

or joint resolutions considered under a special order of business on the basis of either the text made in order as original text for purposes of amendment or the text on which the previous question is ordered directly to passage.

## § 16. Section 306

Section 306 of the Congressional Budget Act<sup>(1)</sup> prevents the consideration of measures that contain matter within the jurisdiction of the Committee on the Budget<sup>(2)</sup> but that have not been reported by (or been discharged from) that committee.<sup>(3)</sup> The Budget Enforcement Act of 1990 standardized this section in its application to any bill, resolution, or amendment, motion or conference report.<sup>(4)</sup> The point of order is applicable in both the House and the Senate.<sup>(5)</sup> Pursuant to section 904(c) of the Congressional Budget Act,<sup>(6)</sup> a vote of three-fifths of Senators duly chosen and sworn is required to waive section 306 of the Budget Act.<sup>(7)</sup>

The House has adopted special orders of business resolutions reported from the Committee on Rules that explicitly waive the requirement of section 306.<sup>(8)</sup> Furthermore, a special order of business that makes in order the consideration of an unreported measure has the effect of discharging that measure from committee (regardless of whether or not the text of the special order uses the term “discharge”) and thus would meet the section 306 requirement that the measure be reported or discharged from committee.<sup>(9)</sup>

1. 2 USC § 637.
2. See § 7, *supra*.
3. Compare to Rule XXI clause 5(a), which provides a point of order against certain tax and tariff measures not reported by the committee with jurisdiction over such matters (Committee on Ways and Means). *House Rules and Manual* § 1066 (2011).
4. In the 107th through the 112th Congresses, the House adopted orders construing the term “resolution” as “joint resolution.” See 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(1)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(1)); 153 CONG. REC. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(1)); 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(1)); 149 CONG. REC. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(1)); and 147 CONG. REC. 21, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)).
5. For examples of section 306 points of order raised in the Senate, see, *e.g.*, 129 CONG. REC. 6574, 6575, 6589–91, 98th Cong. 1st Sess., Mar. 22, 1983; and 122 CONG. REC. 19089–97, 94th Cong. 2d Sess., June 18, 1976.
6. 2 USC § 621 note.
7. For an example of a successful waiver of section 306 in the Senate, see 140 CONG. REC. 24010, 24069, 24070, 103d Cong. 2d Sess., Aug. 25, 1994.
8. See 141 CONG. REC. 13911, 13912, 104th Cong. 1st Sess., May 23, 1995 (H. Res. 155).
9. See § 16.3, *infra*.

The Committee on Rules has also reported special orders of business that “self-execute” amendments to the original text that remove matters within the jurisdiction of the Committee on the Budget in order to avoid violating section 306.<sup>(10)</sup>

Pursuant to the Statutory Pay-As-You-Go Act of 2010,<sup>(11)</sup> a designation regarding the budgetary effects under Stat-Paygo is not considered a matter within the jurisdiction of the Committee on the Budget for the purpose of section 306 enforcement.<sup>(12)</sup> This is to be contrasted with emergency designations made pursuant to section 251 of Gramm-Rudman-Hollings, which have been considered within the jurisdiction of the Committee on the Budget for that purpose.<sup>(13)</sup> Similarly, concurrent resolutions on the budget have occasionally provided for special treatment of amounts designated as emergencies.<sup>(14)</sup> Emergency designations contained in measures pursuant to such *ad hoc* provisions contained in concurrent resolutions on the budget have typically been viewed as falling within the jurisdiction of the Committee on the Budget.<sup>(15)</sup>

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**§ 16.1 An amendment to a general appropriation bill designating an appropriation as “emergency spending” within the meaning of section 314 of the Congressional Budget Act<sup>(1)</sup> was held to “deal with”<sup>(2)</sup> matter within the jurisdiction of the Committee on the**

10. See 142 CONG. REC. 14609, 14610, 104th Cong. 2d Sess., June 19, 1996 (H. Res. 455).

11. Pub. L. No. 111–139, sec. 4(a)(4). See § 23, *infra*.

12. However, such a designation remains within the Committee on the Budget’s jurisdiction for purposes of referral under Rule X.

