

§ 605 **SEC. 605.⁹⁰³ APPLICATION OF SECTION 311;
POINT OF ORDER.**

§ 605(a)(1) **(a) APPLICATION OF SECTION 311(a). — (1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority⁹⁰⁴ or total budget outlays⁹⁰⁵ or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate level for that year and the 4 succeeding years.**

§ 605(a)(2) **(2) In the Senate, in the application of section 311(a)(2)⁹⁰⁶ to any bill, resolution, motion, or conference**

⁹⁰³(...continued)

As I saw it, the conferees on the budget process intended that all the points of order and restrictions that ordinarily apply to reconciliation bills would apply in this case as well. In particular, the points of order against putting Social Security changes and other extraneous matter in reconciliation should apply in this case. That is, the conferees on the part of the Senate fully expected that the provisions of section 310(g) of the Congressional Budget Act and of the Byrd rule should apply to this reconciliation bill, as well.

So, in sum, we are not sure that the product of this new procedure should be put on a fast track if it comes over here to the Senate. But if it is put on such a fast track, then it was the intent of the conferees that it would not provide a fast track for extraneous matter.

136 CONG. REC. S17,539 (daily ed. Oct. 27, 1990) (statements of Sens. Domenici & Sasser).

⁹⁰³ Section 605 is codified at 2 U.S.C. § 665d (Supp. IV 1992). For legislative history of section 605, see *infra* note 907 (at the end of this section).

⁹⁰⁴ Section 3(2) defines "budget authority." See *supra* pp. 11-13.

⁹⁰⁵ Section 3(1) defines "outlays." See *supra* p. 11.

⁹⁰⁶ This should read 311(a).

report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

§ 605(b)

(b) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE. — After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for the first fiscal year covered by that resolution that exceeds the maximum deficit amount specified for such fiscal year in section 601(a).⁹⁰⁷



⁹⁰⁷ See *supra* p. 299.

Section 13111 of the Budget Enforcement Act added what is now section 605. See *infra* p. 707. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *infra* note 936 (at the end of title VI).

Before enactment of the Budget Enforcement Act, the Congressional Budget Act addressed this subject, sometimes called the "MDA point of order," in section 311(a), which used to read as follows:

**NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE
LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS**

SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER. — Except as provided by subsection (b), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if —

- (1) the enactment of such bill or resolution as reported;
- (2) the adoption and enactment of such amendment; or

(continued...)

⁹⁷⁷(...continued)

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate level of total budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution or, in the Senate, would otherwise result in a deficit for such fiscal year that —

(A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7); and

(B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus \$23,000,000,000 for fiscal year 1988 or \$36,000,000,000 for fiscal year 1989;

except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection.

(emphasis added).

Section 13112(a)(10) of the Budget Enforcement Act struck the italicized portion of what used to be section 311(a) (as well as the clause that followed it). See *infra* p. 709. (Section 13112(a)(10) of the Budget Enforcement Act substituted another clause providing an exception for wartime. See *supra* pp. 178-192.)

Note that whereas section 311(a) appears on the list of points of order requiring 60 votes to waive, the Budget Enforcement Act neglected to add section 605(b) to the list. See *supra* pp. 361-363. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

Public Law 97-258 repealed the section 605 originally enacted in the Congressional Budget Act of 1974. See An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 605 read as follows:

BUDGET DATA BASED ON CONTINUATION OF EXISTING LEVEL OF SERVICES
(continued...)

⁹⁰⁷(...continued)

SEC. 605. (a) On or before November 10 of each year (beginning with 1975), the President shall submit to the Senate and the House of Representatives the estimated outlays and proposed budget authority which would be included in the Budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal years in progress and without policy changes in such programs and activities. The estimated outlays and proposed budget authority submitted pursuant to this section shall be shown by function and subfunctions (in accordance with the classifications in the budget summary table entitled "Budget Authority and Outlays by Function and Agency"), by major programs within each such function, and by agency. Accompanying these estimates shall be the economic and programmatic assumptions underlying the estimated outlays and proposed budget authority, such as the rate of inflation, the rate of real economic growth, the unemployment rate, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated outlays and proposed budget authority so submitted, and shall submit to the Committees on the Budget of both Houses an economic evaluation thereof on or before December 31 of each year.