴ increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.³¹⁵

After May 15 of any calendar year, subsection (a)³¹⁶ does not apply in the House of Representatives to any general appropriation bill,³¹⁷ or amendment thereto, which provides new budget authority³¹⁸ for the fiscal year beginning in such calendar year.

§ 303(b)(2)

(2)³¹⁹ In the Senate, subsection (a)³²⁰ does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.

³¹⁴ Section 13205(b)(1) of the Budget Enforcement Act changed this number from "(2)" to "(B)" to conform to the addition of the words "(1) In the House of Representatives," above. See *infra* p. 720.

³¹⁵ Before the enactment of the Budget Enforcement Act, under a precedent of October 5, 1978, sometimes called "the Long precedent," section 303(a) applied in the Senate — with respect to revenues at least — only during the period from January 1 through the adoption of the budget resolution. See 124 CONG. REC. S17,238-44 (daily ed. Oct. 5, 1978). The precedent arose from the Senate's vote to overturn a ~~correct~~ ruling of the Chair. Because section 13205(b)(1) of the Budget Enforcement Act added the words "(1) In the House of Representatives," (see *infra* p. 720) at the beginning of this paragraph, the exception provided by this subparagraph no longer applies in the Senate, and the Long precedent should have no continuing validity. For another precedent under this section as it used to apply in the Senate, see, e.g., 131 CONG. REC. S8806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues in the year for which the budget resolution in conference would provide).

³¹⁶ See *supra* pp. 106-112.

³¹⁷ Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. See *supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

³¹⁸ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

³¹⁹ Section 13205(b)(2) of the Budget Enforcement Act added this paragraph. See *infra* p. 720.

³²⁰ See *supra* pp. 106-112.

§ 303(o) (c) WAIVER IN THE SENATE.³²¹ —

§ 303(o)(1) (1) The committee of the Senate which reports any bill or resolution (or amendment thereto) to which subsection (a)³²² applies may at or after the time it reports such bill or resolution (or amendment), report a resolution³²³

³²¹ Note that the Senate may waive section 303(a) pursuant to section 904(b), *see infra* pp. 359-361, and that either the Senate or the House may pass a simple resolution that would waive section 303(a). *See supra* note 308.

Compare the parallel provisions for waiver in the Senate in section 402(c) as originally enacted in 1974 but repealed in 1985. *See infra* note 697.

³²² *See supra* pp. 106-112.

³²³ *See, e.g.*, S. Res. 82, 98th Cong., 1st Sess. 129 CONG. REC. S2191 (daily ed. Mar. 7, 1983) (Sen. Dole, for S. 690); S. Res. 91, 98th Cong., 1st Sess., 129 CONG. REC. S2944 (daily ed. Mar. 15, 1983) (Sen. Dole, for S. 1); S. Res. 388, 98th Cong., 2d Sess., 130 CONG. REC. S5687 (daily ed. May 14, 1984) (Sen. Andrews, for S. 1735); S. Res. 399, 98th Cong., 2d Sess., 130 CONG. REC. S6790 (daily ed. June 7, 1984) (Sen. Andrews, for S. 1967); S. Res. 409, 98th Cong., 2d Sess., 130 CONG. REC. S7390 (daily ed. June 15, 1984) (Sen. Packwood, for S. 2527); S. Res. 441, 98th Cong., 2d Sess., 130 CONG. REC. S11,271 (daily ed. Sept. 17, 1984) (Sen. Simpson, for S. 2736 as reported by the Senate Comm. on Veterans' Affairs); S. Res. 453, 98th Cong., 2d Sess., 130 CONG. REC. S11,979 (daily ed. Sept. 26, 1984) (Sen. Symms, for S. 3024); S. Res. 64, 99th Cong., 1st Sess., 131 CONG. REC. S1801 (daily ed. Feb. 5, 1985) (Sen. Symms, for S. 391); S. Res. 156, 99th Cong., 1st Sess., 131 CONG. REC. S10,867 (daily ed. May, 7 1985) (Sen. Goldwater, for S. 1029); S. Res. 162, 99th Cong., 1st Sess., 131 CONG. REC. S12,135 (daily ed. May 15, 1985) (Sen. Goldwater, for S. 1029); S. Res. 168, 99th Cong., 1st Sess., 131 CONG. REC. S12,135 (daily ed. May 16, 1985) (Sen. Goldwater, for S. 1160); S. Res. 192, 99th Cong., 1st Sess., 131 CONG. REC. S17,633 (daily ed. June 27, 1985) (Sen. Murkowski, for H.R. 752, as reported by the Senate Comm. on Veterans' Affairs); S. Res. 198, 99th Cong., 1st Sess., 131 CONG. REC. S18,016 (daily ed. July 8, 1985) (Sen. Murkowski, for S. 876 as reported by the Senate Comm. on Veterans' Affairs); S. Res. 208, 99th Cong., 1st Sess., 131 CONG. REC. S22,415 (daily ed. Aug. 1, 1985) (Sen. Abdnor, for S. 1567, the Water Resources Development Act of 1985); S. Res. 218, 99th Cong., 1st Sess., 131 CONG. REC. S23,229 (daily ed. Sept. 10, 1985) (Sen. Thurmond, for S. 1200 as reported by the Senate Comm. on the Judiciary); S. Res. 247, 99th Cong., 1st Sess., 131 CONG. REC. S29,748 (daily ed. Oct. 30, 1985) (Sen. Roth, for S. 1527 as reported by the Comm. on Governmental Affairs); S. Res. 410, 99th Cong., 2d Sess., 132 CONG. REC. S11,218 (daily ed. May 19, 1986) (Sen. Roth, for the conference report on H.R. 2672); S. Res. 416, 99th Cong., 2d Sess., 132 CONG. REC. S12,067 (daily ed. May 29, 1986) (Sen. Packwood, for H.R. 3838 and the Comm. on Finance amendment thereto); S. Res. 417, 99th Cong., 2d Sess., 132 CONG. REC. S6478 (daily ed. June 2, 1986) (Sen. Stafford, for S. 1965, the Higher Education Amendments of 1986); S. Res. 425, 99th Cong., 2d Sess., 132 CONG. REC. S13,128 (daily ed. June 10, 1986) (continued...)

to the Senate

§ 303(o)(1)(A)

(A) providing for the waiver of subsection (a)³²⁴ with respect to such bill or resolution (or amendment), and

§ 303(o)(1)(B)

(B) stating the reasons why the waiver is necessary.

The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

§ 303(o)(2)

(2) During the consideration of any such resolution,

³²³(...continued)

(Sen. Thurmond, for S. 2216, designating September 17, 1987, the bicentennial of the signing of the Constitution of the United States, as "Constitution Day"); S. Res. 459, 99th Cong., 2d Sess., 132 CONG. REC. S19,240 (daily ed. Aug. 5, 1986) (Sen. Symms, for S. 2405); S. Res. 477, 99th Cong., 2d Sess., 132 CONG. REC. S21,385 (daily ed. Aug. 13, 1986) (Sen. Roth, for S. 2230 as reported by the Comm. on Governmental Affairs); S. Res. 83, 100th Cong., 1st Sess., 133 CONG. REC. S1200 (daily ed. Jan. 27, 1987), *id.* at S1671 (daily ed. Feb. 4, 1987) (Sen. Cranston, for S382, the Urban Mass Transportation Act of 1987; approved 84-16); S. Res. 85, 100th Cong., 1st Sess., 133 CONG. REC. S1200 (daily ed. Jan. 27, 1987), *id.* at S1452 (daily ed. Feb. 2, 1987) (Sen. Burdick, for S. 387, Federal Aid-Highway Act; approved 91-1); S. Res. 242, 100th Cong., 1st Sess., 133 CONG. REC. S9198 (daily ed. July 1, 1987), *id.* at S15,247 (daily ed. Oct. 28, 1987) (Sen. Hollings, for S. 1184, the Airport and Airway Capacity Expansion Act; approved 92-5).

³²⁴ See *supra* pp. 106-112.

debate shall be limited³²⁵ to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited³²⁶ to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.³²⁷



§ 303(c)(3)

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a)³²⁸ shall not apply with respect to the bill or resolution (or amendment thereto) to which the resolution so agreed to applies.

³²⁵ Contrast the case under a motion to waive pursuant to section 904(b), where Senators may debate without a time limit. *See infra* note 960.

³²⁶ Contrast the cases for appeals generally under section 904(d) (*see infra* pp. 366-368), and for appeals during consideration of budget resolutions and reconciliation legislation under section 305(b)(2) (*see infra* pp. 124-136), where Senators may debate for one hour.

³²⁷ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

Cf. 131 CONG. REC. S4503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

³²⁸ *See supra* pp. 106-112.

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

§ 304(a) **SEC. 304.**³²⁹ (a) **IN GENERAL.** — At any time³³⁰ after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301,³³¹ and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.³³²

§ 304(b) (b)³³³ **ECONOMIC ASSUMPTIONS.** — The provisions of

³²⁹ Section 304 is codified as amended at 2 U.S.C. § 635 (1988 & Supp. IV 1992).

³³⁰ In some years, Congress has revised the budget for the current fiscal year as part of the budget resolution for the upcoming fiscal year. For example, the budget resolution for fiscal year 1986 also revised the budget totals for fiscal year 1985.

³³¹ See *supra* pp. 50-87.

³³² For examples of second and revised budget resolutions, see Second Concurrent Resolution on the Budget, 1982, S. Con. Res. 50, 97th Cong., 1st Sess., 95 Stat. 1778 (1981); Second Concurrent Resolution on the Budget — Fiscal Year 1981, H. Con. Res. 448, 96th Cong., 2d Sess., 94 Stat. 3680 (1980); Third Concurrent Resolution on the Budget, Fiscal Year 1980, S. Con. Res. 53, 96th Cong., 1st Sess., 93 Stat. 1428 (1979); Second Concurrent Resolution on the Budget — Fiscal Year 1980, S. Con. Res. 36, 96th Cong., 1st Sess., 125 CONG. REC. 30,796 (1979) (adopted); Second Concurrent Resolution on the Budget — Fiscal Year 1979, H. Con. Res. 683, 95th Cong., 2d Sess., 92 Stat. 3878 (1978); Second Concurrent Resolution on the Budget — Fiscal Year 1978, H. Con. Res. 341, 95th Cong., 1st Sess., 91 Stat. 1683 (1977); Third Concurrent Resolution on the Budget — Fiscal Year 1977, S. Con. Res. 10, 95th Cong., 1st Sess., 91 Stat. 1666 (1977); Second Concurrent Resolution on the Budget — Fiscal Year 1977, S. Con. Res. 139, 94th Cong., 2d Sess., 90 Stat. 3044 (1976); Second Concurrent Resolution on the Budget — Fiscal Year 1976, H. Con. Res. 466, 94th Cong., 1st Sess., 89 Stat. 1209 (1975).

³³³ Section 13112(a)(8) of the Budget Enforcement Act repealed what used to be subsection (b) and redesignated what used to be subsection (c) as subsection (b). See *infra* p. 709. Section 208(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added what was then subsection (c) and is now subsection (b). Pub. L. (continued...)

section 301(g)³³⁴ shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto³³⁵ and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such

³³³(...continued)

No. 100-119, § 208(b), 101 Stat. 754, 786 (1987).

Before enactment of the Budget Enforcement Act, subsection (b) read as follows:

(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. — The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).

Section 13303(b) of the Budget Enforcement Act (*see infra* p. 756) repealed what used to be section 301(i). Section 13111 of the Budget Enforcement Act (*see infra* p. 707) added a new section 606(c) of the Congressional Budget Act (*see infra* p. 334) that fulfills much the same function as did the old section 301(i). (Compare the text of what used to be section 301(i) (*see infra* note 912) with that of the new section 606(c). *See infra* p. 334.) Note, however, that section 606(c) does not apply to revisions of budget resolutions under section 304, even though the parallel language for the House of Representatives in section 606(b) (*see infra* p. 334) explicitly mentions revisions of budget resolutions under section 304. Consequently, while violating the maximum deficit amount in this context used to violate the Congressional Budget Act, it no longer does.

Section 13208(a)(1) of the Budget Enforcement Act amended section 904(c) of the Congressional Budget Act to consolidate in one place the list of points of order requiring 60 votes to waive. *See infra* p. 728. Congress intended the new section 904(c) to supersede section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671), but section 13208 of the Budget Enforcement Act (*see infra* pp. 728-729) mistakenly failed to repeal section 271(b) of Gramm-Rudman-Hollings. While the new section 904(c) does not list section 304(b), section 271(b) continues to list section 304(b) among the points of order that it requires 60 Senators to waive. *See infra* p. 671. Thus, if the statute is to be taken at its face value, it requires 60 Senators to waive a point of order raised on the grounds that a revision of a budget resolution uses two sets of economic assumptions, even though such a sin may be waived by a majority if the Senate commits it on the first budget resolution that the Senate considers for a fiscal year.

³³⁴ *See supra* pp. 81-82.

³³⁵ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303(a)).

section 301(g)³³⁶ (and amendments thereto and conference reports thereon).³³⁷

³³⁶ See *supra* pp. 81-82.

³³⁷ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. Cf. *supra* note 293 (regarding section 303(a)).

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

§ 305(a) **SEC. 305.³³⁸ (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE. —**

§ 305(a)(1) (1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 301(c)³³⁹ has been available to Members of the House (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 305(a)(2) (2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not

³³⁸ Section 305 is codified as amended at 2 U.S.C. § 636 (1988 & Supp. IV 1992).

³³⁹ See *supra* p. 69.

debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

§ 305(a)(3) — (3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and priorities.

§ 305(a)(4) (4) Only if a concurrent resolution on the budget reported by the Committee on the budget of the House sets forth the economic goals (as described in sections 3(a)(2)³⁴⁰ and 4(b)³⁴¹ of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)³⁴²) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

§ 305(a)(5) (5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the

³⁴⁰ See *supra* note 200.

³⁴¹ See *supra* note 152.

³⁴² See *supra* pp. 50-56.

House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

305(a)(6)

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

305(a)(7)

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

305(b)

(b) **PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS.** —³⁴³

³⁴³ Budget resolutions are privileged, so the motion to proceed to a budget resolution is not debatable, and the resolution does not have to lie over a day before consideration. 127 CONG. REC. S4871 (1981); Senate Precedent PRL19810512-001 (May 12, 1981) (LEGIS, Rules database) (response of the Chair to motion by Majority Leader Baker). During the consideration of one budget resolution (for example, an S. Con. Res.), the Senate's adoption of a motion to proceed to a second budget resolution (for example, an H. Con. Res.), places the first budget resolution (here, the S. Con. Res.) on the Calendar. *Id.* On the effects of privilege, see ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 1034-37 (1992) ("Privileged Business"). In contrast, if the Senate agrees by unanimous consent to take up to the second resolution, the result is different, leaving the first budget resolution pending at the end of consideration of the second budget resolution. Compare *id.* at 664-65 (displacement by motion) with *id.* at 669 (displacement by unanimous consent).