13. For an example of a special order explicitly waiving section 306 for a bill containing such section 251 emergency designations, see 144 CONG. REC. 16341, 105th Cong. 2d Sess., July 21, 1998 (H. Res. 504). Section 314 of the Congressional Budget Act, as noted in Section 1, *supra*, and Section 26, *infra*, is textually linked to these emergency designations under section 251 of Gramm-Rudman-Hollings. For an example of an amendment containing such an emergency designation ruled out on a section 306 point of order, see § 16.1, *infra*.

14. See § 4, *supra*.

15. The blanket waiver contained in H. Res. 396 of the 108th Congress covered such unrefereed budget matters. 149 CONG. REC. 24863, 24864, 108th Cong. 1st Sess., Oct. 16, 2003.

1. 2 USC § 645.

2. Although somewhat unusual statutory language, this phraseology is used in section 306 of the Congressional Budget Act.

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**Budget on a measure that had not been reported by that committee, in violation of section 306 of the Congressional Budget Act, and ruled out of order.**

On Sept. 8, 1999,<sup>(3)</sup> an amendment containing an emergency designation in an appropriation bill was ruled out of order for violating section 306 of the Congressional Budget Act:

AMENDMENT OFFERED BY MR. FILNER

Mr. [Bob] FILNER [of California]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FILNER:  
In title I, in the item relating to "VETERANS HEALTH ADMINISTRATION—MEDICAL CARE", insert at the end the following:  
In addition, for "Medical Care", \$1,100,000,000: *Provided*, That the Congress hereby designates the entire such amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That such amount shall be available only to the extent of a specific dollar amount for such purpose that is included in an official budget request transmitted by the President to the Congress and that is designated as an emergency requirement pursuant to such section 251(b)(2)(A).

Mr. FILNER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore.<sup>(4)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

Mr. [James] WALSH [of New York]. Mr. Chairman, I reserve a point of order against the gentleman's amendment. . . .

POINT OF ORDER

Mr. WALSH. Mr. Chairman, I insist on a point of order against the amendment, if I could explain further.

The CHAIRMAN pro tempore. The gentleman from New York (Mr. WALSH) may state his point of order.

Mr. WALSH. Mr. Chairman, we have had this debate, the gentleman from California (Mr. FILNER) and I, for the better part of the afternoon.

The issue here is the offset that he provides under the rule, and he is asking for an emergency declaration. We considered that process and ultimately rejected it.

What we did was we found real dollars within the budget to allocate for veterans health, and what we did was provide a \$1.7 billion increase over the President's request.

As the gentleman has stipulated to and agreed to, and I think it is a unanimous agreement now, the President's request for veterans medical health was not only inadequate, it was embarrassing. They later came back and they suggested that, yes, they thought that the \$1.7 billion level was the right level and supported it. We received a letter from the Vice President on that.

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3. 145 CONG. REC. 20928–30, 106th Cong. 1st Sess.

4. Edward Pease (IN).

We also received letters from the American Legion and from the Veterans of Foreign Wars who agreed that \$1.7 billion was the right amount to fund veterans health care.

I looked back at the budgets of the last 5 years, including this budget. We have gone from \$15.7 billion in the 1996 enacted level to \$19 billion this year. That is a \$3.5 billion increase in funding for veterans. So we have striven mightily, in spite of the lack of support there seems to be in the executive branch for the veterans medical care budget.

The Congress, both parties, have supported plussing up this budget, and we made hard choices, as we have heard in the debate today. NASA was cut a billion dollars. There are programs in HUD operating subsidies, modernization funds in public housing where we had to go to help to fund the veterans health care. People want more money for Section 8 vouchers, but the choices were difficult.

We cannot appropriate these funds because they are not available to us, Mr. Chairman. For that reason, I would restate and insist on the point of order against the amendment because it proposes to change existing law, constitutes legislation in an appropriations bill; therefore, violates clause 2, rule XXI and because it violates section 306 of the Budget Act that deals with matters in the jurisdiction of the Committee on the Budget.

The CHAIRMAN pro tempore. Does the gentleman from California (Mr. FILNER) seek to be heard on the point of order?

Mr. FILNER. Mr. Chairman, speaking on the point of order, Mr. Chairman, I say to my friend, the gentleman from New York (Mr. WALSH), I want to legislate on this appropriations bill. We were not allowed to do any legislation in our authorizing committee. The Chair just refused to allow motions from the minority side.

