

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

— 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, RIDDIK'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

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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



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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(e)(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 recommitment 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, RIDICK'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

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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

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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 than 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?"

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?

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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.

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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).

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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

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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

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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.*

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

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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:

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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 recommitment 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(c)(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.