§ 305(b)(1)

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto³⁴⁴ and debatable motions and appeals in connection therewith,³⁴⁵

³⁴⁴ The Committee on the Budget may modify the budget resolution on the floor. *See* 126 CONG. REC. S4516 (daily ed. May 5, 1980) (statement of Chairman Hollings). The Committee on the Budget may authorize a Senator to modify a Committee amendment to a budget resolution. 127 CONG. REC. S2697 (daily ed. Mar. 26, 1981) (statement of Majority Leader Baker).

A committee need not have a formal meeting to authorize the offering of a committee amendment on its behalf; rather, a majority of the committee may so authorize by polling. 128 CONG. REC. S9014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

At the end of the time for debate on a bill or resolution, Senators may call up amendments for the Senate to vote on without debate. *Cf.* 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821220-004 (Dec. 20, 1982) (LEGIS, Rules database) (inquiries of Sen. Byrd; where a unanimous consent agreement provides for a vote at a time certain, when that time arrives amendments may be offered and voted on without debate). (The Chair uses precedents under unanimous consent agreements to interpret provisions of the Congressional Budget Act that use the language used in unanimous consent agreements. *See* 127 CONG. REC. S3148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 353).)

³⁴⁵ Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on Concurrent Resolutions on the Budget," added the words "and all amendments thereto and debatable motions and appeals in connection therewith." Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987). The joint statement of managers accompanying the conference report on that bill explained:

5. Time Limit for Conference Reports on Budget Resolutions

Current Law

Section 305(c)(2) of the 1974 Budget Act establishes time limits for debate on the conference reports on budget resolutions and reconciliation legislation. However, it is not clear from the language whether the time limit applies to appeals, debatable motions, and amendments in disagreement.

Senate Amendment

The Senate amendment (Section 232) amends Section 305(c)(2) to specifically include in the time limit "all amendments in disagreement, and all

(continued...)

shall be limited to not more than 50 hours,³⁴⁶ except that with respect to any concurrent resolution referred to in section 304(a)³⁴⁷ all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.



305(b)(2)

(2)³⁴⁸ Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any



³⁴⁵(...continued)

amendments thereto, and debatable motions and appeals in connection therewith."

Conference Agreement

The House recedes and concurs in the Senate amendment. The conferees intend that all debate on the conference report should fall within the established time limits.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 64-65 (1987), reprinted in 1987 U.S.C.C.A.N. 739, 764-65.

³⁴⁶ In contrast, section 310(c)(2) limits debate on a reconciliation bill to 20 hours. See *infra* p. 173.

³⁴⁷ See *supra* p. 117.

³⁴⁸ Section 904(c) provides that the Senate may waive or suspend section 305(b)(2) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. See *infra* p. 361; see also 132 CONG. REC. S12,986; Senate Precedent PRL19860919-003 (Sept. 19, 1986) (LEGIS, Rules database) (vote of three-fifths of the Senators duly chosen and sworn is required to waive the germaneness requirement contained in section 305(b)(2)).

amendment to an amendment, debatable motion,³⁴⁹ or appeal³⁵⁰ shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of

³⁴⁹ When a Senator makes a motion to waive under section 904(b) during the consideration of a reconciliation bill, debate is limited to one hour, as specified by section 305(b) and applied to reconciliation by section 310(e). 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database).

The motion is subject to a motion to table when that time has expired or been yielded back. *Id.*

Any motion in the Senate must be submitted in writing upon the request of any Senator. *Id.*

A Senator must control time or have time yielded to him to make a parliamentary inquiry when the Senate is considering a matter under controlled debate time. *Id.*

Compare the similar provisions for control and division of time on motions to recommit in paragraph (5), which do not provide for time for the minority leader. See *infra* p. 137.

Despite the legislative language of this paragraph and paragraph (5), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2), and, more particularly, section 305(b)(5), to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

³⁵⁰ Compare the similar provisions for control and division of time on appeals in section 904(d), which do not provide for time for the minority leader. See *infra* p. 366.

Despite the legislative language of this paragraph and section 904(d), the Chair once responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the Senator who made the appeal and the majority leader. 128 CONG. REC. S8702-03, S8705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment³⁵¹ that is not germane³⁵² to

³⁵¹ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303(a)).

³⁵² In summary, an amendment is germane *only* if it:

- strikes a provision,
- changes a number or date,
- states purely precatory language (such as findings, a sense of the Senate, or a sense of the Congress) within the jurisdiction of the Budget Committee (or in application to reconciliation, some reporting committee), or
- otherwise does not add any new subject matter or expand the existing subject matter.

The Chair uses precedents regarding germaneness under unanimous consent agreements to interpret this provision of the Congressional Budget Act, which uses the language used in unanimous consent agreements in the usual form. 127 CONG. REC. S3148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 353).

Recently, the Parliamentarian has modified the definition of germaneness, to some degree returning to older precedents. Consequently, in order to ensure that one has a correct understanding of the current law of germaneness, one must consult the Parliamentarian as particular cases arise. For more on the subject of germaneness of amendments, see ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 854-62 (1992). In *Riddick's Senate Procedure*, the Parliamentarian spells out some general guidelines:

Although the precedents of the Senate with respect to germaneness of amendments reflect various conclusions, it has generally been understood that germaneness is more restrictive than relevancy. However, in order to be germane, an amendment must at least be relevant. Therefore, while a simple restriction on the effect of a measure would generally be germane, a restriction subject to an irrelevant contingency would not be germane.

The Senate usually imposes a germaneness requirement when it decides to limit debate on a proposal. In this sense, the Senate enters into a contract whereby it promises to bring a measure to a vote in exchange for a

(continued...)

¹⁵⁷(...continued)

promise that the measure to be voted on will consist of known and foreseeable issues. Since it is difficult to know in advance the limits what proposals might be relevant to a measure, the precedents interpreting germaneness have generally imposed a more restrictive standard than simple relevancy.

The following are among the questions that are considered in determining whether an amendment is germane: does it add any new subject matter? does it expand the powers, authorities, or constraints being proposed? does it amend existing law or another measure, as opposed to the measure before the Senate? does it involve another class of persons not otherwise covered by the measure? does it involve additional administrative entities? is it within the jurisdiction of the committee that reported the measure? and is it foreseeable?

Amendments fall into four classes for the purpose of determining germaneness. Amendments in the first two classes are considered germane *per se*. Class one consists of amendments that strike language without inserting other language. Class two consists of amendments that change numbers and dates. Class three consists of amendments that propose nonbinding language (such as sense of Senate or sense of Congress language). Under recent practice, if such nonbinding language is within the jurisdiction of the committee that reported the measure, the amendment is considered germane.

The fourth class consists of amendments that add language to a measure, but do not fall into either class two or three.

In determining whether an amendment is germane, the Chair first identifies in which of these four classes an amendment belongs. If an amendment falls within any of the first three classes, it will be considered germane. All other amendments are examined on a case by case basis to determine if they are germane. Such examination requires a detailed analysis of the amendment and the matter to be amended, and takes into account the principles and guidelines stated above.

Id. at 854-55.

During the 1980s, the test for germaneness flowed from a series of inquiries of the Chair clarifying the precedents on germaneness on April 22, 1982. See 128 CONG. REC. S3879-82 (1982). These inquiries spelled out a rather formalistic, but more predictable, test. The first headnote of the Parliamentarian's record of that precedent summarizes:

The germaneness test is much more severe in the Senate than a simple subject matter test. It is basically a technical amendment test, and adding language to a bill which expands the powers available under that bill has been ruled nongermane. Amendments which restrict powers granted by a bill have been
(continued...)

³⁵²(...continued)

ruled germane. In addition, amendments which propose to strike language in a bill regardless of their effect upon the powers granted in a bill are per se germane.

Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

The precedent arose in the Senate debate of the motion to proceed to S. 1680, the Criminal Code Reform Act of 1981. Senators McClure and Helms propounded a series of parliamentary inquiries of the Presiding Officer (Senator Cochran). *Id.*

In a series of inquiries and responses, Senator McClure and the Chair made clear that an amendment may permissibly restrict the meaning of a section, but could not broaden its effect:

Mr. McCLURE. Mr. President, I have the following parliamentary inquiry: Is the amendment . . . nongermane because it introduces a new word which changes the meaning of the amended section, in that it replaces, "interferes with, hinders, delays, or prevents," with "causes interference with, or hindrance, delay, or prevention of?"

The PRESIDING OFFICER. Changing the meaning of the section is permissible if the change does not broaden the effect of the section.

Mr. McCLURE. It would not be germane because it adds new language, if that new language does not change the meaning — excuse me — if it does not add new material in spite of the fact that it may change the meaning.

The PRESIDING OFFICER. It is permissible within the germaneness standard to change the meaning so long as you do not broaden the meaning.

Mr. McCLURE. Mr. President, I understand the words: I am not sure I understand the implication. I can change it but not broaden it. That is one of my concerns.

The PRESIDING OFFICER. The meaning could be restricted by the change.

Mr. McCLURE. It could be restricted but not broadened?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. And the addition of the word "causes" in that particular place — does that restrict or does that expand?

(continued...)

³⁵³(...continued)

The PRESIDING OFFICER. The original meaning included both a conduct and a result test. The new meaning only includes a result test.

Mr. McCLURE. Therefore, it is a restriction? Do I understand the Chair correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. The second inquiry: Is the amendment on page 20 . . . nongermane because it introduces new subject matter not pertaining to criminal law in that it adds a new section bringing the bill into conformity with the Budget Act?

The PRESIDING OFFICER. That amendment restricts the power which would be otherwise available; therefore, it would be germane.

Mr. McCLURE. Is the amendment on page 3, line 2, nongermane because it adds new crimes to the list of exemptions from the inchoate offenses?

The PRESIDING OFFICER. If the amendment added a new crime to a list of crimes for which penalties could be assessed, it would be nongermane. This amendment adds a restriction on the bill; therefore, it is germane.

Mr. McCLURE. That is true because, Mr. President, it adds to a list of exemptions; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Is the amendment on page 12, line 4, nongermane because it adds a new section dealing with safety offenses to the bill?

The PRESIDING OFFICER. This indeed does add a new crime, and therefore would be considered nongermane.

Mr. McCLURE. Is the amendment on 21, line 1, nongermane because it references in a new section?

The PRESIDING OFFICER. This amendment expands the effect of the bill and therefore is nongermane.

* * * *

Mr. McCLURE. Amendment No. 1287 . . . would prohibit funds from the victims compensation program being used to perform abortions.
(continued...)

¹³²(...continued)

Would that amendment be nongermane?

The PRESIDING OFFICER. This amendment appears to be a restrictive amendment, and therefore it would be germane.

128 CONG. REC. S3879 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). For additional authority for the proposition that an amendment that on its face restricts the effect of the bill or amendment is germane, see 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821219-002 (Dec. 19, 1982) (LEGIS, Rules database) (inquiry of Sen. Harry F. Byrd, Jr.); 128 CONG. REC. S11,844 (1982) (inquiry of Sen. Robert C. Byrd regarding Weicker amendment).

In another set of inquiries on April 22, 1982, Senator McClure and the Chair made clear that an amendment that would strike language is *always* germane:

Mr. McCLURE. . . .

Amendment No. 1285 would strike section 402. Since it would be an amendment to strike, it would not be subject to the germaneness test; is that correct?

The PRESIDING OFFICER. No amendment to strike, regardless of its effect, can be ruled nongermane.

....

Mr. McCLURE. Amendment No. 1288 would restore current law with respect to the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms and would affect the bill by removing several broad jurisdictional expansions, but it would add to the bill current law while restricting the bill with respect to the broadening of jurisdiction. Would that be nongermane?

The PRESIDING OFFICER. Amendment 1288, since it is fashioned as an amendment to strike, is *per se* germane.

....

Mr. McCLURE. Amendment No. 1290 would repeal the order of notice provisions which would allow businessmen to be ordered to notify customers to sue them. Would the amendment be in order?

The PRESIDING OFFICER. Since the amendment is an amendment to strike, it would be *per se* germane.

128 CONG. REC. S3879-80 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

(continued...)

³⁵³(...continued)

A third set of inquiries indicates that an amendment that changes a figure is germane:

Mr. McCLURE. Amendment No. 1289 would restore current law with respect to the general level of criminal fines and would remove the structure that has been created in the proposed legislation. Would that amendment be nongermane?

The PRESIDING OFFICER. The amendment appears to be an attempt to strike a figure and substitute in lieu thereof another figure and therefore would be germane.

Id.

In one inquiry, the continued utility of which is in question by virtue of the Parliamentarian's new interpretation of the precedents, Senator McClure and the Chair spelled out that an amendment that would substitute new language that is not restrictive of the bill would not be germane even if it dealt with the same subject matter:

Mr. McCLURE. . . . Amendment 1295 would restore current law with respect to first degree murder. Would that amendment be germane?

The PRESIDING OFFICER. This is another amendment that is in fact two amendments. The first is an amendment to strike, and would be germane. The second expands the effect of the bill, and would not be germane.

Mr. McCLURE. I might pursue that one step further, in that the subject matter to be added with respect to line 4 of the amendment, being the numeral 1111, is language that deals with the same subject matter but in a manner different from that contained in the bill, in the first half of the amendment, which would be stricken.

The PRESIDING OFFICER. The germaneness test has never been interpreted as a subject matter test. It is basically a technical amendment test, and even expanding the bill dealing with the same subject matter has been ruled nongermane.

Mr. McCLURE. I will not debate the issue with respect to this particular amendment. I simply wish to point out that that which is in 1111 is the same subject matter — does not expand the bill. It is a substitution for the bill language with respect to the law relating to first degree murder. If we get to that point, I might wish to discuss that a little further, because I am not certain in this instance that if you look past the number to what is contained in page 522, line 2, it would be discerned that 1111 is the same subject matter

(continued...)

³³²(...continued)

and not a broadening of the subject matter of the bill.

I might renew that parliamentary inquiry when, as, and if we get to the point when that becomes pertinent.

The PRESIDING OFFICER. The Senator has not propounded an additional inquiry?

Mr. McCLURE. No; I have not.

Id. at S3,880.

Similarly, another precedent indicates that an amendment that adds nonrestrictive language is not germane, even if the amendment is relevant to the bill. 131 CONG. REC. S17,507 (1985); Senate Precedent PRL19851212-001 (Dec. 12, 1985) (LEGIS, Rules database). In the precedent of December 12, 1985, the pending bill, S. 1396, provided for the settlement of claims relating to trust allotments of land granted to certain Native Americans and for judicial review of compensation findings by the Secretary of the Interior relating to those claims. A unanimous consent agreement required that amendments be germane and relevant. On a point of order by Senator Durenberger, the Chair ruled not germane a Melcher amendment that required the United States to provide legal assistance to allottees or heirs regarding the merits of their claims under the bill. *Id.*

A ruling of December 3, 1985, provides another precedent for the proposition that an amendment that adds nonrestrictive language to a bill is not germane. 131 CONG. REC. S16,735 (1985); Senate Precedent PRL19851203-010 (Dec. 3, 1985) (LEGIS, Rules database). The pending bill then (S. 1884, the farm credit system bill) governed by a unanimous consent agreement that required that amendments be germane, provided for three members of a board to be elected by farm credit banks and two members to be appointed by the Chairman of another board. *Id.* Senator Boren's amendment proposed to reduce from three to two those members to be elected by farm credit banks, and provided that one member be appointed by the Secretary of Agriculture. *Id.* The Chair ruled as follows:

The PRESIDING OFFICER (Mr. Gorton of Washington). germaneness of the amendment is required by the unanimous consent agreement. The amendment of the Senator from Oklahoma does add new language which does not restrict powers contained in the bill and it is, therefore, not germane. The point of order is sustained.

