

§ 258B **SEC. 258B.¹⁷¹¹ FLEXIBILITY AMONG
DEFENSE PROGRAMS, PROJECTS, AND
ACTIVITIES.**

§ 258B(a) **(a) Subject to subsections (b), (c), and (d), new budget authority¹⁷¹² and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account¹⁷¹³) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay¹⁷¹⁴ reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major func-**

¹⁷¹⁰(...continued)

the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION. — If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

¹⁷¹¹ Section 258B is codified at 2 U.S.C. § 907c (Supp. IV 1992). Section 13101(g) of the Budget Enforcement Act added section 258B. See *infra* p. 706. For legislative history of section 258B, see *infra* note 1729 (at the end of this section).

¹⁷¹² Section 250(c)(1) (see *supra* p. 440) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. See *supra* pp. 11-13.

¹⁷¹³ Section 250(c)(11) defines "account." See *supra* p. 445.

¹⁷¹⁴ Section 250(c)(1) (see *supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. See *supra* p. 11.

tional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration¹⁷¹⁵ into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB¹⁷¹⁶ under section 254.

§ 258B(b) (b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

§ 258B(c) (c) The President may not exercise the authority provided by this paragraph for a fiscal year unless —

§ 258B(c)(1) (1) the President submits a single report to Congress specifying, for each account,¹⁷¹⁷ the detailed changes proposed to be made for such fiscal year pursuant to this section;¹⁷¹⁸

¹⁷¹⁵ Section 250(c)(2) defines "sequestration." *See supra* p. 440.

¹⁷¹⁶ Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 446.

¹⁷¹⁷ Section 250(c)(11) defines "account." *See supra* p. 445.

¹⁷¹⁸ On the evening of October 19, 1989, the President submitted to the Majority Leader of the Senate (before the Senate had recessed for the day) and to the Majority Leader of the House of Representatives (after the House had recessed for the day) what the President characterized as "an alternative sequester report" under the predecessor to this section. The "report," in full, was as follows:

Alternative Sequester Report
for the Department of Defense
for Fiscal Year 1990

To provide for flexibility among defense programs, projects, and activities, the amount of transfer authority available to the Secretary of
(continued...)

§ 258B(e)(2) (2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

§ 258B(e)(3) (3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

§ 258B(d) (d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

§ 258B(e)(1) (e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 258B is hereby approved."

¹⁷⁰(...continued)

Defense pursuant to Section 8014 of the Department of Defense Appropriations Act, 1989, as made available by the Joint Resolution making continuing appropriations for the fiscal year 1990, or any comparable provision subsequently enacted for fiscal year 1990, is proposed to be established at \$6,000,000,000, effective upon enactment of a joint resolution approving this report.

On October 20, 1989, the Majority Leader introduced, by request, the joint resolution approving the "report" (S.J. Res. 219, 101st Cong., 1st Sess., 135 CONG. REC. S13,825 (daily ed. Oct. 20, 1989)), reserving judgment as to whether the "report" complied with the requirements for that report set forth in section 252(c)(2). 135 CONG. REC. S13,825 (daily ed. Oct. 20, 1989) (statement of Sen. Mitchell).

On October 27, 1989, the fifth calendar day after the date of introduction of the joint resolution, the Senate failed to discharge the Appropriations Committee of the joint resolution. Representatives of the Budget and Appropriations Committees had argued that, because it did not indicate what "programs, projects, and activities" were affected, the President's submission did not constitute a "report" within the meaning of the statute and was thus not entitled to the procedural protections afforded by this section, including discharge from the Appropriations Committee. The Senate's failure to discharge appears to reflect the Parliamentarian's belief that the report did not fulfill the statutory requirements.

§ 258B(e)(2) (2) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985."

§ 258B(e)(3) (3) Such joint resolution shall not contain any preamble.

§ 258B(f)(1) (f)(1) A joint resolution introduced in the Senate under subsection (d) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment¹⁷¹⁹ proposed¹⁷²⁰ in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane¹⁷²¹ or relevant¹⁷²² to the provisions of the

¹⁷¹⁹ 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)).

¹⁷²⁰ Section 8003(e) of the Omnibus Budget Reconciliation Act of 1987 substituted the word "proposed" here for the word "made" to reflect the fact that, in this context, committees merely propose amendments, while the Senate acts on them. Pub. L. No. 100-203, § 8003(e), 101 Stat. 1330, 1330-281 (1987).

¹⁷²¹ For a discussion of germaneness, see *supra* note 352.

