

## D. Budget Act Points of Order

### § 8. Section 904

As described above, the Congressional Budget Act of 1974 is the primary statutory source for the congressional budget process and contains numerous points or order, expedited procedures, and other parliamentary mechanisms to enforce budget-related decisions. Section 904 of the Budget Act<sup>(1)</sup> explicitly declares that such procedural mechanisms are enacted into law “as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith.” Section 904 additionally declares that such statutory rulemaking is done “with full recognition of the constitutional right<sup>(2)</sup> of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rules of such House.”

Because Congressional Budget Act procedures were enacted as an exercise in congressional rulemaking, the House may vary those procedures through subsequent rulemaking. Such rulemaking may be accomplished by a change to the standing rules of the House,<sup>(3)</sup> the adoption of a special order of business resolution reported by the Committee on Rules,<sup>(4)</sup> or the agreeing to a unanimous-consent request.<sup>(5)</sup> Additionally, a motion to suspend the rules has the effect of suspending all rules in conflict with the motion, including rules contained in statute.<sup>(6)</sup>

In several instances, Congressional Budget Act points of order have been raised in the House against measures whose consideration proceeded under a waiver of all points of order (including those contained in statute) or by

1. 2 USC § 621 note; *House Rules and Manual* § 1127 (2011).
2. U.S. Const. art I, § 5, clause 2; *House Rules and Manual* §§ 58, 59 (2011).
3. See, e.g., Rule XXI clause 8, *House Rules and Manual* § 1068c (2011)
4. See Deschler’s Precedents Ch. 24 § 6.3, Deschler-Brown Precedents Ch. 29 § 2.38, and Ch. 31 §§ 10.1, 10.2, 10.6, *supra*. See also § 8.1, *infra*. For a statement by the chairman of the Committee on the Budget regarding the policies to be followed by the Committee on the Budget with respect to recommendations of waivers to the Committee on Rules, see Deschler-Brown Precedents Ch. 31 § 10.4, *supra*.
5. Unanimous-consent requests merely making in order consideration of a particular measure do not, in so doing, waive any points of order against such measure. See Deschler-Brown Precedents Ch. 31 § 9.4, *supra*.
6. See Deschler’s Precedents Ch. 21 § 9, *supra*. See also § 8.2, *infra*.

a motion to suspend the rules. For the reasons described above, these points of order were not available and were overruled.

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***Waiver by Special Order of Business***

**§ 8.1 A point of order under section 311 of the Congressional Budget Act,<sup>(1)</sup> enacted pursuant to the rulemaking authority of the House under article I, section 5 of the U.S. Constitution,<sup>(2)</sup> will not lie against an amendment where the House has adopted a resolution waiving all points of order against amendments made in order by that resolution.<sup>(3)</sup>**

On July 9, 1992,<sup>(4)</sup> the House was considering an appropriation bill pursuant to a special order of business that waived all points of order against consideration of specified amendments. As shown by the following proceedings, such a waiver applies not just to points of order established in the standing rules of the House, but also to points of order in a statute that was enacted as an exercise in rulemaking.

AMENDMENTS EN BLOC OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Chairman, I offer amendments en bloc made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. OBEY:

On page 7, line 14, strike “\$2,515,739,000” and insert “\$2,553,739,000”.

On page 14, line 15, strike “\$1,800,000,000” and insert “\$1,850,000,000”.

On page 18, line 6, strike “\$14,440,000,000” and insert “\$16,690,000,000”.

On page 36, strike out line 15 through line 24, and insert the following:

“For necessary expenses for discretionary grants as authorized by section 21(b) of the Federal Transit Act, to remain available until expended, \$132,000,000: *Provided*, That no more than \$1,857,000,000 of budget authority shall be available for these purposes: *Provided further*, That, notwithstanding any provision of law there shall be available for fixed guideway modernization \$640,000,000, there shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the

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1. 2 USC § 642.
  2. *House Rules and Manual* § 58 (2011).
  3. See Deschler-Brown Precedents Ch. 31 § 10.1, *supra*. For an example of a point of order raised against a bill that was alleged to violate section 401 of the Congressional Budget Act (2 USC § 651), but which was considered pursuant to a special order of business that explicitly waived that section of the Budget Act, see 121 CONG. REC. 7676–8, 94th Cong. 1st Sess., Mar. 20, 1975. Deschler’s Precedents Ch. 24 § 6.3, *supra*.
  4. 138 CONG. REC. 18401, 18402, 102d Cong. 2d Sess.

construction of bus-related facilities \$320,000,000, and there shall be available for new fixed guideway systems \$897,000,000 of which—”.