Id.

An amendment that would have limited a proposed increase in a tax contained in a bill, but also proposed to increase another tax not contained in the bill was not germane. 128 CONG. REC. S8884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (point of order by Sen. Dole to Thurmond amendment to

(continued...)

³³²(...continued)
the Tax Reconciliation Act of 1982).

Once the Senate has stricken language, that language can no longer form the basis for germaneness. 128 CONG. REC. S3880 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). Senator McClure and the Chair set this precedent on the same April 22, 1982, set of inquiries noted above:

Mr. McCLURE. . . .

Amendment No. 1296: The amendment would strike section 1325.
Is that amendment germane?

The PRESIDING OFFICER. This amendment is two amendments. The first is an amendment to strike, and would be germane. The second appears to expand the effect of the bill, and therefore would not be germane.

Mr. McCLURE. If, as a matter of fact, the language contained in "1503, 1505," referred to in line 4 of the amendment, is more restrictive than the language being stricken in the first half of the amendment, would it then survive the germaneness test?

The PRESIDING OFFICER. Once language has been stricken, it no longer sets the parameters for germaneness.

Mr. McCLURE. Even though it is in the same amendment?

The PRESIDING OFFICER. The Chair has observed that this is not one amendment but two amendments.

Id.

The Chair will consider germane per se amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness. 128 CONG. REC. S9014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982). The Chair will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. 128 CONG. REC. S8702-04 (1982); Senate Precedent PRL19820720-002 (July 20, 1982) (LEGIS, Rules database) (debate on reconciliation bill). It follows, then, that the Chair will consider per se germane an amendment reported by a committee even if the committee amendment contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. *See id.*

(continued...)

the provisions of such concurrent resolution shall be received.³⁵³ Such leaders, or either of them, may, from

³⁵³(...continued)

A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Chair had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity. See 128 CONG. REC. S9014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (Dole amendment to the Tax Reconciliation Act of 1982).

The Chair will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act. 132 CONG. REC. S12,986 (1986); Senate Precedent PRL19860919-004 (Sept. 19, 1986) (LEGIS, Rules database); 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement. See 129 CONG. REC. S1807 (1983); Senate Precedent PRL19830301-001 (Mar. 1, 1983) (LEGIS, Rules database) (inquiries of Sens. Metzenbaum, Byrd, and Baker regarding cloture).

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in the budget resolution. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); see also *infra* note 446.

In contrast to the germaneness test, the test for relevance is a looser, subject matter test. See *infra* note 1722.

Also in contrast to the germaneness test, the test for extraneousness (in the context of reconciliation) depends on another set of criteria regarding, among other things, whether the provision in question reduces the deficit. See section 313 (sometimes called the "Byrd Rule") *infra* pp. 198-245.

³⁵³ The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. 127 CONG. REC. S3148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database). On April 1, 1981, the following debate took place before time on the amendment had expired:

(continued...)

²⁹³(...continued)

Mr. LONG. . . .

. . . . Mr. President, I make the point of order that this amendment is not germane to the bill.

Mr. METZENBAUM. Mr. President, I believe the Senator's point of order is premature.

The PRESIDING OFFICER. The Chair would inform the Senator from Louisiana that a point of order is not in order at this time.

Mr. LONG. Mr. President, the reorganization law says that an amendment that is not germane will not be received.

Mr. METZENBAUM. But it also says it is not in order until time for debate on the amendment has expired.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

The point of order would be in order after the time for debate on the amendment has expired.

Mr. LONG. Mr. President, might I just discuss it? We have before us an amendment which, under the law, is an amendment that is not to be received. Therefore, I make the point of order that this amendment is out of order. It should not have been received and there is nothing to debate.

The PRESIDING OFFICER. The Chair is of the opinion that the point of order may or may not be correct. It looks as if it might be correct. But the language "shall not be received" is standard language used by the Senate in unanimous-consent agreements which impose germaneness on amendments. Under the precedents of the Senate, it has been held uniformly that, under those circumstances, a point of order against an amendment on the ground that it is not germane may not be made until the time of the amendment has expired.

Id.

Cf. supra note 293 (Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement; regarding section 303(a)).

Contrast the rule under cloture, where the Chair will take the initiative to rule out of order nongermane amendments without waiting for a point of order from the floor. *See, e.g.,* 130 CONG. REC. S11,111-12 (1984); Senate Precedent PRL19840913-001 (Sept. 13, (continued...))

the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

§ 305(b)(3)

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.



§ 305(b)(4)

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2)³⁵⁴ and 4(b)³⁵⁵ of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)³⁵⁶) set forth in such resolution are designed to

³⁵³(...continued)

1984) (LEGIS, Rules database); 128 CONG. REC. S11,844 (1982); Senate Precedent PRL19820920-002 (Sept. 20, 1982) (LEGIS, Rules database) (inquiry of Sen. Robert C. Byrd).

For further examples of the application of the point of order under section 305(b), see, e.g., 133 CONG. REC. S17,652-53 (daily ed. Dec. 10, 1987) (Harkin motion to waive rejected 47-49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 CONG. REC. S17,600 (daily ed. Dec. 10, 1987) (Majority Leader Byrd's motion to waive section 305(b) and other sections approved 81-13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

³⁵⁴ See *supra* note 200.

³⁵⁵ See *supra* note 152.

³⁵⁶ See *supra* pp. 50-56.

achieve, shall it be in order³⁵⁷ to offer to such resolution an amendment relating to such goals,³⁵⁸ and such amendment shall be in order³⁵⁹ only if it also proposes to alter such estimates, amounts, and levels in germane³⁶⁰ fashion in order to be consistent with the goals proposed in such amendment.

§ 305(b)(5)

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.³⁶¹



³⁵⁷ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

³⁵⁸ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303(a)).

³⁵⁹ *Id.*

³⁶⁰ For a discussion of germaneness, see *supra* note 352.

³⁶¹ Compare the similar provisions for control and division of time on motions generally in paragraph (2), which provide for time for the minority leader under certain circumstances. See *supra* p. 125.

Despite the legislative language of this paragraph and paragraph (2), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(5) (not to mention the parallel, less specific provisions of section 305(b)(2)) to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

§ 305(b)(6)

(6) Notwithstanding any other rule,³⁶² an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.³⁶³

§ 305(c)

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE. —

³⁶² The rule of section 305(b)(6) runs contrary to the general rule in the Senate that it is not in order to amend solely material that the Senate has already amended. For discussions of the general rule, see ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 28-30 (1992) (and precedents cited there); M. Gold, Senate Procedure and Practice: An Introductory Manual 33-34, 46-47 (Dec. 1983).

³⁶³ See also 128 CONG. REC. S5759 (1982); Senate Precedent PRL19820520-006 (May 20, 1982) (LEGIS, Rules database) (inquiry of Majority Leader Baker regarding amendment by Sen. Sasser to the First Concurrent Resolution on the Budget for fiscal year 1983).

The Parliamentarian's notes accompanying the precedent of May 20, 1982, explains that office's position:

Section 305(b)(6) . . . protects amendments which would otherwise not be in order, namely those amending figures already amended or those amending the pending question at more than one place, if said amendments make or maintain mathematical consistency. Advice from this office has been given to the effect that to qualify for this exception, any increase or decrease in a budget function requires a commensurate increase or decrease in any one or combination of the following to make the amendment in order: Revenue totals, and the amounts by which revenues should be changed, budget authority totals, outlay totals, public debt totals, and the amounts by which the statutory limit on the public debt should be changed, the deficit for the fiscal year involved and interest on the public debt, and other budget functions. Reconciliation numbers need not be changed.

Senate Precedent PRL19820520-006 (May 20, 1982) (LEGIS, Rules database).

Note that section 305(d) creates a point of order against consideration of a budget resolution whose figures are not mathematically consistent. See *infra* pp. 141-142.

§ 305(c)(1)

(1)³⁶⁴ A motion to proceed to the consideration of the conference report on any concurrent resolution on the budget (or a reconciliation bill or resolution)³⁶⁵ may be made even though a previous motion to the same effect has been disagreed to.

§ 305(c)(2)

(2) During the consideration in the Senate of the conference report (or a message between Houses)³⁶⁶ on

³⁶⁴ Section 13209(1)(A) of the Budget Enforcement Act repealed what used to be the first sentence of this paragraph. *See infra* p. 730. Before enactment of the Budget Enforcement Act, that sentence read as follows:

The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such conference report is reported and is available to Members of the Senate.

This superseded provision created something of an anomaly, as conference reports normally enjoy privileged status in the Senate, and they do not have to lie over under the Standing Rules of the Senate. *See* ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 471-75 (1992) (and precedents cited there). The law before enactment of the Budget Enforcement Act made budget resolutions and reconciliation bills a notable exception to that general principle, even though the Senate usually has just as much reason to consider conference reports on budget resolutions and reconciliation bills under an expedited schedule as other conference reports.

³⁶⁵ Section 13209(1)(B) of the Budget Enforcement Act added the words "on any concurrent resolution on the budget (or a reconciliation bill or resolution)" here (*see infra* p. 730), as section 13209(1)(B) of the Budget Enforcement Act repealed the reference in what used to be the first sentence of this paragraph. *See infra* p. 730.

³⁶⁶ Section 13209(2) of the Budget Enforcement Act added this parenthetical. *See infra* p. 730. This addition makes explicit the interpretation prior to enactment of the Budget Enforcement Act. Before enactment of the Budget Enforcement Act, paragraph (2) appeared to cover the case most analogous to that of amendment between the Houses, and thus provided the procedures for that case. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the addition briefly: "The conference agreement makes clear that amendments between the Houses on budget resolutions are covered in the Senate under section 305(c), which also deals with conference reports on budget resolutions." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted at* 1990 U.S.C.C.A.N. 2374, 2875.

any concurrent resolution on the budget,³⁶⁷ and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith,³⁶⁸ debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report (or a message between Houses)³⁶⁹ shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report (or a message between Houses).³⁷⁰



§ 305(o)(3)

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before



³⁶⁷ When conferees have before them a complete substitute, they may add any matter to their report that is not "entirely irrelevant" to the subject matter contained in either the bill or the substitute. 128 CONG. REC. S10,898-901 (1982); Senate Precedent PRL19820819-002 (Aug. 19, 1982) (LEGIS, Rules database) (point of order by Sen. East on the Tax Reconciliation Act of 1982; Chair sustained 68-27 on appeal).

³⁶⁸ Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on Concurrent Resolutions on the Budget," added the language "and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith" at this point to make clear that the 10-hour limit constitutes an overall cap on all debate. See Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987). Section 8003(d) of the Omnibus Budget Reconciliation Act of 1987 inserted the comma after "therewith" that section 209 had inadvertently omitted. Pub. L. No. 100-203, § 8003(d), 101 Stat. 1330, 1330-282 (Dec. 22, 1987).

³⁶⁹ Section 13209(2) of the Budget Enforcement Act added this parenthetical. See *infra* p. 730. For a brief discussion of the addition, see *supra* note 366.

³⁷⁰ Section 13209(2) of the Budget Enforcement Act added this parenthetical. See *infra* p. 730. For a brief discussion of the addition, see *supra* note 366.

the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

§ 305(o)(4)

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment³⁷¹ that is not germane³⁷² to the provisions of such amendments shall be received.³⁷³

§ 305(d)

(d)³⁷⁴ CONCURRENT RESOLUTION MUST BE CONSISTENT

³⁷¹ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

³⁷² For a discussion of germaneness, see *supra* note 352.

³⁷³ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

³⁷⁴ Section 13210(1) of the Budget Enforcement Act repealed what used to be subsection (d) and redesignated what used to be subsection (e) as subsection (d). *See infra* p. 731. Before enactment of the Budget Enforcement Act, subsection (d) read as follows:

(d) REQUIRED ACTION BY CONFERENCE COMMITTEE. — If at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two
(continued...)

IN THE SENATE. — It shall not be in order³⁷⁵ in the Senate to vote on the question of agreeing to —

§ 305(d)(1)

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent;³⁷⁶ or



§ 305(d)(2)

(2) a conference report on a concurrent report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

³⁷⁴(...continued)

Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session —

(1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or

(2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts substitute text.

Congress honored this 7-day rule in the breach, and it may well have been unenforceable.

³⁷⁵ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. Cf. *supra* note 293 (regarding section 303(a)).

³⁷⁶ For a discussion of mathematical consistency, see *supra* note 363.

Note that section 305(b)(6) makes in order amendments that make or maintain mathematical consistency. See *supra* p. 138.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

§ 306 **SEC. 306.**³⁷⁷ No bill,³⁷⁸ resolution, amendment,³⁷⁹ motion,³⁸⁰ or conference report,³⁸¹ dealing with any matter which is within the jurisdiction³⁸² of the Committee on the Budget of either House shall be considered³⁸³ in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an



³⁷⁷ Section 306 is codified as amended at 2 U.S.C. § 637 (Supp. IV 1992).

Section 904(c) provides that the Senate may waive or suspend section 306 only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. *See infra* p. 362.

³⁷⁸ Because section 306 does not contain the words "as reported" here, points of order under section 306 should apply to bills and resolutions as amended by amendments against which points of order would lie under section 306. *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)).

³⁷⁹ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

³⁸⁰ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, *see supra* note 235.

³⁸¹ Section 13207(a)(1)(D) of the Budget Enforcement Act struck "bill or resolution, and no amendment to any bill or resolution" here and inserted "bill, resolution, amendment, motion, or conference report." *See infra* p. 723.

³⁸² For a discussion of the Budget Committee's jurisdiction, *see infra* note 384.

³⁸³ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

amendment to such a bill or resolution.³⁸⁴

³⁸⁴ For examples of applications of the point of order under section 306, see, e.g., 138 CONG. REC. S15,001-18 (daily ed. Sept. 25, 1992) (Smith motion to waive Sasser point of order rejected 36-58 regarding his amendment on a tax-form check-off to trigger deficit reductions or sequesters); *id.* at S14,915-19 (daily ed. Sept. 24, 1992) (McCain motion to waive a Sasser point of order rejected 32 to 60 regarding his amendment no. 3172 to require a supermajority to raise taxes and remove the supermajority requirement to cut taxes); *id.* at S2457-78 (daily ed. Feb. 27, 1992) (McCain motion to waive Sasser point of order rejected 44-54 regarding his amendment no. 1698 to enhance the President's rescission authority); 136 CONG. REC. S8197 (daily ed. June 19, 1990) (the Senate agreed to a Cranston unanimous consent request to waive points of order regarding a Heinz amendment regarding congressional action to remove Social Security trust funds from the definition of the deficit); *id.* at S7457-78 (daily ed. June 6, 1990) (McCain motion to waive rejected 43-50 regarding his amendment no. 1995 regarding enhancing the President's rescission authority); 135 CONG. REC. S15,336-58 (daily ed. Nov. 9, 1989) (Coats motion to waive rejected 40-51 regarding his amendment no. 1092 regarding enhancing the President's rescission authority); 133 CONG. REC. S11,025 (daily ed. July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); *id.* at S10,584 (daily ed. July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, to revise Gramm-Rudman-Hollings); *id.* at S10,579 (daily ed. July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, to revise Gramm-Rudman-Hollings); 129 CONG. REC. S3587-603 (1983); Senate Precedent PRL19830322-002 (Mar. 22, 1983) (LEGIS, Rules database) (Heinz motion to waive tabled 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

Three sources provide the basis for the Budget Committee's jurisdiction. First, section 102(a) amended rule XXV of the Standing Rules of the Senate, which now reads as follows (in relevant part):

(e)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.