¹⁷²² The test of relevance of amendments is broader than the germaneness test; it is a subject matter test, and amendments that deal with the subject matter of the bill are in order if they do not contain any significant matter not dealt with in the bill. 131 CONG. REC. S16,503 (1985); Senate Precedent PRL19851123-002 (Nov. 23, 1985). In the precedent of November 23, 1985, the Majority Leader (Senator Dole of Kansas) attempted to obtain a unanimous consent agreement on S. 1884, a bill to amend the Farm Credit Act of 1974, which proposed that amendments be germane. *Id.* The following colloquy took place:

Mr. BAUCUS. — I wonder if the majority leader would agree to change the consent agreement to allow the Senator from Montana to offer an
(continued...)

joint resolution or to the order issued under section 254. For

¹⁷²²(...continued)

amendment regardless of its germaneness.

Mr. DOLE. Madam President, I ask unanimous consent that substitute amendments be in order and limited to 20 minutes provided they are relevant to the subject matter.

Mr. BAUCUS. Reserving the right to object, Madam President, a parliamentary inquiry. I wonder what the difference between germaneness and relative to the subject matter would be. What is the difference between the two?

The PRESIDING OFFICER (Mrs. Kassebaum of Kansas). Relevance is broader than germaneness, it is a subject matter test.

Mr. BAUCUS. A further parliamentary inquiry. That means if the Senator from Montana has an amendment which has something to do with farm credit legislation, it would be in order under this agreement?

The PRESIDING OFFICER. As long as it deals with the subject of the farm credit bill before us.

Id.

— —
Senator Harkin of Iowa then addressed additional questions to the Chair regarding the relevancy test:

Mr. HARKIN. As I understand the modification just mentioned by the distinguished majority leader, we could offer amendments that dealt with the subject matter. My concern is that I may have an amendment which goes broader than just the Farm Credit System. It will deal with farm credit but it may go beyond the bill itself, which talks basically or only about the Farm Credit System itself.

The PRESIDING OFFICER. It would not be relevant if it does contain any significant matter that is not dealt with in the farm credit legislation.

Mr. HARKIN. So, Madam President, if I had an amendment that dealt with farm credit that applied both to the Farm Credit System and to, let us say, private lenders or private banks, would that be in order under the modification mentioned by the majority leader?

The PRESIDING OFFICER. If private lenders and private banks are not dealt with in the original bill, it would not be in order.

Id.

purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense).

§ 258B(f)(2) (2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

§ 258B(g)(1) (g)(1) In the Senate, debate on a joint resolution introduced under subsection (d), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

258B(g)(2) (2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

§ 258B(h)(1) (h)(1) No amendment¹⁷²³ that is not germane¹⁷²⁴ or relevant¹⁷²⁵ to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

§ 258B(h)(2) (2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains mathematical consistency. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

§ 258B(h)(3) (3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subsection (d) or any conference report thereon if such amendment or conference report would have the effect of decreasing any

¹⁷²³ 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)).

¹⁷²⁴ For a discussion of germaneness, *see supra* note 352.

¹⁷²⁵ For a discussion of relevance, *see supra* note 1722.

specific budget outlay¹⁷²⁶ reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

§ 258B(h)(4) (4) For purposes of the application of paragraph (3), the level of outlays¹⁷²⁷ and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.¹⁷²⁸

§ 258B(i) (i) Immediately following the conclusion of the debate on a joint resolution introduced under subsection (d), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under subsection (h), the vote on final passage of the joint resolution shall occur.

§ 258B(j) (j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (d) shall be decided without debate.

§ 258B(k) (k) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are

¹⁷²⁶ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹⁷²⁷ Section 250(c)(1) (*see supra* p. 440) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

¹⁷²⁸ 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) of the Congressional Budget Act, *supra* p. 32; section 302(g) of the Congressional Budget Act, *supra* p. 105; section 310(d)(4) of the Congressional Budget Act, *supra* p. 172; section 311(c) of the Congressional Budget Act, *supra* p. 194; and section 313(e) of the Congressional Budget Act, *supra* p. 228.

applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

- § 258B(f) **(f) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:**
- § 258B(f)(1) **(1) The joint resolution of the House of Representatives shall not be referred to a committee.**
- § 258B(f)(2) **(2) With respect to a joint resolution introduced under subsection (d) in the Senate —**
- § 258B(f)(2)(A) **(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but**
- § 258B(f)(2)(B)(i) **(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or**
- § 258B(f)(2)(B)(ii) **(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.**
- § 258B(f)(3) **(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.**
- § 258B(m) **(m) If the Senate receives from the House of Represen-**

tatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.¹⁷²⁹

¹⁷²⁹ Section 13101(g) of the Budget Enforcement Act added section 258B. *See infra* p. 706. The drafters of the Budget Enforcement Act based section 258B on the provisions of section 252(c) of Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act. (Section 13101(a) of the Budget Enforcement Act repealed the old section 252(c). *See infra* p. 701.) Before enactment of the Budget Enforcement Act, section 252(c) of Gramm-Rudman-Hollings read as follows:

(c) PROPOSAL OF ALTERNATIVES BY THE PRESIDENT. —

(1) IN GENERAL. — A message transmitted pursuant to subsection (a)(5) with respect to a fiscal year may be accompanied by a proposal setting forth in full detail alternative ways to reduce the deficit for such fiscal year in an amount not less than the deficit reduction required under section 251(a)(3) for such fiscal year.

(2) FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES. —

(A) Subject to subparagraphs (B), (C), and (D), and subsection (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under subsection (b)(1) for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into

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¹⁷²⁹(...continued)

account). In making calculations under this subparagraph, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 251(c)(2).

(B) No actions taken by the President under subparagraph (A) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(C) The President may not exercise the authority provided by this paragraph for a fiscal year unless —

(i) the President submits a single report to Congress specifying changes proposed to be made for such fiscal year pursuant to this paragraph; and

(ii) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

(D) Within 5 calendar days of session after the President submits a report to Congress under subparagraph (C)(i) for a fiscal year, but before November 25, 1987, for fiscal year 1988 or, in the case of any subsequent fiscal year, before October 20 of such fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

(E)(i) The matter after the resolving clause in any joint resolution introduced pursuant to subparagraph (D) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 252(c)(2)(C)(i) is hereby approved."

(ii) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985."

(iii) Such joint resolution shall not contain any preamble.

(F)(i) A joint resolution introduced in the House of Representatives under subparagraph (D) shall be referred to

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¹⁷²⁹(...continued)

the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection.

(ii) A joint resolution introduced in the Senate under subparagraph (D) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane or relevant to the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense).

(iii) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the appropriate calendar, notwithstanding any rule or precedent of the Senate, including Rule 22 of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived, except for points of order under titles III and IV of the Congressional Budget Act of 1974. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion,

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¹⁷²⁹(...continued)

order, or other business, and the joint resolution shall remain the unfinished business of the respective House until disposed of.

(G)(i) In the Senate, debate on a joint resolution introduced under subparagraph (D), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees). In the House, general debate on a joint resolution introduced under subparagraph (D) shall be limited to not more than 4 hours which shall be equally divided between the chairman of the Committee on Appropriations and the ranking minority member of such committee.

(ii) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order. In the House, a motion further to limit debate is in order and not debatable. In the House, a motion to recommit, with or without instructions, is in order.

(H)(i) In the House of Representatives, an amendment and any amendment to an amendment is debatable for not to exceed 30 minutes to be equally divided between the proponent of the amendment and a Member opposed thereto.

(ii) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense) shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between the majority leader and the minority leader (or their designees).

(iii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to

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¹⁷²⁹(...continued)

such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(iv) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subparagraph (D) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

(v) For purposes of the application of clause (iv), the level of outlays and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(I) Immediately following the conclusion of the debate on a joint resolution introduced under subparagraph (D), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, and the disposition of any amendments under subparagraph (H) (except in the House of Representatives for the motion to recommit and the disposition of any amendment proposed in a motion to recommit which has been adopted), the vote on final passage of the joint resolution shall occur.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subparagraph (D) shall be decided without debate.

(K) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(L) If, before the passage by the Senate of a joint resolution of the Senate introduced under subparagraph (D),
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¹⁷²⁹ (...continued)

the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D), then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution introduced under subparagraph (D) in the Senate--

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(II)(aa) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(bb) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes it, the Senate shall be considered to have passed the joint resolution as amended by the text of the Senate joint resolution.

(iii) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

(M) If the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

§ 258C **SEC. 258C.¹⁷³⁰ SPECIAL RECONCILIATION
PROCESS.¹⁷³¹**

§ 258C(a) **(a) REPORTING OF RESOLUTIONS AND RECONCILIATION
BILLS AND RESOLUTIONS, IN THE SENATE. —**

§ 258C(a)(1) **(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL
ORDER. — After the submission of an OMB¹⁷³² sequestra-
tion¹⁷³³ update report under section 254 that envisions a
sequestration under section 252 or 253, each standing
committee of the Senate may, not later than October 10,
submit to the Committee on the Budget of the Senate
information of the type described in section 301(d) of the
Congressional Budget Act of 1974 with respect to alterna-
tives to the order envisioned by such report insofar as such**

¹⁷³⁰ Section 258C is codified at 2 U.S.C. § 907d (Supp. IV 1992). Section 13101(g) of the Budget Enforcement Act added section 258C. See *infra* p. 706. For legislative history on section 258C, see *infra* note 1740 (at the end of this section).