The gentleman says we have real dollars for our \$1.7 billion. I am asking for real dollars here. We have it in our command. It is being given to people, special interests, in the utility industry. It is being given to special interests for multinational corporations. It is being given to those who make \$200,000 or more a year. Why not give a billion to the veterans who made our country as great as it is?

So we have the real dollars, Mr. Chairman, and we should legislate on this appropriations bill, and I hope the Chair would find in our favor.

The CHAIRMAN pro tempore. The Chair finds that a proposal to designate an appropriation as “emergency spending” within the meaning of the budget-enforcement laws is fundamentally legislative in character. It does not merely make the appropriation. Instead, it characterizes the appropriation otherwise made. The resulting emergency designation alters the application of existing law with respect to that appropriation. Thus, the proposal is one to change existing law. On these premises and based on previous rulings of the Chair earlier today, the Chair holds that the amendment offered by the gentleman from California, by including a proposal to designate an appropriation as “emergency spending” within the meaning of the budget-enforcement laws, constitutes legislation in violation of clause 2(b) of rule XXI.<sup>(5)</sup>

The Chair also finds that a proposal to designate an appropriation as “emergency spending” within the meaning of the budget-enforcement laws is a matter within the jurisdiction of the Committee on the Budget under clause 1(e) of rule X.

On that premise the Chair holds that the amendment offered by the gentleman from California, because it relates to such a matter on a bill that was not referred<sup>(6)</sup> to that committee, also violates section 306 of the Congressional Budget Act of 1974.

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5. For more information on the prohibition against legislating on an appropriation bill, see generally Deschler’s *Precedents* Ch. 26, *supra*. See also *House Rules and Manual* §§ 1052, *et seq.* (2011).
  6. While it is true that a committee cannot report a measure (or be discharged from its consideration) if it has not been formally referred such a measure, the language of section 306 speaks only of a requirement to report or be discharged from consideration.

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The point of order is sustained on each of the grounds stated. The amendment is not in order.

**§ 16.2 An amendment directing that certain lease-purchase agreements be “scored” for budget purposes on an annual basis was held to “deal with” matter within the jurisdiction of the Committee on the Budget on a bill not reported by that committee, in violation of section 306 of the Congressional Budget Act.<sup>(1)</sup>**

On July 19, 1999,<sup>(2)</sup> the following occurred:

AMENDMENT NO. 10 OFFERED BY MR. BEREUTER

Mr. [Douglas] BEREUTER [of Nebraska]. Mr. Chairman, I offer an amendment. The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 10 offered by Mr. BEREUTER:  
Page 35, after line 9, insert the following:

**SEC. 211. LEASE-PURCHASE AGREEMENTS.**

Whenever the Department of State enters into lease-purchase agreements involving property in foreign countries pursuant to section 1 of the Foreign Service Buildings Act (22 U.S.C. 292), budget authority shall be scored on an annual basis over the period of the lease in an amount equal to the annual lease payments.

Mr. [Saxby] CHAMBLISS [of Georgia]. Mr. Chairman, I reserve the right to raise a point of order on the amendment of the gentleman from Nebraska (Mr. BEREUTER).

The CHAIRMAN pro tempore.<sup>(3)</sup> The point of order is reserved.

Pursuant to House Resolution 247, the gentleman from Nebraska (Mr. BEREUTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. BEREUTER). . . .

POINT OF ORDER

The CHAIRMAN pro tempore. Does the gentleman from Georgia (Mr. CHAMBLISS) insist on his point of order?

Mr. CHAMBLISS. I do, Mr. Chairman.

I object to the amendment under section 306 of the Congressional Budget Act.

Mr. Chairman, the amendment violates section 306 of the Congressional Budget Act of 1974. Section 306 prohibits the consideration of any amendment that is within the jurisdiction of the Committee on the Budget and which is offered to a bill that was neither reported or discharged from the Committee on the Budget.

The amendment of the gentleman from Nebraska modifies the budgetary treatment of certain leases entered into by the State Department. The budgetary treatment of such leases prescribed in the Balanced Budget Act and Emergency Deficit Control Act of 1985, which is, pursuant to clause 1 of House Rule X, within the jurisdiction of the Committee on the Budget.

1. 2 USC § 637.
2. 145 CONG. REC. 16615, 16616, 106th Cong. 1st Sess.
3. Daniel Miller (FL).