(2) Such committee shall have the duty —

(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

(continued...)

²⁰⁴(...continued)

(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and

(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

STANDING RULES OF THE SENATE Rule XXV(1)(e) (1992).

A second source of Budget committee Jurisdiction is the standing order on referral of budget process legislation. The Senate requires joint referral to the Budget and Governmental Affairs Committees of all legislation to change the budget and impoundment control process. The Senate agreed by unanimous consent on August 4, 1977:

that legislation affecting the congressional budget process, as described below, be referred jointly to the Committees on the Budget and on Governmental Affairs. If one committee acts to report a jointly-referred measure, the other must act within 30 calendar days of continuous possession, or be automatically discharged.

Legislative proposals affecting the congressional budget process to which this order applies are:

First. The functions, duties, and powers of the Budget Committee — as described in title I of the act;

Second. The functions, duties, and powers of the Congressional Budget Office — as described in title[s] II and IV of the act[;]

Third. The process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt — including subdivisions thereof. That process includes the establishment of:

mandatory ceilings on spending and appropriations;

a floor on revenues;

timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriations bills; and

enforcement mechanisms for the limits and timetables,

all as described in titles III and IV of the act[;]

(continued...)

³⁰⁴(...continued)

Fourth. The limiting of backdoor spending device[s] — as described in title IV of the act;

Fifth. The timetables for Presidential submission of appropriations and authorization requests — as described in title VI of the act;

Sixth. The definitions of what constitutes impoundment — such as "rescissions" and "deferrals," as provided in the Impoundment Control Act, title X;

Seventh. The process and determination by which impoundments must be reported to and considered by Congress — as provided in the Impoundment Control Act, title X;

Eighth. The mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X — such as GAO review and lawsuits; and

Ninth. The provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act — as set forth in title I thereof.

123 CONG. REC. S13,553 (daily ed. Aug. 4, 1977).

The reference to "30 calendar days of continuous possession" in the first paragraph of the standing order is so in the original. It probably should be to "30 calendar days of continuous session."

The Parliamentarian interprets the period of "30 calendar days of continuous session" to equate to 30 calendar days not interrupted by a sine die adjournment after the committee files its report with the Senate. In other words, "30 calendar days of continuous session" means 30 calendar days (including Saturdays, Sundays, legal holidays, and days in which the Senate stands in recess) unless the Senate adjourns sine die during those 30 days. If the Senate adjourns sine die during the 30 days, the 30 days begin counting again when the Senate next reconvenes.

Thus, on July 14, 1988, the Committee on Governmental Affairs ordered reported the Biennial Budget Act of 1988, S. 2478, 100th Cong., 2d Sess., 134 CONG. REC. S7295-302 (daily ed. June 7, 1988), sponsored by Senators Ford and Roth and others. On August 25, 1988, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate, under the authority of an order of August 11, 1988, providing for filing during the August recess. On that date, August 25, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on September 26, 1988, the

(continued...)

²⁰⁴(...continued)

Senate discharged the Committee on the Budget and placed the bill on the Legislative Calendar under General Orders. 134 CONG. REC. S13,263 (daily ed. Sept. 26, 1988) (measures placed on the calendar).

Similarly, on November 17, 1989, the Committee on Governmental Affairs ordered reported the Biennial Budget Act, S. 29, 101st Cong., 1st Sess., 135 CONG. REC. S291 (daily ed. Jan. 25, 1989), sponsored by Senators Ford and Roth and others. On March 21, 1990, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate and on that date, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on April 20, 1990, the Senate discharged the Committee on the Budget and placed the bill on the calendar. 1990 SEN. J. H1.

Again on August 4, 1990, the Committee on the Budget reported four budget process bills, the Honest Budget/Balanced Budget Act, S. 101, the Debt Ceiling Reform Act, S. 532, the Social Security Preservation Act, S. 2999, and the Federal Hospital Insurance Preservation Act, S. 3008. See 136 CONG. REC. S12,475 (daily ed. Aug. 4, 1990). The Senate discharged the Governmental Affairs Committee and placed all four bills on the calendar. See *id.* at S12,722 (daily ed. Sept. 10, 1990). On August 30, 1990 the Committee on the Budget reported two more bills, the Gross Interest Legislation Act, S. 3011, and the National Priorities Review Act, S. 2835, each of which the Chair referred to the Committee on Governmental Affairs. See 136 CONG. REC. S12,724 (daily ed. Sept. 10, 1990).

Specifying that an activity will not affect the deficit is a matter within the jurisdiction of the Budget Committee. See, e.g., *id.* at S5405 (daily ed. May 1, 1990). On May 1, 1990, during consideration of H.R. 4404 (Making dire emergency supplemental appropriations for disaster assistance, food stamps, unemployment compensation administration, and other urgent needs, and transfers, and reducing funds budgeted for military spending for the fiscal year ending September 30, 1990, and for other purposes), the chair ruled that the following language contained matters within the jurisdiction of the Budget Committee, in violation of section 306:

Sec. 320. Section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended —

(1) in subparagraph (J), by striking "and" at the end thereof;

(2) in subparagraph (K), by striking the period at the end thereof and inserting a semicolon; and

(3) by adding after subparagraph (K) the following:

"(L) assuming, for purposes of this paragraph, paragraph(3)(A)(i), and the Congressional Budget Act of 1974, and notwithstanding sections 3(6) and 406(b) of that Act, that disbursements and receipts equalling the principal amounts of borrowings or repayments of principal of direct

(continued...)

²⁰⁰(...continued)

loans from the Federal Financing Bank to the Resolution Trust Corporation that are used for working capital requirements in liquidating Federal deposit insurance claims or for any other working capital purpose (pursuant to title V of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), shall not alter the deficit or produce any change in the budget baseline, and

“(M) assuming, for purposes of this paragraph, paragraph 3(A)(i), and the Congressional Budget Act of 1974, notwithstanding sections 3(6) and 406(b) of that Act, and excluding receipts and disbursements subject to subparagraph (L), the sum of the amount of any offsetting collections from the Resolution Funding Corporation for purchase of capital certificates and any other offsetting collections of the Resolution Trust Corporation in any fiscal year shall equal the amount of any Resolution Trust Corporation disbursements for that fiscal year, effective beginning with the fiscal year 1991 budget.”

H.R. 4404, 101st Cong., 2d Sess. § 320, 136 CONG. REC. S4991, S4999 (daily ed. Apr. 25, 1990) (as reported to the Senate). Upon a point of order raised by Senator Hollings against the committee amendment under section 306, the amendment fell. *Id.* at S5405 (daily ed. May 1, 1990). For the discussion of the point of order and the section, see *id.* at S5383-405.

Any new mechanism to enhance the President's power to rescind funds fall within the Budget Committee's jurisdiction. See *id.* at S7457-78 (daily ed. June 6, 1990) (McCain amendment no. 1995 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction); 135 CONG. REC. S15,336-58 (daily ed. Nov. 9, 1989) (Coats amendment no. 1092 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction). On June 6, 1990, the Senate considered a McCain amendment (identical to S. 1553, 101st Cong., 1st Sess., 135 CONG. REC. S10,293-96 (daily ed. Aug. 4, 1989)) to add a new title to the Impoundment Control Act of 1974 changing what would happen if Congress failed to act on a rescission. See 136 CONG. REC. S7457 (daily ed. June 6, 1990) (statement of Sen. McCain). After the Senate rejected 43-50 Senator McCain's motion to waive section 306 of the Congressional Budget Act, the Chair ruled: "The amendment by the Senator from Arizona modifies the President's authority to rescind funds, which is a subject within the Budget Committee's jurisdiction." 136 CONG. REC. S7478 (daily ed. June 6, 1990) (Sen. Wirth acting as Presiding Officer).

Mandating the annual amounts of deficit and debt reduction affects the process by which Congress annually establishes the appropriate levels of budget authority, outlays, deficits, and public debt, and thus deals with matter within the jurisdiction of the Budget Committee. See 138 CONG. REC. S15,001-18 (daily ed. Sept. 25, 1992) (Smith amendment on a tax-form check-off to trigger deficit reductions or sequesters).

(continued...)

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COM- PLETED BY JUNE 10

§ 307

SEC. 307.³⁸⁵ On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills³⁸⁶ providing new budget authority³⁸⁷ under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

³⁸⁴ (...continued)

The Parliamentarian's office has advised (as recently as spring 1992) that the third source of Budget Committee jurisdiction, its limited authority to comment on rescissions and deferrals (*see infra* note 1080), does not give rise to point of order under section 306.

³⁸⁵ Section 307 is codified as amended at 2 U.S.C. § 638 (1988).

³⁸⁶ Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), *see supra* note 36.

³⁸⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

§ 308(a) **SEC. 308.³⁸⁸ (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES. —**

§ 308(a)(1) **(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority³⁸⁹ (other than continuing appropriations), new spending authority described in section 401(c)(2),³⁹⁰ or new credit authority,³⁹¹ or providing an increase or decrease in revenues or tax expenditures³⁹² for a fiscal year (or fiscal years),³⁹³ the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office —**

§ 308(a)(1)(A) **(A) comparing the levels in such measure to the appropriate allocations in the reports submitted**

³⁸⁸ Section 308 is codified as amended at 2 U.S.C. § 639 (1988 & Supp. IV 1992).

³⁸⁹ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

³⁹⁰ *See infra* pp. 251-254.

³⁹¹ Section 402(b) defines "new credit authority" (*see infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

³⁹² Section 3(3) defines "tax expenditures." *See supra* p. 13.

³⁹³ Section 13206(a)(1) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." *See infra* p. 722.

under section 302(b)³⁹⁴ for the most recently agreed to concurrent resolution on the budget for such fiscal year (or fiscal years);³⁹⁵

§ 308(a)(1)(B)

(B) including an identification of any new spending authority described in section 401(c)(2)³⁹⁶ which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

§ 308(a)(1)(C)

(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority,³⁹⁷ budget outlays,³⁹⁸ spending authority,³⁹⁹ revenues, tax expenditures,⁴⁰⁰ direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year (or fiscal years)⁴⁰¹ and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

§ 308(a)(1)(D)

(D) containing an estimate by the Congressio-

³⁹⁴ See *supra* pp. 90-91.

³⁹⁵ Section 13206(a)(2) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." See *infra* p. 722.

³⁹⁶ See *infra* pp. 251-254.

³⁹⁷ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

³⁹⁸ Section 3(1) defines "budget outlays." See *supra* p. 11.

³⁹⁹ Section 401(c)(2) defines "spending authority." See *infra* pp. 251-254.

⁴⁰⁰ Section 3(3) defines "tax expenditures." See *supra* p. 13.

⁴⁰¹ Section 13206(a)(3) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." See *infra* p. 722.

nal Budget Office of the level of new budget authority⁴⁰² for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

§ 308(a)(2)

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority⁴⁰³ (other than continuing appropriations), new spending authority described in section 401(c)(2),⁴⁰⁴ or new credit authority,⁴⁰⁵ or provides an increase or decrease in revenues for a fiscal year (or fiscal years),⁴⁰⁶ the statement of managers accompanying such conference report shall contain the information described in paragraph (1),⁴⁰⁷ if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

§ 308(b)

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION. —

⁴⁰² Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁴⁰³ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁴⁰⁴ See *infra* pp. 251-254.

⁴⁰⁵ Section 402(b) defines "new credit authority" (see *infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (see *supra* p. 19).

⁴⁰⁶ Section 13206(b) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." See *infra* p. 722.

⁴⁰⁷ See *supra* pp. 150-152.

§ 308(b)(1)

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly⁴⁰⁸ basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority,⁴⁰⁹ new spending authority described in section 401(c)(2),⁴¹⁰ or new credit authority,⁴¹¹ or providing an increase or decrease in revenues or tax expenditures⁴¹² for each fiscal year covered by a concurrent resolution on the budget.⁴¹³ Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays⁴¹⁴) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding the first fiscal year covered by the appropriate concurrent resolution.⁴¹⁵

⁴⁰⁸ As a matter of practice, the Director issues these reports more frequently, as much as weekly during some times of the year. For example, the Director issued at least 29 reports in 1989. See *infra* note 416.

⁴⁰⁹ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁴¹⁰ See *infra* pp. 251-254.

⁴¹¹ Section 402(b) defines "new credit authority" (see *infra* p. 261), in part by reference to the definition of "credit authority" in section 3(10) (see *supra* p. 19).

⁴¹² Section 3(3) defines "tax expenditures." See *supra* p. 13.

⁴¹³ Section 13206(c)(1) of the Budget Enforcement Act struck the words "for a fiscal year" at this point and inserted "for each fiscal year covered by a concurrent resolution on the budget." See *infra* p. 722.

⁴¹⁴ Section 3(1) defines "outlays." See *supra* p. 11.

⁴¹⁵ Section 13206(c)(2) of the Budget Enforcement Act struck the words "such fiscal year" at this point and inserted "the first fiscal year covered by the appropriate concurrent resolution." See *infra* p. 722.