On page 67, after line 16, insert:

“SEC. 339. ADDITIONAL INVESTMENT IN AMERICA.—(a) Effective upon the date of enactment of this Act, the fiscal year 1993 discretionary spending limits set forth in section 601(a)(2) of the Congressional Budget Act of 1974 are amended for all purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 and the Congressional Budget and Impoundment Act of 1974, as follows:

(1) the outlay limit for the domestic category shall be increased by \$400,000,000; and

(2) the outlay limit for the international category shall be reduced by \$400,000,000.

(b) Notwithstanding any other provision of law, the Office of Management and Budget and the Congressional Budget Office shall recalculate all adjustments to fiscal year 1993 discretionary spending limits required under section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 based on the amendments required in subsection (a) and shall report the revised limits to the Congress in the report to Congress for this Act that is required under section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such revised limits shall be valid as if made pursuant to section 251(b) of the Act.

(c) The Congress reaffirms that the deficit reduction assigned to the Committees on Appropriations in the 1993 Concurrent Budget Resolution (H. Con. Res. 287) shall be achieved. The total of the first four domestic discretionary appropriation bills passed by the House is \$154,000,000 below their outlay targets. Additional savings are expected to be made from the six remaining non-defense bills. The Congress intends and commits that the final appropriation bills for fiscal year 1993 sent to the President will fully comply with their existing deficit reduction target.

#### POINT OF ORDER

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Chairman, I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WALKER. Mr. Chairman, the gentleman from Wisconsin [Mr. OBEY] raises his amendment under the provisions of the rule adopted by the House, House Resolution 513.

House Resolution 513 under the provisions of rule XXII of the House is a resolution which speaks to the procedures of the House of Representatives, and therefore related directly to the House.

If in fact the gentleman was raising his amendment under the provisions of rule XXI, my point of order would not stand because under rule XXI, where it says, “No provision changing existing law shall be reported in any general appropriation bill except germane provisions which retrench expenditures by the reduction of amounts of moneys covered by the bill,” and so on, a House resolution can speak to that.

The amendment of the gentleman from Wisconsin [Mr. OBEY] also speaks to a change in public law. Public Law 93–344, section 311, states that an amendment that would cause the appropriate level of total new 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, that public law also prevents such an amendment from coming to the floor.

A House resolution such as House Resolution 513 has no basis on which to waive provisions of public law. It can only waive those things which are within the jurisdiction of the House to waive.

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Section 311 of Public Law 93–344 makes it very clear, quoting from the public law, that this is either in the House of Representatives or in the Senate. So therefore the public law makes it impossible for such amendments to come to the floor.

The gentleman from Wisconsin [Mr. OBEY] would have us work on an amendment which is in fact a violation not only of the House rules, but also of public law, and my point of order relates to the provisions of Public Law 93–344 that the amendment is ineligible for consideration in the House of Representatives.

The CHAIRMAN. Does the gentleman from Wisconsin [Mr. OBEY] seek recognition?

Mr. OBEY. Mr. Chairman, I would simply note that the House has the right to try to amend public law at any time it chooses. I would simply read from House Resolution 513, which reads as follows:

Each amendment printed in the report may be offered only by the named proponent or a designee, shall be considered as read when offered, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against amendments printed in the report are waived.

Mr. Chairman, I think that is self-explanatory.

Mr. WALKER. Mr. Chairman, I wish to be heard further. The gentleman from Wisconsin [Mr. OBEY] quotes only from House Resolution 513. House Resolution 513 under the rules of the House, under the provisions of rule XXII, can relate only to procedures of the House of Representatives. What the gentleman is attempting to do here is not just change the procedures of the House of Representatives, but also change provisions of public law.

Therefore, I insist that my point of order be upheld as a violation of public law, not only a violation of the House rules.

The CHAIRMAN (Mr. BOUCHER).<sup>(5)</sup> The Chair is prepared to rule on the point of order offered by the gentleman from Pennsylvania [Mr. WALKER].

Under the Constitution, article 1, section 5, each House has the authority to change its rules at any time, even rules enacted into law and specifically contained in the Budget Act. In fact, section 904 of the Budget Act acknowledges that title III of the Budget Act is enacted as an exercise in rulemaking, subject to the constitutional authority of either House to change those rules at any time.

The House has adopted House Resolution 513. On page 2, lines 21 to 23 of the rule, all points of order against all amendments granted in the report accompanying H.R. 513 are waived.

The pending amendment is printed in the report, and, accordingly, the point of order is not sustained.