Under current law and existing scoring procedures, the Federal Government is required to appropriate the full cost of any multi-year lease of office space in the fiscal year in which it enters into the lease agreement. This amendment permits the State Department to commit the Federal Government to a long-term lease agreement with an appropriation for only the first year of the cost of the lease. However, once the lease is agreed to, the Federal Government is saddled with a long-term financial commitment.

So I do object to the gentleman's amendment.

The CHAIRMAN pro tempore. Does the gentleman from Nebraska (Mr. BEREUTER) wish to be heard on the point of order?

Mr. BEREUTER. Yes, Mr. Chairman. It is my intention to attempt to amend the Budget Act to permit for lease-purchasing by the State Department for embassies and consulates and related facilities, but I do reluctantly, with great regret, acknowledge that a point of order does pertain against the amendment under the rule.

Mr. CHAMBLISS. Mr. Chairman, I would just say to the gentleman that we look forward to working with him to reconcile any concern he has.

The CHAIRMAN pro tempore. The point of order is sustained.

**§ 16.3 While section 306 of the Congressional Budget Act<sup>(1)</sup> prohibits consideration of a concurrent resolution on the budget within the jurisdiction of the Committee on the Budget unless it has been reported by or discharged from that committee, adoption by the House of a special order of business reported from the Committee on Rules making in order consideration of an unreported concurrent resolution on the budget has the inevitable effect, under the precedents,<sup>(2)</sup> of “discharging” the Committee on the Budget consistent with the statute.**

On Mar. 13, 1986,<sup>(3)</sup> a special order adopted by the House providing for consideration of an unreported concurrent resolution on the budget had the effect of discharging the Committee on the Budget from further consideration of that resolution, and need not have contained the term “discharge” or waived points of order under section 306 of the Congressional Budget Act:

The SPEAKER pro tempore.<sup>(4)</sup> Pursuant to House Resolution 397 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution, House Concurrent Resolution 296.

#### POINT OF ORDER

Mr. [Hank] BROWN of Colorado. Mr. Speaker, I rise to make a point of order against consideration of House Concurrent Resolution 296.

The SPEAKER pro tempore. The gentleman will state his point of order, please.

1. 2 USC § 637.
2. See Deschler's Precedents Ch. 21 §§ 20.1, *et seq.*, *supra*.
3. 132 CONG. REC. 4638, 4639, 99th Cong. 2d Sess.
4. Dale Kildee (MI).

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Mr. BROWN of Colorado. Mr. Speaker, this resolution proposes a congressional budget for the U.S. Government for fiscal years 1987, 1988, and 1989. It fails to comply with section 306 of the Congressional Budget Act.

Section 306 of the Congressional Budget Act is very clear. It says:

No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget or either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

Now, Mr. Speaker, section 308<sup>(5)</sup> was reaffirmed last year in the debt limit bill, the balanced budget, and Emergency Deficit Control Act. It is on our books as Public Law 99-177.

House Concurrent Resolution 296 clearly is legislation dealing with the congressional budget that must be handled by the Budget Committee. Since the committee has neither reported or been discharged from consideration of the resolution, bringing the resolution to the floor violates section 306.

The rule reported by the Rules Committee makes in order the consideration of House Concurrent Resolution 296, but it does not waive any point of order against the resolution for failing to comply with section 306.

Now, Mr. Speaker, some might argue that by adoption of the rule we have somehow waived section 306.

Let me refer this body and the Chair to the resolution itself and the rule that we just passed. It is very clear that there is no waiver within that resolution to section 306 of the Budget Act.

To hold contrary, to hold somehow that this rule does something that it does not say, is a clear violation of the rules of this House, and I would ask that my point of order be upheld.

The SPEAKER pro tempore (Mr. KILDEE). Does any other Member wish to speak on the point of order? If not, the Chair will rule.

The Chair, first of all, will reread for the House section 306. The section reads:

“SEC. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

The rule just adopted does discharge the Committee on the Budget. It has that inevitable effect under the precedents. The rule needs no waiver of section 306 because this procedure is in compliance with section 306 and within the authority of the Committee on Rules.

The Chair, therefore, overrules the point of order.

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5. As printed in the *Congressional Record*. The gentleman probably meant section 306 of the Budget Act given the context of the argument.