§ 308(b)(2)

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports.⁴¹⁶ Such reports —

§ 308(b)(2)(A)

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

⁴¹⁶ The Chairman of the Budget Committee regularly submits these budget scorekeeping reports for printing in the *Congressional Record*. See, e.g., 138 CONG. REC. S13,176 (daily ed. Sept. 10, 1992); *id.* at S11,140 (daily ed. July 31, 1992); *id.* at S9962 (daily ed. July 20, 1992); *id.* at S8407 (daily ed. June 17, 1992); *id.* at S7496 (daily ed. June 3, 1992); *id.* at S7075 (daily ed. May 20, 1992); *id.* at S6617 (daily ed. May 13, 1992); *id.* at S6238 (daily ed. May 6, 1992); *id.* at S5822 (daily ed. Apr. 29, 1992); *id.* at S5330 (daily ed. Apr. 9, 1992); *id.* at S4969 (daily ed. Apr. 7, 1992); *id.* at S4407 (daily ed. Mar. 26, 1992); *id.* at S3576 (daily ed. Mar. 12, 1992); *id.* at S2770 (daily ed. Mar. 3, 1992); *id.* at S2347 (daily ed. Feb. 26, 1992); *id.* at S2119 (daily ed. Feb. 21, 1992); *id.* at S933 (daily ed. Feb. 4, 1992); *id.* at S307 (daily ed. Jan. 23, 1992); 137 CONG. REC. at S14,095 (daily ed. Oct. 1, 1991); *id.* at S13,615 (daily ed. Sept. 24, 1991); *id.* at S13,193 (daily ed. Sept. 17, 1991); *id.* at S12,811 (daily ed. Sept. 11, 1991); *id.* at S11,386 (daily ed. July 30, 1991); *id.* at S10,303 (daily ed. July 17, 1991); *id.* at S9406 (daily ed. July 9, 1991); *id.* at S8513 (daily ed. June 24, 1991); *id.* at S8049 (daily ed. June 18, 1991); *id.* at S7703 (daily ed. June 12, 1991); *id.* at S6255 (daily ed. May 21, 1991); *id.* at S5964 (daily ed. May 15, 1991); *id.* at S4913 (daily ed. Apr. 23, 1991); *id.* at S4509 (daily ed. Apr. 16, 1991); *id.* at S4139 (daily ed. Mar. 22, 1991); *id.* at S3118 (daily ed. Mar. 12, 1991); *id.* S2692-93 (daily ed. Mar. 5, 1991); 136 CONG. REC. S6266-67 (daily ed. May 15, 1990); *id.* at S5927-28 (daily ed. May 9, 1990); *id.* at S5372 (daily ed. Apr. 30, 1990); *id.* at S4953 (daily ed. Apr. 24, 1990); *id.* at S3913 (daily ed. Apr. 3, 1990); *id.* at S3227 (daily ed. Mar. 26, 1990); *id.* at S2954-55 (daily ed. Mar. 21, 1990); *id.* at S2212 (daily ed. Mar. 6, 1990); *id.* at S1773-74 (daily ed. Feb. 27, 1990); *id.* at S1648-49 (daily ed. Feb. 26, 1990); *id.* at S1040 (daily ed. Feb. 7, 1990); *id.* at S924-26 (daily ed. Feb. 6, 1990); 135 CONG. REC. S16,426-27 (daily ed. Nov. 20, 1989); *id.* at S15,576-77 (daily ed. Nov. 14, 1989); *id.* at S15,201 (daily ed. Nov. 7, 1989); *id.* at S14,617 (daily ed. Nov. 2, 1989); *id.* at S14,616-17 (daily ed. Nov. 2, 1989); *id.* at S11,916-17 (daily ed. Sept. 26, 1989); *id.* at S11,915-16 (daily ed. Sept. 26, 1989); *id.* at S11,395-96 (daily ed. Sept. 19, 1989); *id.* at S11,394-95 (daily ed. Sept. 19, 1989); *id.* at S10,373 (daily ed. Aug. 4, 1989); *id.* at S9395-96 (daily ed. Aug. 1, 1989); *id.* at S8654-56 (daily ed. July 24, 1989); *id.* at S8074-75 (daily ed. July 17, 1989); *id.* at S7843-44 (daily ed. July 12, 1989); *id.* at S7004-05 (daily ed. June 20, 1989); *id.* at S6566 (daily ed. June 13, 1989); *id.* at S6346-47 (daily ed. June 7, 1989); *id.* at S6059 (daily ed. June 1, 1989); *id.* at S5432 (daily ed. May 16, 1989); *id.* at S5060-61 (daily ed. May 9, 1989); *id.* at S4648-49 (daily ed. May 2, 1989); *id.* at S4065 (daily ed. Apr. 17, 1989); *id.* at S3558-59 (daily ed. Apr. 10, 1989); *id.* at S3392 (daily ed. Apr. 5, 1989); *id.* at S2746 (daily ed. Mar. 15, 1989); *id.* at S2029 (daily ed. Mar. 2, 1989); *id.* at S1863 (daily ed. Feb. 28, 1989); *id.* at S1392 (daily ed. Feb. 8, 1989); *id.* at S1126 (daily ed. Feb. 2, 1989).

§ 308(b)(2)(B) (B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1);⁴¹⁷ and

§ 308(b)(2)(C) (C) shall be based on information provided under subsection (b)(1)⁴¹⁸ without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

§ 308(c) (c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION. — As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year —

§ 308(c)(1) (1) total new budget authority⁴¹⁹ and total budget outlays⁴²⁰ for each fiscal year in such period;

§ 308(c)(2) (2) revenues to be received and the major sources thereof, and the surplus or deficit,⁴²¹ if any, for each fiscal year in such period;

§ 308(c)(3) (3) tax expenditures⁴²² for each fiscal year in such period;

⁴¹⁷ See *supra* p. 153.

⁴¹⁸ See *supra* p. 153.

⁴¹⁹ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁴²⁰ Section 3(1) defines "budget outlays." See *supra* p. 11.

⁴²¹ Section 3(6) defines "deficit." See *supra* p. 16.

⁴²² Section 3(3) defines "tax expenditures." See *supra* p. 13.

§ 308(e)(4) **(4) entitlement authority⁴²³ for each fiscal year in such period; and**

§ 308(e)(5) **(5) credit authority⁴²⁴ for each fiscal year in such period.**

⁴²³ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

⁴²⁴ Section 3(10) defines "credit authority." *See supra* p. 19.

HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS⁴²⁵

§ 309 **SEC. 309.**⁴²⁶ It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills⁴²⁷ providing new budget authority⁴²⁸ under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

⁴²⁵ Compare the parallel point of order in the House in connection with completion of reconciliation in section 310(f). *See infra* p. 174.

⁴²⁶ Section 309 is codified as amended at 2 U.S.C. § 640 (1988).

⁴²⁷ Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 36.

⁴²⁸ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

RECONCILIATION

§ 310(a) **SEC. 310.⁴²⁹ (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.⁴³⁰ — A concurrent resolution on the budget for any fiscal year,⁴³¹ to the extent necessary to effectuate the provisions**

⁴²⁹ Section 310 is codified as amended at 2 U.S.C. § 641 (1988 & Supp. IV 1992).

⁴³⁰ Section 201(b) of Gramm-Rudman-Hollings (*see infra* p. 413) revised subsections 310(a) and 310(b). Those subsections originally addressed reconciliation in the context of a second budget resolution. For the text of section 310(a) as enacted in 1974, *see infra* note 441 (at the end of this subsection).

Section 310 sets forth the reconciliation process in the context of Congress's annual cycle of concurrent resolutions on the budget. *See infra* pp. 158-177. For other budget process legislation dealing with reconciliation, *see* section 300, *supra* p. 47 (budget timetable, including that for reconciliation); section 301(b)(2) & (3), *supra* pp. 58-60 (empowering budget resolutions to include reconciliation instructions, as well as a provision providing for delayed enrollment of legislation pending completion of reconciliation); section 305, *supra* pp. 120-142 (procedures for budget resolutions and reconciliation bills); section 313, *infra* pp. 198-228 (the Byrd Rule prohibiting extraneous matter in reconciliation); section 604, *infra* pp. 325-327 (providing an optional reconciliation process in the House of Representatives to make up the net losses created by tax-cutting legislation); section 904(c) & (d), *infra* pp. 361-368 (supermajority requirements for points of order and appeals, including those for reconciliation); Gramm-Rudman-Hollings section 258C, *infra* pp. 658-662 (providing a special Gramm-Rudman-Hollings reconciliation process to achieve savings in lieu of an impending sequester); section 5 of Executive Order 12857, *infra* pp. 826-827 (reconciliation recommendations in special direct spending message); and section 16005 of H.R. 2264, 103d Cong., 1st Sess., 139 CONG. REC. H3029, H3199-201 (daily ed. May 27, 1993) (as passed by the House of Representatives) as applied to the House by H. Res. 235, 103d Cong., 1st Sess., 139 CONG. REC. H6122 (daily ed. Aug. 3, 1993), *infra* pp. 844-848 (reconciliation procedures in response to special direct spending message).

⁴³¹ No limitations apply to how many years may be covered by reconciliation instructions. 127 CONG. REC. S2754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed a series of parliamentary inquiries of the Chair (Senator Humphrey of New Hampshire):

Mr. HATFIELD. Mr. President, if this present Budget Committee had desired to apply program reductions beyond the year 1983, and set target figures on those subsequent fiscal years — and let me cite a hypothetical
(continued...)

and requirements of such resolution, shall —

§ 310(a)(1) (1) specify the total amount by which —

§ 310(a)(1)(A) (A) new budget authority⁴³² for such fiscal year;

§ 310(a)(1)(B) (B) budget authority⁴³³ initially provided for prior fiscal years;

⁴³¹(...continued)

situation, that they would want to set, say, program reductions, target figures, for 1984, 1985, 1986, 1987, 1988, 1989, 1990, up to the year 2000, would that have been within the power of the Budget Committee as interpreted by the Chair under the Budget Act?

The PRESIDING OFFICER. The issue is out-year reconciliations and on that issue the Budget Act itself is silent. The Senate chose to permit out-year budget reconciliation in a previous year. Therefore, the Chair would not be advised that a point of order would lie against out-year reconciliation instructions.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair had not quite finished — no matter what the year was. The Senator from Oregon has the floor.

Mr. HATFIELD. Do I understand that the Chair — I would be glad to yield to the minority leader, but I have to get this clear in my mind. I think I am in frequency with the Chair, I am not sure, but do I understand the Chair states there are no out-year limitations that would apply to a resolution of this kind, which is a subsequent resolution to the first concurrent resolution?

The PRESIDING OFFICER. Not in the Budget Act.

Id.

⁴³² Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁴³³ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

§ 310(a)(1)(C) (C) new entitlement authority⁴³⁴ which is to become effective during such fiscal year; and

§ 310(a)(1)(D) (D) credit authority⁴³⁵ for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

§ 310(a)(2) (2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction⁴³⁶ to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

§ 310(a)(3) (3) specify the amounts by which the statutory limit on the public debt⁴³⁷ is to be changed and direct the

⁴³⁴ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

⁴³⁵ Section 3(10) defines "credit authority." *See supra* p. 19.

⁴³⁶ Rule XXV of the Standing Rules of the Senate provides (in relevant part):

(1) Committee on Finance, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

....

8. Revenue measures generally, except as provided in the Congressional Budget Act of 1974.

STANDING RULES OF THE SENATE Rule XXV(1)(i)(8) (1992).

⁴³⁷ The public debt limit is set at 31 U.S.C. § 3101 (Supp. III 1991), amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13411, 107 Stat. 312 (1993).

committee having jurisdiction⁴³⁸ to recommend such change; or

§ 310(a)(4)

(4) specify and direct any combination of the matters described in paragraphs (1),⁴³⁹ (2),⁴⁴⁰ and (3) (including a direction to achieve deficit reduction).⁴⁴¹

⁴³⁸ Rule XXV of the Standing Rules of the Senate provides (in relevant part):

(I) Committee on Finance, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Bonded debt of the United States, except as provided in the Congressional Budget Act of 1974.

STANDING RULES OF THE SENATE Rule XXV(i)(1) (1992).

⁴³⁹ See *supra* p. 159.

⁴⁴⁰ See *supra* p. 160.

⁴⁴¹ Section 13207(d) of the Budget Enforcement Act added the parenthetical "(including a direction to achieve deficit reduction)" so as to remove all doubt that a budget resolution may instruct a committee to achieve unspecified deficit reduction — through reductions of either revenues or outlays, at the committee's option. See *infra* p. 726.

The Chair will not look to the effect of reconciliation instructions, only to their form. See *supra* note 133.

Reconciliation instructions may not specify that the reporting committee must achieve its savings from certain types of programs or raise its revenues in specific ways. 128 CONG. REC. S5506 (1982); Senate Precedent PRL19820519-002 (May 19, 1982) (LEGIS, Rules database) (inquiries of Sen. Dole); 131 CONG. REC. S5863 (1985); Senate Precedent PRL19850509-007 (May 9, 1985) (LEGIS, Rules database) (inquiry of Sen. Helms regarding amendment by Sen. Bradley).

Nonetheless, pursuant to this paragraph and section 301(b)(4) (the "elastic clause," see *supra* p. 60), budget resolutions have regularly instructed committees to achieve savings in categories not specifically enumerated in the listing in section 310(a). For example, budget resolutions regularly specify the amount by which reporting committees must reduce "outlays." Similarly, budget resolutions regularly distinguish between spending as defined in section 401(c)(2)(C) and other spending. In several instances, as well, the Senate has passed budget resolutions that have included reconciliation instructions that specify increases in "contributions." See S. Con. Res. 30, 101st Cong., 1st Sess., §§ 6(b), 6(c), 6(j) (continued...)

⁴¹(...continued)

& 6(k) (1989) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Agriculture, and the House Committee on Banking, Finance, and Urban Affairs); S. Con. Res. 48, 100th Cong., 1st Sess., §§ 4(b) & 4(l) (1987) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture); S. Con. Res. 120, 99th Cong., 2d Sess., §§ 2(f) & 2(q) (1986) (instructions to the Senate Committee on Energy and Natural Resources and the House Committee on Energy and Commerce); S. Con. Res. 32, 99th Cong., 1st Sess., §§ 2(j) & 2(x) (1985) (instructions to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service).

Section 201(b) of Gramm-Rudman-Hollings (*see infra* p. 413) revised subsection 310(a). That subsection originally addressed reconciliation in the context of a second budget resolution. As enacted in 1974, section 310(a) read:

SECOND REQUIRED CONCURRENT RESOLUTION AND RECONCILIATION
PROCESS

SEC. 310. (a) REPORTING OF CONCURRENT RESOLUTION. — The Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget shall also, to the extent necessary —

(1) specify the total amount by which —

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior
fiscal years; and

(C) new spending authority described in section
401(c)(2)(C) which is to become effective during such fiscal
year,

contained in laws, bills, and resolutions within the jurisdiction of a
committee, is to be changed and direct that committee to determine
and recommend changes to accomplish a change of such total
amount;

(2) specify the total amount by which revenues are to be
changed and direct that the committees having jurisdiction to
determine and recommend changes in the revenue laws, bills, and
resolutions to accomplish a change of such total amount;

(continued...)

§ 310(b) **(b) LEGISLATIVE PROCEDURE.** — If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a),⁴⁴² and —

§ 310(b)(1) (1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

§ 310(b)(2) (2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit⁴⁴³ such recommendations to the Committee on the Budget of its

⁴⁴¹(...continued)

(3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

Any such concurrent resolution may be reported, and the report accompanying it may be filed, in either House notwithstanding that that House is not in session on the day on which such concurrent resolution is reported.

⁴⁴² See *supra* pp. 158-161.

⁴⁴³ Committees must comply with the provisions of rule XXVI(7)(a) when submitting their recommendations under this section. Rule XXVI(7)(a)(1) provides (among other things) that "no measure or matter or *recommendation* shall be reported from any committee unless a majority of the committee were physically present." *STANDING RULES OF THE SENATE* Rule XXVI(7)(a)(1) (1992) (emphasis added). Rule XXVI(7)(a)(3) requires (among other things): "The vote of any committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are present." *Id.* Rule XXVI(7)(a)(3).