¹⁷³¹ Congressional Budget Act 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 Congressional Budget Act 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, *supra* pp. 198-228 (the Byrd Rule prohibiting extraneous matter in reconciliation); section 604, *supra* 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), *supra* pp. 361-368 (supermajority requirements for points of order and appeals, including those for reconciliation); 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).

¹⁷³² Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." See *supra* p. 446.

¹⁷³³ Section 250(c)(2) defines "sequestration." See *supra* p. 440.

order affects laws within the jurisdiction of the committee.

§ 258C(a)(2)

(2) INITIAL BUDGET COMMITTEE ACTION. — After the submission of such a report, the Committee on the Budget of the Senate may, not later than October 15, report to the Senate a resolution. The resolution may affirm the impact of the order envisioned by such report, in whole or in part. To the extent that any part is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit¹⁷³⁴ reduction contained in those sections which are not affirmed.

§ 258C(a)(3)

(3) RESPONSE OF COMMITTEES. — Committees instructed pursuant to paragraph (2), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in paragraph (2) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit¹⁷³⁵ at least equal to the total reduction directed by such instructions.

§ 258C(a)(4)

(4) BUDGET COMMITTEE ACTION. — Upon receipt of

¹⁷³⁴ Section 250(c)(1) (*see supra* p. 440) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

¹⁷³⁵ Section 250(c)(1) (*see supra* p. 440) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

the recommendations received in response to a resolution referred to in paragraph (2), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in paragraph (2) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit¹⁷³⁶ reduction directed in such instructions.

§ 258C(a)(5) (5) **POINT OF ORDER.** — It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under paragraph (4) with respect to a fiscal year, any amendment thereto, or any conference report thereon if —

§ 258C(a)(5)(A) (A) the enactment of such bill or resolution as reported;

§ 258C(a)(5)(B) (B) the adoption and enactment of such amendment; or

§ 258C(a)(5)(C) (C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit¹⁷³⁷ for such fiscal

¹⁷³⁶ Section 250(c)(1) (*see supra* p. 440) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

¹⁷³⁷ Section 250(c)(1) (*see supra* p. 440) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

year to exceed the maximum deficit amount¹⁷³⁸ for such fiscal year, unless the low-growth report submitted under section 254 projects negative real economic growth¹⁷³⁹ for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

§ 258C(a)(6)

(6) TREATMENT OF CERTAIN AMENDMENTS. — In the Senate, an amendment which adds to a resolution reported under paragraph (2) an instruction of the type referred to in such paragraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane on the basis that the instruction constitutes new matter.

§ 258C(a)(7)

(7) DEFINITION. — For purposes of paragraphs (1), (2), and (3), the term day shall mean any calendar day on which the Senate is in session.

§ 258C(b)

(b) PROCEDURES. —

§ 258C(b)(1)

(1) IN GENERAL. — Except as provided in paragraph (2), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

§ 258C(b)(2)

(2) LIMIT ON DEBATE. — Debate in the Senate on any

¹⁷³⁸ Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 440) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 299) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 475-502, 523-533.

¹⁷³⁹ Section 250(c)(10) defines "real economic growth." *See supra* p. 445.

resolution reported pursuant to subsection (a)(2), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

§ 258C(b)(3) (3) **LIMITATION ON AMENDMENTS.** — Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

§ 258C(b)(4) (4) **BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE.** — Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

§ 258C(b)(5) (5) **DEFINITION.** — For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent resolution.¹⁷⁴⁰

¹⁷⁴⁰ Section 13101(g) of the Budget Enforcement Act added section 258C. *See infra* p. 706. The drafters of the Budget Enforcement Act based section 258C on the provisions of section 254(b) of Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act. (Section 13101(a) of the Budget Enforcement Act repealed the old section 254(b). *See infra* p. 701.) Before enactment of the Budget Enforcement Act, section 254(b) of Gramm-Rudman-Hollings read as follows:

(b) **CONGRESSIONAL RESPONSE TO PRESIDENTIAL ORDER.** —

(1) **REPORTING OF RESOLUTIONS, AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE.** —

(A) **COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.** — Within two days after the submission of a report by the Director of OMB under section 251(c)(2), each standing committee of the Senate may submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

(continued...)