House, which, upon receiving all such recommendations,⁴⁴⁴ shall report to its House reconciliation legisla-

⁴⁴⁴ This language imposes upon the Budget Committee the duty to report promptly when it receives "all such recommendations." Thus, the Budget Committee may include in reconciliation legislation material reported to it after the deadline in the budget resolution's reconciliation instructions, so long as the Budget Committee has not yet reported by the time the tardy committee reports. See 135 CONG. REC. S12,589 (daily ed. Oct. 4, 1989) (statement of Budget Committee Chairman Sasser). The Chairman of the Budget Committee has put it this way:

RECONCILIATION QUESTIONS

Mr. SASSER. Mr. President. The distinguished Republican leader gave notice yesterday of his intent to propound four parliamentary inquiries of the Chair regarding the reconciliation process pursuant to the Congressional Budget Act of 1974. I rise today to address these inquiries from the perspective of the Committee on the Budget.

First, the Republican leader asks: "Can the Senate Budget Committee incorporate into the reconciliation bill, pursuant to the congressional budget resolution, material which was reported after August 4, 1989?"

Mr. President, from the perspective of the Committee on the Budget, the answer is "Yes." Let me quote from the controlling statute, section 310(b) of the Congressional Budget Act: "the Committee on the Budget, . . . upon receiving all such recommendations, shall report to its House reconciliation legislation."

Two things are worth noting about this statutory requirement. First, it is mandatory. The statute says the Budget Committee "shall" report. Second, it only comes into effect upon the happening of a contingency: "[U]pon receiving all such recommendations." The mandatory requirement for the Budget Committee to report only ripens when all instructed committees have reported.

Now what happens if the deadline for reporting reconciliation arrives and all committees have not reported? In this situation, we have to fall back on the Standing Rules of the Senate. Rule 25(c)(2) gives the Committee on the Budget jurisdiction over "matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974." Now the reconciliation legislation is a "matter . . . under title III." It is a creature of section 310 of the Budget Act.

Under this rule, in the absence of specific constraints, the Budget Committee has jurisdiction over the reconciliation bill just as other committees have jurisdiction over other bills within their jurisdiction. Thus, after the

(continued...)

tion carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which

⁴⁴⁴(...continued)

deadline has passed, the Budget Committee may report out the reconciliation bill absent the contributions of the tardy committees, or the Budget Committee may wait for all committees to report. Only when all committees report, does the Budget Committee's obligation ripen.

What becomes of the bill that includes a title that is reported late? This lateness is a factor that the Chair must take into account in determining whether the bill as a whole constitutes a reconciliation bill deserving of the procedural protections set forth in the statute. It is a factor, but I should think a rather minor factor when weighed along with whether the other requirements are met, that is whether the committees instructed have achieved deficit reduction of the right amount, whether they have done so in their jurisdiction, and whether provisions are otherwise extraneous or non-germane.

Should a title reported late be subject to any extraordinary remedies? We submit, no. The remedy for failure to comply with the amount of reconciliation instructions is that any Senator may rise and offer a motion to recommit with instructions to report back forthwith an amendment that would bring the title into complete compliance.

But could that remedy apply here? It would make no sense. There is no possible amendment that could make the committee's title comply with the deadline for reporting recommendations.

There is no way it could be sent back and the clock turned back to make it comply with the time requirement.

Now, should the tardy committee be otherwise punished? The Committee on the Budget would respond no. There is sufficient sanction in the threat that the Budget Committee might report the reconciliation bill and the Senate might consider it without that committee's title. In essence, the committee that reports in a tardy fashion, gambles on the patience of the Budget Committee and on the patience of the Senate leadership.

Id. (The Republican leader never propounded of the Chair the inquiries that he said he would.)

have not been enrolled.⁴⁴⁵

§ 310(o)(1)

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.⁴⁴⁶

⁴⁴⁵ Pursuant to this paragraph and section 301(b)(3) (*see supra* p. 59), reconciliation provisions in a budget resolution may direct the development of a reconciliation resolution. Such a reconciliation resolution could direct the Clerk of the House or the Secretary of the Senate to revise certain bills on which enrollment has been delayed pursuant to a budget resolution provision requiring delayed enrollment. Section 301(b)(3) provides for delayed enrollment provisions. *See supra* p. 59 & note 154. Congress has not included this reconciliation resolution procedure in any budget resolution.

⁴⁴⁶ If a committee fails to comply with the reconciliation instructions in the budget resolution, it is in order for any Senator to offer a motion to recommit the reconciliation bill with instructions to report back forthwith with an amendment — which need not be germane — that achieves those savings. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also* SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1981, S. REP. No. 97-139, 97th Cong., 1st Sess. 11 (1981); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1982, S. REP. No. 97-504, 97th Cong., 2d Sess. 6 (1982); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1983, S. REP. No. 98-300, 98th Cong., 1st Sess. 5 (1983); SENATE COMM. ON THE BUDGET, CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, S. REP. No. 99-146, 99th Cong., 1st Sess. 5 (1985); SENATE COMM. ON THE BUDGET, SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986, S. REP. No. 99-348, 99th Cong., 2d Sess. 5 (1986). Thus, failure to comply causes the offending committee to lose the protection of the requirement of section 305(b)(2) (*see supra* p. 126 & note 352) that amendments be germane and may mean that another Senator will write the offending committee's provisions on the floor. For the parallel enforcement mechanism in the House, *see* section 310(d)(5) *infra* p. 172.

If a committee submits its reconciliation recommendations to the Budget Committee after the deadline that the budget resolution sets forth for submitting recommendations to the Budget Committee, and the Budget Committee nonetheless includes the tardy committee's reconciliation recommendations in the reconciliation legislation that it reports, this extraordinary remedy is not available to remedy the failure of the committee to comply with the deadline. *See* 135 CONG. REC. S12,589 (daily ed. Oct. 4, 1989) (statement of Budget Committee Chairman Sasser). For excerpts of the statement cited, *see supra* note 444.

As long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill may contain non-budgetary amendments to substantive law, and still be protected under the Congressional Budget Act. 127 CONG. REC. S6664 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database) (statement of Majority Leader Baker).

— (1)⁴⁴⁷ Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1)⁴⁴⁸ and ~~(2)~~⁴⁴⁹ of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions —

§ 310(c)(1)(A)

(A)⁴⁵⁰ if —

§ 310(c)(1)(A)(i)

(i)⁴⁵¹ the amount of the changes of the type described in paragraph (1)⁴⁵² of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)⁴⁵³ and (2)⁴⁵⁴ of such subsection, and

§ 310(c)(1)(A)(ii)

(ii)⁴⁵⁵ the amount of the changes of the type

⁴⁴⁷ Section 13207(c)(1) of the Budget Enforcement Act added the number (1) here. *See infra* p. 725.

⁴⁴⁸ That is, budget, entitlement, and credit authority. *See supra* p. 159.

⁴⁴⁹ That is, revenues. *See supra* p. 160.

⁴⁵⁰ Section 13207(c)(3) of the Budget Enforcement Act redesignated this subparagraph from (1) to (A). *See infra* p. 725.

⁴⁵¹ Section 13207(c)(2) of the Budget Enforcement Act redesignated this clause from (A) to (i). *See infra* p. 725.

⁴⁵² That is, budget, entitlement, and credit authority. *See supra* p. 159.

⁴⁵³ That is, budget, entitlement, and credit authority. *See supra* p. 159.

⁴⁵⁴ That is, revenues. *See supra* p. 160.

⁴⁵⁵ Section 13207(c)(2) of the Budget Enforcement Act redesignated this clause from (B) to (ii). *See infra* p. 725.

described in paragraph (2)⁴⁵⁶ of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)⁴⁵⁷ and (2)⁴⁵⁸ of such subsection, and

§ 310(c)(1)(B) (B)⁴⁵⁹ if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1)⁴⁶⁰ and (2)⁴⁶¹ of such subsection.⁴⁶²

⁴⁵⁶ That is, revenues. *See supra* p. 160.

⁴⁵⁷ That is, budget, entitlement, and credit authority. *See supra* p. 159.

⁴⁵⁸ That is, revenues. *See supra* p. 160.

⁴⁵⁹ Section 13207(c)(3) of the Budget Enforcement Act redesignated this subparagraph from (2) to (B). *See infra* p. 725.

⁴⁶⁰ That is, budget, entitlement, and credit authority. *See supra* p. 159.

⁴⁶¹ That is, revenues. *See supra* p. 160.

⁴⁶² Because to some extent this section makes outlays and revenues fungible, some refer to it as the "fungibility rule."

For an example of the rule in operation, take the case of a budget resolution that instructs a committee to achieve \$3 million in outlay reductions and \$7 million in revenue increases, for a total of \$10 million in deficit reduction. By virtue of this section, that committee may permissibly achieve outlay reductions as low as \$1 million (\$3 million minus 20 percent of \$10 million, or \$2 million), as long as it achieves a total of at least \$10 million in deficit reduction by also achieving at least \$9 million in revenues increases. Alternatively, the committee may achieve revenue increases as low as \$5 million (\$7 million minus 20 percent of \$10 million, or \$2 million), as long as it achieves a total of at least \$10 million in deficit reduction by also achieving outlay reductions of at least \$5 million.

§ 310(o)(2)(A)

(2)(A)⁴⁶³ Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a)⁴⁶⁴ and revised functional levels and aggregates to carry out this subsection.

§ 310(o)(2)(B)

(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a)⁴⁶⁵ and revised functional levels and aggregates to carry out this subsection.

§ 310(o)(2)(C)

(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.⁴⁶⁶

§ 310(o)(2)(D)

(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b)⁴⁶⁷ to carry out this subsection.

⁴⁶³ Section 13207(c)(4) of the Budget Enforcement Act added this paragraph. *See infra* p. 725. Prior to the enactment of the Budget Enforcement Act, the possibility existed that a committee might take advantage of section 310(c) only to find that points of order under section 302(f) impeded the progress of its legislation after the reconciliation act.

⁴⁶⁴ *See supra* pp. 88-90.

⁴⁶⁵ *See supra* pp. 88-90.

⁴⁶⁶ *See supra* pp. 50-87.

⁴⁶⁷ *See supra* pp. 90-91.

§ 310(d) (d) LIMITATION OF AMENDMENTS TO RECONCILIATION
BILLS AND RESOLUTIONS.⁴⁶⁸ —

§ 310(d)(1) (1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution⁴⁶⁹ if such amendment would have the effect of increasing any specific budget outlays⁴⁷⁰ above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority⁴⁷¹ or new entitlement authority⁴⁷² may be in order.

⁴⁶⁸ Section 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 310(d) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690.

Note also the provisions for the suspension of section 310(d) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 619-630.

⁴⁶⁹ Section 310(b) defines "reconciliation resolution." *See supra* pp. 163-166.

⁴⁷⁰ Section 3(1) defines "budget outlays." *See supra* p. 11.

⁴⁷¹ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁴⁷² Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

§ 310(d)(2)

(2) It shall not be in order⁴⁷³ in the Senate to consider any amendment⁴⁷⁴ to a reconciliation bill or reconciliation resolution⁴⁷⁵ if such amendment would have the effect of decreasing any specific budget outlay⁴⁷⁶ reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent⁴⁷⁷ to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.



§ 310(d)(3)

(3) Paragraphs (1)⁴⁷⁸ and (2)⁴⁷⁹ shall not apply if

⁴⁷³ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

⁴⁷⁴ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

⁴⁷⁵ Section 310(b) defines "reconciliation resolution." *See supra* pp. 163-166.

⁴⁷⁶ Section 3(1) defines "budget outlays." *See supra* p. 11.

⁴⁷⁷ The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 520 (regarding section 311(a)).

⁴⁷⁸ *See supra* p. 170.

⁴⁷⁹ *See supra* p. 171.

a declaration of war by the Congress⁴⁸⁰ is in effect.

§ 310(d)(4) (4) For purposes of this section, the levels of budget outlays⁴⁸¹ and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget⁴⁸² of the House of Representatives or of the Senate, as the case may be.

§ 310(d)(5) (5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.⁴⁸³

§ 310(e) (e) PROCEDURE IN THE SENATE. —

§ 310(e)(1) (1) Except as provided in paragraph (2),⁴⁸⁴ the provisions of section 305⁴⁸⁵ for the consideration in the Senate of concurrent resolutions on the budget and

⁴⁸⁰ The Constitution grants Congress the power "[t]o declare War." U.S. CONST. art. I, § 8, cl. 11.

Note also the provisions for the suspension of section 310(d) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. See *infra* pp. 619-630.

⁴⁸¹ Section 3(1) defines "budget outlays." See *supra* p. 11.

⁴⁸² This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. See also section 201(g), *supra* p. 32; section 302(g), *supra* p. 105; section 311(c), *infra* p. 194; section 313(e), *infra* p. 228; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 650.

⁴⁸³ Compare the parallel sanctions for noncompliance in the Senate. See *supra* note 166.

⁴⁸⁴ See *infra* p. 173.

⁴⁸⁵ See *supra* pp. 120-142.

conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b)⁴⁸⁶ and conference reports thereon.

§ 310(e)(2)

(2) Debate in the Senate on any reconciliation bill reported under subsection (b),⁴⁸⁷ and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.⁴⁸⁸



⁴⁸⁶ See *supra* pp. 163-166.

⁴⁸⁷ See *supra* pp. 163-166.

⁴⁸⁸ In contrast, section 305(b)(1) limits debate on a concurrent resolution on the budget to 50 hours and debate on revisions of a budget resolution to 15 hours. See *supra* pp. 123-124.

§ 310(f)

(f)⁴⁸⁹ COMPLETION OF RECONCILIATION PROCESS. — It shall not be in order in the House of Representatives⁴⁹⁰ to consider any resolution providing for an adjournment period of more than three calendar days during the month of July⁴⁹¹

⁴⁸⁹ Section 13210(2) of the Budget Enforcement Act amended section 310(f) to repeal the explicit deadline for the completion of reconciliation. See *infra* p. 731. Congress honored the deadline in the breach. See *infra* note 491. Before enactment of the Budget Enforcement Act, section 310(f) read as follows (material that the Budget Enforcement Act deleted appears in ~~strikeout~~ type):

(f) COMPLETION OF RECONCILIATION PROCESS. —

~~(1) IN GENERAL. — Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (b) not later than June 15 of each year.~~

~~(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES. —~~ It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

By virtue of a mistaken reference, section 904(c) lists section 310(f) (instead of section 310(g)) among the points of order requiring 60 votes to waive in the Senate. As the point of order applies only in the House, the reference makes absolutely no sense. See *infra* note 967.

⁴⁹⁰ Compare the parallel point of order in the House in connection with completion of all appropriations legislation in section 309. See *supra* p. 157.

⁴⁹¹ Congress usually takes action on reconciliation bills well after the June deadline, as the following table illustrates. (Note that until the enactment of Gramm-Rudman-Hollings, section 310(d) set forth a September 25 deadline.) On the subject of how long Congress takes on reconciliation, see generally ROBERT KEITH & EDWARD DAVIS, OMNIBUS BUDGET RECONCILIATION LEGISLATION: THE TIMING OF LEGISLATIVE ACTION (Aug. 2, 1993) (Cong. Res. Serv. rep. no. 93-706 GOV).

(continued...)

until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such

⁴⁰¹(...continued)

Adoption Dates of Reconciliation Bills

<u>Reconciliation bills</u>	<u>Dates passed by Congress</u>
Omnibus Reconciliation Act of 1980	December 3, 1980 (H.R. 7765; Pub. L. No. 96-499 (Dec. 5, 1980))
Omnibus Budget Reconciliation Act of 1981	July 31, 1981 (H.R. 3982; Pub. L. No. 97-35 (Aug. 13, 1981))
Omnibus Budget Reconciliation Act of 1982	August 18, 1982 (H.R. 6955; Pub. L. No. 97-253 (Sept. 8, 1982))
Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)	August 19, 1982 (H.R. 4961; Pub. L. No. 97-248 (Sept. 3, 1982))
Omnibus Budget Reconciliation Act of 1983	April 5, 1984 (H.R. 4169; Pub. L. No. 98-270 (Apr. 18, 1984))
Deficit Reduction Act of 1984 (DEFRA)	June 27, 1984 (H.R. 4170 (incorporating H.R. 5394); Pub. L. No. 98-369 (July 18, 1984))
Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)	March 20, 1986 (H.R. 3128; Pub. L. No. 99-272 (Apr. 7, 1986))
Omnibus Budget Reconciliation Act of 1986	October 17, 1986 (H.R. 5300; Pub. L. No. 99-509 (Oct. 21, 1986))
Omnibus Budget Reconciliation Act of 1987	December 22, 1987 (H.R. 3545; Pub. L. No. 100-203 (Dec. 22, 1987))
Omnibus Budget Reconciliation Act of 1989	November 22, 1989 (H.R. 3299; Pub. L. No. 101-239 (Dec. 19, 1989))
Omnibus Budget Reconciliation Act of 1990	October 27, 1990 (H.R. 5835; Pub. L. No. 101-508 (Nov. 5, 1990))
Omnibus Budget Reconciliation Act of 1993	August 6, 1993 (H.R. 2264; Pub. L. No. 103-66 (Aug. 10, 1990))

fiscal year.

§ 310(g) (g) **LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.**⁴⁹² — Notwithstanding any other provision of law, it shall not be in order⁴⁹³ in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution⁴⁹⁴ reported⁴⁹⁵ pursuant to a concurrent resolution on the budget agreed to under section 301⁴⁹⁶ or 304,⁴⁹⁷ or a joint⁴⁹⁸ resolution



⁴⁹² Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 310(g) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. *See infra* p. 671. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690. Congress intended to provide for this supermajority in section 904(c) of the Congressional Budget Act, but the Budget Enforcement Act mistakenly amended section 904(c) to refer to section 310(f) instead of section 310(g). *See infra* note 967.

⁴⁹³ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

⁴⁹⁴ Section 310(b) defines "reconciliation resolution." *See supra* pp. 163-166.

⁴⁹⁵ Because section 310(g) does not contain the words "as reported" here, points of order under section 310(g) will apply to reconciliation bills and reconciliation resolutions as amended by amendments against which points of order would lie under section 310(g). *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)).

⁴⁹⁶ *See supra* pp. 50-87.

⁴⁹⁷ *See supra* pp. 117-119.

⁴⁹⁸ So that one could not read this language to apply to simple House resolutions setting forth rules, section 13112(a)(9) of the Budget Enforcement Act added the word "joint" here. *See infra* p. 709.

pursuant to section 258C⁴⁹⁹ of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto⁵⁰⁰ or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II⁵⁰¹ of the Social Security Act.

⁴⁹⁹ See *infra* pp. 658-662.

Section 13112(a)(9) of the Budget Enforcement Act changed this reference from "254(b)" to "258C" (*see infra* p. 709) to conform to changes made by other sections of the Budget Enforcement Act. Section 13101(a) of the Budget Enforcement Act (*see infra* p. 701) repealed what used to be section 254(b) of Gramm-Rudman-Hollings, which dealt with special fast-track reconciliation procedures in the Senate to substitute alternative means of deficit reduction for sequestration. Section 13101(g) of the Budget Enforcement Act (*see infra* p. 706) added a new section 258C to Gramm-Rudman-Hollings (*see infra* pp. 658-662) that closely paralleled the old section 254(b). (For the text of what used to be section 254(b), *see infra* note 1740.)

⁵⁰⁰ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303).

⁵⁰¹ Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433 (1988 & Supp. III 1991).

**NEW BUDGET AUTHORITY, NEW SPENDING
AUTHORITY, AND REVENUE LEGISLA-
TION MUST BE WITHIN APPROPRIATE
LEVELS**

§ 311(a)(1) **SEC. 311.⁵⁰² (a)(1)⁵⁰³ LEGISLATION SUBJECT TO
POINT OF ORDER.⁵⁰⁴ — Except as provided by
subsection (b),⁵⁰⁵ after the Congress has completed
action on a concurrent resolution on the budget for
a fiscal year, it shall not be in order⁵⁰⁶ in either
the House of Representatives or the Senate to**



⁵⁰² Section 311 is codified as amended at 2 U.S.C. 642 (1988 & Supp. IV 1992).

⁵⁰³ Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a) as section 311(a)(1). *See infra* p. 758.

⁵⁰⁴ Section 904(c) of the Congressional Budget Act (*see infra* pp. 361-363) and section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671) provide that the Senate may waive or suspend section 311(a) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 690.

Note also the provisions for the suspension of section 311(a) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 619-630.

⁵⁰⁵ Section 311(b) applies what is known as the "Fazio exception," which applies only in the House. *See infra* p. 192.

⁵⁰⁶ Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 293 (regarding section 303(a)).

consider any bill, joint resolution, amendment,⁵⁰⁷ motion,⁵⁰⁸ or conference report⁵⁰⁹ providing new budget authority⁵¹⁰ for such fiscal year, providing new entitlement authority⁵¹¹ effective during such fiscal year, or reducing revenues for such fiscal year,⁵¹² if —

§ 311(a)(1)(A)

(A)⁵¹³ the enactment of such bill or resolution as reported;⁵¹⁴

⁵⁰⁷ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *supra* note 295 (regarding section 303).

The Senate Budget Committee estimates the costs of an amendment based on the assumption that Congress has already enacted the pending bill (to which the amendment has been offered) into law. Thus, when the current level exceeds the outlay ceiling, and a bill is pending that would reduce outlays by less than the amount by which the current level exceeds the outlay ceiling, an amendment that would increase outlays at all (net of outlay reductions in the amendment) will cause outlays to exceed the outlay ceiling.

⁵⁰⁸ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. See *infra* p. 723. For a discussion of the motivation for the addition, see *supra* note 235.

⁵⁰⁹ Section 13207(a)(1)(E)(i) of the Budget Enforcement Act struck the words "bill, resolution, or amendment" here and inserted "bill, joint resolution, amendment, motion, or conference report." See *infra* p. 723.

⁵¹⁰ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁵¹¹ Section 3(9) (see *supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (see *infra* p. 252). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 652.

⁵¹² Section 13207(a)(1)(E)(ii) of the Budget Enforcement Act struck the words "or any conference report on any such bill or resolution" here, but did not strike the comma at the end of that parenthetical. See *infra* p. 723.

⁵¹³ Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(1) as section 311(a)(1)(A). See *infra* p. 758.

⁵¹⁴ By virtue of the words "as reported," a point of order will not lie under section 311(a)(1) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor. 131 CONG. REC. S8806 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee). In other words, no point of order will lie under section 311(a)(1) even though the bill as
(continued...)

⁵¹⁴(...continued)

amended would cause revenues to fall below the revenue floor, if the bill as reported would not have done so. *See id.* This precedent creates a limited window of applicability for section 311(a)(1): A Senator must raise a point of order against an amendment during the pendency of the amendment, or forever lose the right to question under section 311(a)(1) the deficit-increasing effect of the bill as amended. Note, however, that by virtue of the differing language of section 311(a)(2) (*see infra* p. 186) a point of order will lie under that subsection even when it will not lie under this subsection.

Note the following series of inquiries by Senator Chafee of the Chair (Senator Humphrey of New Hampshire):

The PRESIDING OFFICER. This amendment reduces revenues below the level expressed in the second budget resolution, and therefore the point of order is well taken.

Mr. CHAFEE. I ask the Chair if the entire bill before us does not do the same. We just adopted an amendment of the Senator from Pennsylvania that reduced revenues by \$25 million. Will the Chair offer his opinion on that situation?

The PRESIDING OFFICER. The bill as reported is revenue neutral for the fiscal year 1985. Therefore, it is not subject to a point of order.

Mr. CHAFEE. Would the President be good enough to explain? We just adopted on the floor an amendment by a voice vote that cost \$25 million. Is that de minimis or does that not count? Is that not real dollars?

The PRESIDING OFFICER. That amendment likewise would have been subject to a point of order, but the amendment having been agreed to, the point of order is now moot.

Mr. CHAFEE. But the amendment is now part of the bill. So is the whole bill not subject to a point of order?

The PRESIDING OFFICER. The Parliamentarian advises the bill is treated on the basis on which it was reported from committee.

Mr. CHAFEE. That is parliamentary jargon that I do not quite understand.

Mr. PACKWOOD. Mr. President, I ask what the Chair is ruling: Is it that first we look at the bill as introduced and since the bill is revenue neutral, it is not subject to a point of order? Each amendment as it comes along may or may not be subject to a point of order, but you do not impute it backward to the bill when it is added. Do I understand the ruling correctly?

(continued...)

⁵¹⁴(...continued)

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. That is a bit of ingenuity that I am afraid I have not mastered. Let us take that slowly. You can add innumerable amendments to the bill that cost millions or billions, and if a point of order is not raised to each amendment at the time and is adopted, the whole measure itself, which now involves these billions above any budget limitations that were there, is perfectly all right? Could the Chair lead me through that Alice in Wonderland safely?

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. That is the way it works?

The PRESIDING OFFICER. That is what the law says.

Mr. CHAFEE. So the law says you do not pay any attention to the final product.

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. Is that what the law says, Mr. President?

The PRESIDING OFFICER. The Chair will read the provision. "The enactment of such bill or resolution as reported." The Chair advises that with respect to points of order in this wise the bill is not affected by amendments.

Mr. CHAFEE. If that is the law I refer the President to Charles Dickens' definition of the law.

Id. (Sen. Chafee refers, respectively, to LEWIS CARROLL (CHARLES L. DODGSON), ALICE'S ADVENTURES IN WONDERLAND (1865), and to Mr. Bumble's definition in CHARLES DICKENS, OLIVER TWIST ch. 51 (1838).).

Compare the language of section 301(i), *supra* p. 82; section 303(a), *supra* p. 107; section 401(a), *infra* p. 247; section 401(b)(1), *infra* p. 249; section 402(a), *infra* p. 260; which contain the magic words "as reported."

Contrast the language of section 302(c), *supra* p. 92; section 302(f)(2), *supra* p. 97; section 306, *supra* p. 143; section 310(g), *supra* p. 176; and section 311(a)(2), *infra* p. 186; which *do not* contain the magic words "as reported." Under the logic of this precedent, points of order under section 302(f), for example, *will* apply to bills as amended by amendments against which points of order would lie under section 302(f). (For a table comparing the language of points of order, see below in this note.)

(continued...)

⁵¹⁴(...continued)

In contrast to the ruling of the Chair, the clause of section 311 listing

- (1) the enactment of such bill or resolution as reported;
- (2) the adoption and enactment of such amendment; or
- (3) the enactment of such bill or resolution in the form recommended in such conference report

appears merely to state the Congress's attempt to cover the complete legislative process at all stages on the floor.

The legislative history of section 311 supports the interpretation that points of order apply to bills as amended by amendments that offend the rule. The report of the Senate Committee on Rules and Administration on the Congressional Budget Act makes clear that the drafters of section 311 wanted the point of order to cover bills as reported and *as amended*:

Sec. 311.

After all regular annual bills and resolutions providing new budget authority for a fiscal year have been enacted and, if a reconciliation bill is required to be reported under Section 310(c) such a bill has been enacted, it shall not be in order in either House to consider *any bill or resolution* providing additional new budget authority for such fiscal year, any amendment to any such bill or resolution or any conference report thereon if the enactment of the bill or resolution *as reported, as amended or as recommended in the conference report* would cause the appropriate levels of new budget authority or total outlays, as set forth in the budget resolution then in effect, to be exceeded.

In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons it is considered necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the appropriate levels set forth in the then-effective budget resolution.

S. Rep. No. 93-688, 93d Cong., 2d Sess. 53-54 (1973) (some emphasis added).

The report of the Senate Committee on Government Operations for the Budget Act used the broad term *any measure*:

(continued...)

⁵¹⁴(...continued)

Once the budget process for a fiscal year has been completed and appropriations have been effected by a triggering provision described, it shall not be in order to consider *any measure* providing new budget authority for such fiscal year or any conference report thereon if the result of such a measure would be to cause the limitations on new budget authority or on total outlays then in effect to be exceeded.

In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons the Committee believes it necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the limitations set forth in the then-effective budget resolution.

S. Rep. No. 93-579, 93d Cong., 1st Sess. 55 (1973) (some emphasis added).

The conference report for the Budget Act spoke in the general terms *legislation* and *measures*:

The Senate amendment provided that after adoption of all regular appropriations and a required reconciliation bill, Congress could not consider budget authority *legislation* in excess of the appropriate levels in the most recent concurrent resolution.

The conference substitute provides that after adoption of the second concurrent resolution and completion of the reconciliation process, it shall not be in order to consider any new budget authority or entitlement *measure* that would cause the appropriate level of total budget authority or outlays in the most recent budget concurrent resolution to be exceeded. Nor would it be in order to consider a *measure* that would reduce total revenues below the appropriate levels in the budget resolution.

S. Conf. Rep. No. 93-924, 93d Cong., 2d Sess. 64 (1974) (emphasis added).

Similarly, the conference report for Gramm-Rudman-Hollings, which added the language of the maximum deficit amount point of order, spoke of a point of order that covered *legislation*, using that general term:

(a) *Legislation Subject to Point of Order.* — This subsection prohibits consideration in the House or the Senate of *legislation* providing budget authority or entitlement authority, or reducing revenues for the fiscal year to which the most recently agreed to budget resolution applies if enactment of such *legislation* would cause the totals for such authorities, or for revenues, or the total for budget outlays
(continued...)

⁵¹⁴(...continued)

set forth in such budget resolution to be breached. A point of order also lies in the Senate against *legislation* that would cause the maximum deficit amount to be exceeded.

H.R. Conf. Rep. No. 99-433, 99th Cong., 2d Sess. 110 (1985) (some emphasis added).

Thus the legislative history contemplates a point of order against any legislation or measure that offends the rule. No provision seems to have been made requiring the point of order to lie only at certain points along the way.

Note also that the Chair's interpretation of the words "as reported" results in another anomaly. Even though the precedent causes a point of order not to lie against a bill amended by an amendment that offends section 311, the terms of section 311 apply to conference reports. Consequently, a point of order would lie against a conference report that contained nothing in substance other than an amended bill that would not be subject to a point of order.

The drafters of the Congressional Budget Act worded its points of order inconsistently, creating anomalies and perhaps loopholes. The table below illustrates the types of legislation covered by points of order:

APPLICABILITY OF POINTS OF ORDER TO TYPES OF LEGISLATION				
Point of Order	Bills		Resolutions	
	As Reported	All	As Reported	All
301(i)	-	-	X	*
301(g)	-	-	X	X
302(c)	X	X	X	X
302(f)	X	X	X	X
303(a)	X	-	X	-
304(b)	-	-	X	X
305(d)	-	-	X	X
306	X	X	X	X
310(e)	X	X	-	-
310(g)	X	X	X	X
311(a)(1)	X	-	X	-
311(a)(2)	X	X	X	X
401(a)	X	-	X	-
401(b)(1)	X	-	X	-
402(a)	X	-	X	-

(continued...)

§ 311(a)(1)(B) (B)⁵¹⁵ the adoption and enactment of such amendment; or

§ 311(a)(1)(C) (C)⁵¹⁶ the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate level of total budget authority⁵¹⁷ or total budget outlays⁵¹⁸ set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues⁵¹⁹ to be less than the appropriate level⁵²⁰ of total revenues set forth in such concur-

⁵¹⁴(...continued)

* applies by virtue of H. Con. Res. 287, 102d Cong., 2d Sess. § 12(b) (1992) (adopted).

The "as reported" language also prevents a point of order from lying against a bill during the pendency of a committee amendment that would correct the violation that gives rise to the point of order.

⁵¹⁵ Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(2) as section 311(a)(1)(B). *See infra* p. 758.

⁵¹⁶ Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(3) as section 311(a)(1)(C). *See infra* p. 758.

⁵¹⁷ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁵¹⁸ Section 3(1) defines "budget outlays." *See supra* p. 11.

⁵¹⁹ *E.g.*, 131 CONG. REC. S8806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (point of order raised by Sen. Packwood).

If the current level is below the revenue floor for a fiscal year, legislation that would result in a loss of revenues for that year would violate section 311. 131 CONG. REC. S6367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum).

⁵²⁰ The Congressional Budget Act makes no exception for very small amounts; even a "negligible" revenue loss can subject legislation to a point of order under section 311(a). 122 CONG. REC. S17,709-10 (1976); Senate Precedent PRL19761001-001 (Oct. 1, 1976) (LEGIS, Rules database) (point of order by Sen. Haskell).

rent resolution⁵²¹ except in the case that a declaration of war by the Congress is in effect.

§ 311(a)(2)(A) (2)(A)⁵²² After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill,⁵²³ resolution, amendment,⁵²⁴

⁵²¹ Section 13112(a)(10) of the Budget Enforcement Act struck the balance of what used to be section 311(a) from this point on and inserted "except in the case that a declaration of war by the Congress is in effect." See *infra* p. 709. The last clause of the material stricken by the Budget Enforcement Act contained an exception for wartime.

Before enactment of the Budget Enforcement Act, the balance of section 311(a) read as follows:

or, in the Senate, would otherwise result in a deficit for such fiscal year that —

(A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7); and

(B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus \$23,000,000,000 for fiscal year 1988 or \$36,000,000,000 for fiscal year 1989;

except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection.

The Congressional Budget Act now addresses this material, sometimes called the "maximum deficit amount point of order" or "MDA point of order," in section 605(b). See *infra* p. 329.

⁵²² Section 13303(d)(2) of the Budget Enforcement Act added paragraph (2). See *infra* p. 758.

⁵²³ Because section 311(a)(2)(A) does not contain the words "as reported" here, points of order under section 311(a)(2)(A) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 311(a)(2)(A). Cf. *supra* note 514 (regarding the meaning of "as reported" in section 311(a)(1)).

motion, or conference report that would cause the appropriate level of total new budget authority⁵²⁵ or total budget outlays or social security outlays⁵²⁶ set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues⁵²⁷ (or social security revenues to be less than the appropriate level of social security revenues⁵²⁸) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.⁵²⁹

⁵²⁴ (...continued)

⁵²⁴ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *supra* note 295 (regarding section 303).

The Senate Budget Committee estimates the costs of an amendment based on the assumption that Congress has already enacted the pending bill (to which the amendment has been offered) into law. Thus, when the current level exceeds the outlay ceiling, and a bill is pending that would reduce outlays by less than the amount by which the current level exceeds the outlay ceiling, an amendment that would increase outlays at all (net of outlay reductions in the amendment) will cause outlays to exceed the outlay ceiling.

⁵²⁵ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁵²⁶ Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 143.

⁵²⁷ For examples of legislation violating this section, see, e.g., 138 CONG. REC. S14,880-87, S14,890-91, S14,947 (daily ed. Sept. 24, 1992) (Bumpers motion to waive a Bentsen point of order against his amendment no. 3164 striking a 120 percent estimated tax safe harbor and permanently extending the limitation on the use of the preceding year's tax in computing estimated tax).

⁵²⁸ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." See *supra* note 145.

⁵²⁹ In addition to the point of order applied by this section, section 12(c) of the budget resolution for fiscal year 1994 provides further enforcement:

(continued...)

²⁹(...continued)

(c) **ENFORCING PAY-AS-YOU-GO.** — At any time after the enactment of the reconciliation bill pursuant to section 7 of this resolution, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report, that would increase the deficit in this resolution for any fiscal year through fiscal year 1998 or would increase the deficit for any other fiscal year through fiscal year 2003, as measured by the sum of —

(1) all applicable estimates of direct spending and receipts legislation applicable to that fiscal year, other than any amounts resulting from —

(A) full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of the Budget Enforcement Act of 1990; and

(B) emergency provisions as designated under section 252(c) of that Act; and

(2) the estimated amount of savings in direct spending programs applicable to that fiscal year resulting from the prior year's sequestration under that Act, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year).

(d) **WAIVER.** — This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(e) **APPEALS.** — Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the concurrent resolution, bill, or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(f) **DETERMINATION OF BUDGET LEVELS.** — For purposes of this section, the levels of new budget authority, outlays, and receipts for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

H. Con. Res. 64, 103d Cong., 1st Sess., § 12, 139 CONG. REC. H1747, H1753 (daily ed. Mar. 31, 1993) (adopted).

Section 12(a) of the resolution makes clear the purpose of the new point of order:

(continued...)

§ 311(a)(2)(B) (B) In applying this paragraph —

§ 311(a)(2)(B)(i) (i) estimated social security outlays⁵³⁰ shall be deemed to be reduced by the excess of estimated social security revenues⁵³¹ (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues specified in the most recently agreed to concurrent resolution on the bud-

⁵²⁹(...continued)

(a) PURPOSE. — The Senate declares that it is essential to —

(1) ensure compliance with the deficit reduction goals embodied in this resolution;

...

(4) prohibit the consideration of direct spending or receipts legislation that would decrease the pay-as-you-go surplus that the reconciliation bill pursuant to section 7 of this resolution will create under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985

Id. § 12(a). The joint statement of managers accompanying the budget resolution explains: "Section 11 of the Senate amendment contains new enforcement procedures to . . . prohibit the consideration of direct spending or receipts' legislation that would decrease the pay-as-you-go surplus that the reconciliation bill will create." H.R. CONF. REP. NO. 103-48, 103d Cong., 1st Sess. 47 (1993), reprinted in 139 CONG. REC. H1747, H1760 (daily ed. Mar. 31, 1993).

Note that this point of order will apply in at least two situations not covered by sections 602(c) and 311(a). First, the budget resolution point of order will prohibit measures — such as a back-loaded tax cut or a late-starting entitlement — that would worsen the deficit in any of fiscal years 1999 through 2003. Second, the budget resolution point of order would prohibit cutting the taxes used to fund the spending provided for through the use of a reserve fund.

⁵³⁰ Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 143.

⁵³¹ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." See *supra* note 145.

get;⁵³²

§ 311(a)(2)(B)(i)(II) (II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget;⁵³³ and

§ 311(a)(2)(B)(ii)(I) (ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;⁵³⁴ and

§ 311(a)(2)(B)(ii)(II) (II) estimated social security revenues⁵³⁵ shall be

⁵³² In other words, if Congress raises Social Security revenues in excess of those anticipated in the budget resolution, it may increase Social Security spending beyond that anticipated in the budget resolution by the amount of the excess. The drafters of the Budget Enforcement Act added this and the other provisions of clauses (i) and (ii) of this section, as well as the provisions of section 302(f)(2)(A) and (B) (that is, the second of the two sections 302(f)(2)(A) and (B), *see supra* pp. 103-104), to allow fungibility between Social Security revenues and outlays.

⁵³³ In other words, if Congress cuts Social Security spending below that anticipated in the budget resolution, it may cut Social Security revenues below those anticipated in the budget resolution by the amount of the spending cut.

⁵³⁴ In other words, if Congress cuts Social Security revenues below those anticipated in the budget resolution, it may not increase Social Security spending above the amount equal to the spending anticipated in the budget resolution minus the revenue shortfall. *See also* section 302(f)(2)(B) *supra* p. 104.

⁵³⁵ Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 145.

deemed to be reduced by the excess of estimated social security outlays⁵³⁶ (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget;⁵³⁷ and

§ 311(a)(2)(B)(iii)

(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues⁵³⁸ unless such provision changes the income tax treatment of social security benefits.

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a)⁵³⁹ and revised functional levels and aggregates to reflect the application of the preceding sentence. Such

⁵³⁶ Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." See *supra* note 143.

⁵³⁷ In other words, if Congress increases Social Security spending beyond that anticipated in the budget resolution, it may not cut Social Security revenues below the amount equal to the revenues anticipated in the budget resolution plus the excess spending.

⁵³⁸ The drafters of the Budget Enforcement Act intended this language to address the case where changes in income tax law had certain indirect effects on the Social Security trust fund. (See also section 302(f)(2)(C) *supra* p. 104 (to the same effect).) The drafters intended that these changes should not trigger a point of order under this section dealing with the levels in that trust fund. To achieve the intended result, however, the language should have read "social security revenues or outlays." This is so because when revenues result from the taxation of Social Security benefits, the revenues flow into the Treasury and the Treasury then makes a payment to the Social Security Trust Funds. The payment is scored as a positive outlay when made by the Treasury and a negative outlay when received by Social Security. Therefore, any changes to the income tax law that indirectly affect the amount of revenue collected from the income taxation of Social Security benefits would affect Social Security outlays rather than revenues.

⁵³⁹ See *supra* pp. 88-90.

revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b).⁵⁴⁰

§ 311(b) (b) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.⁵⁴¹
— Subsection (a)⁵⁴² shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget authority⁵⁴³ or new entitlement authority⁵⁴⁴ effective during such fiscal year, or to any conference report on any such bill or resolution, if —

§ 311(b)(1) (1) the enactment of such bill or resolution as reported;

§ 311(b)(2) (2) the adoption and enactment of such amendment;
or

§ 311(b)(3) (3) the enactment of such bill or resolution in the form recommended in such conference report,

would not cause the appropriate allocation of new discretionary budget authority⁵⁴⁵ or new entitlement authority made pursu-

⁵⁴⁰ See *supra* pp. 90-91.

⁵⁴¹ This subsection provides what some call the "Fazio exception."

⁵⁴² See *supra* pp. 178-192.

⁵⁴³ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁵⁴⁴ Section 3(9) (see *supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (see *infra* p. 252).

⁵⁴⁵ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

ant to section 302(a)⁵⁴⁶ for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.⁵⁴⁷

⁵⁴⁶ See *supra* pp. 88-90. Section 11 of the fiscal year 1993 budget resolution provides:

SEC. 11. CLARIFICATION OF THE APPLICATION OF SECTION 311(b) OF THE CONGRESSIONAL BUDGET ACT IN THE HOUSE.

For fiscal years 1992 through 1995, the reference in section 311(b) of the Congressional Budget Act of 1974 to the appropriate allocation under section 302(a) shall be considered to be a reference to the appropriate allocation for the fiscal year concerned under section 602(a) of the Congressional Budget Act of 1974.

Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess. § 11, 138 CONG. REC. H3602, H3609 (daily ed. May 20, 1992) (adopted).

The joint statement of managers accompanying the resolution explains:

CLARIFICATION OF THE APPLICATION OF SECTION 311(b) OF THE CONGRESSIONAL BUDGET ACT IN THE HOUSE OF REPRESENTATIVES

The conference agreement includes a clarification of the application of section 311(b) of the Congressional Budget Act (2 U.S.C. § 642(b) (1988)), which applies only in the House of Representatives, for fiscal years 1992 through 1995. During those years, allocations of new discretionary budget authority and new entitlement authority are made pursuant to section 602(a) of the Congressional Budget Act (2 U.S.C. § 665a (Supp. II 1990)), rather than pursuant to section 302(a) of that Act (2 U.S.C. § 633(a) (Supp. II 1990)). However, the Budget Enforcement Act of 1990 inadvertently failed to include language providing for such a cross-reference in the application of section 311(b) for those fiscal years. The language in this conference agreement clarifies that, for those fiscal years, section 311(b) will operate in the same manner as it did prior to the enactment of the Budget Enforcement Act.

H.R. CONF. REP. NO. 102-529, 102d Cong., 2d Sess. 63-64 (1992), reprinted in 138 CONG. REC. H3602, H3618 (daily ed. May 20, 1992).

⁵⁴⁷ Congress adopted a similar, temporary exception for the Senate for fiscal year 1993 in that year's budget resolution:

SEC. 16. MAXIMUM DEFICIT AMOUNT AND AGGREGATE POINTS OF ORDER IN THE SENATE.

Notwithstanding any other rule of the Senate, for those years in which this concurrent resolution is in effect and not superseded by adoption of a
(continued...)

§ 311(o)

(c) DETERMINATION OF BUDGET LEVELS. — For purposes of this section, the levels of new budget authority,⁵⁴⁸ budget outlays,⁵⁴⁹ new entitlement authority,⁵⁵⁰ and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget⁵⁵¹ of the House of Representatives or of the Senate, as the case may be.

⁵⁴⁷(...continued)

subsequent concurrent resolution on the budget, in the Senate, sections 311(a) and 605 of the Congressional Budget Act of 1974 shall not apply to any bill, resolution, amendment, motion, or conference report that —

(1) would, if introduced as a bill or resolution, be referred to the Committee on Appropriations;

(2) would not cause the appropriate allocation of new budget authority or outlays made pursuant to section 602(a) to be exceeded;

(3) would not cause the appropriate suballocation (or suballocations), if any, of new budget authority or outlays made pursuant to section 602(b) to be exceeded;

(4) would not cause the appropriate level of social security outlays to be exceeded;

(5) would not cause revenues to be less than the appropriate level of total revenues; and

(6) would not cause social security revenues to be less than the appropriate level of social security revenues.

Concurrent Resolution on the Budget — Fiscal Year 1993, H. Con. Res. 287, 102d Cong., 2d Sess., § 10, 138 CONG. REC. H3602, H3608-09 (daily ed. May 20, 1992) (adopted); *see also* H.R. CONF. REP. NO. 102-529, 102d Cong., 2d Sess. 62-63 (1992), *reprinted in* 138 CONG. REC. H3602, H3618 (daily ed. May 20, 1992) (explaining the provision).

⁵⁴⁸ Section 3(2) defines "budget authority." *See supra* pp. 11-13.

⁵⁴⁹ Section 3(1) defines "budget outlays." *See supra* p. 11.

⁵⁵⁰ Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 252).

⁵⁵¹ This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 302(g), *supra* p. 105; section 310(d)(4), *supra* p. 172; section 313(e), *infra* p. 228; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 650.