***Waiver by Suspension of the Rules***

**§ 8.2 A point of order against consideration of a bill under suspension of the rules (on the ground that section 306 of the Congressional Budget Act<sup>(1)</sup> precludes consideration in the House of a bill**

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5. Frederick Boucher (VA).

1. 2 USC § 637.

**dealing with subject matter within the jurisdiction of the Committee on the Budget unless reported by such committee), was overruled on the basis that the suspension procedure waives any procedural impediments to consideration, including rulemaking contained in statute.<sup>(2)</sup>**

On Nov. 1, 1977,<sup>(3)</sup> the following occurred:

#### CONGRESSIONAL SALARY DEFERRAL

Mr. [Stephen] SOLARZ [of New York]. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9282) to provide that adjustments in the rates of pay for Members of Congress shall take effect at the beginning of the Congress following the Congress in which they are approved, and for other purposes.

The Clerk read as follows:

#### H.R. 9282

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31), relating to congressional salary adjustment, is amended by striking out "Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which" and inserting in lieu thereof "Effective at the beginning of the Congress following any Congress during which". . . .*

SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget, resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

(b) For purposes of subsection (a), the term "budget resolution" means any concurrent resolution on the budget, as such term is defined in section 3(a)(4) of the Congressional Budget and Impoundment Control Act of 1974.

(c) The provisions of subsection (a) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 3. The provisions of this Act shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore.<sup>(4)</sup> Is a second demanded?<sup>(5)</sup>

#### POINT OF ORDER

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, I have a point of order.

2. In the 96th Congress, the Speaker announced a policy of refraining from recognizing Members for motions to suspend the rules when it was determined that the underlying legislation contained Congressional Budget Act violations. 125 CONG. REC. 13331, 96th Cong. 1st Sess., June 5, 1979.
3. 123 CONG. REC. 36309–11, 95th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 31 § 9.2, *supra*.
4. George Brown (CA).
5. *Parliamentarian's Note*: Until the 102d Congress, certain motions to suspend the rules were subject to a demand for a second. Such requirement was eliminated at the beginning of the 102d Congress. *House Rules and Manual* § 889 (2011).

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

Mr. BAUMAN. Mr. Speaker, I make a point of order against the present consideration of the bill under suspension on the ground that the bill itself and the manner in which it was considered is in violation of Public Law 93-344, the Congressional Budget Act, specifically section 306.

Section 306 of the Budget Act says as follows:

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 of the Budget of that House or from the consideration of which such committee has been discharged, or unless it is an amendment to such bill or resolution.

Mr. Speaker, the bill before us specifically, in section 2, seeks to repeal part of the jurisdiction of the Committee on the Budget. Specifically it says the following:

SEC. 2. (a) It shall not be in order in either the House of Representatives or the Senate to consider any appropriation bill, budget resolution, or amendment thereto, which directly or indirectly prevents the payment of increases in pay rates resulting from a pay adjustment deferred under the amendments made by the first section of this Act.

Mr. Speaker, the Budget Act is very clear that so far as the rules of procedure governing the Budget Act itself are concerned, that is within the jurisdiction of the Committee on Rules. This bill was reported by the Committee on Post Office and Civil Service, the committee of original jurisdiction, and I understand the jurisdiction was waived by the Committee on Rules. Nevertheless, section 306 makes it plain that since this bill, if it becomes statutory law, repeals part of the jurisdiction of the Committee on the Budget, it should have also been considered, in the opinion of the gentleman from Maryland, by the Committee on the Budget or their jurisdiction should have been waived. This was not done.

I would say further, Mr. Speaker, that if in fact any committee of the House is able to report a bill which prevents the Committee on the Budget from dealing with subject matters under that reporting committee's jurisdiction, then the Committee on the Budget in fact could be, over a period of time, destroyed as far as its capability of dealing with the Budget Act.

For all of those reasons, I make a point of order against consideration of this bill. I would further point out that section 306 does not deal with reporting or with whether or not the House can suspend the rules, but it forbids consideration by the House at any time of any legislation that repeals or changes the jurisdiction of the Committee on the Budget without that committee's acting upon it.

The SPEAKER pro tempore. Does the gentleman from New York desire to be heard on the point of order?

Mr. SOLARZ. I do, Mr. Speaker.

I have unbounded admiration for the parliamentary sagacity of my good friend, the gentleman from Maryland. Who am I, after all, to challenge the validity of this rather sophisticated parliamentary analysis? But may I suggest, Mr. Speaker, that the substantive merits of the gentleman's objection notwithstanding, the fact is that from a procedural point of view I do believe it has to be found wanting. The reason for that is that under the suspension of the rules, which are the terms under which the legislation is being considered, all existing rules of the House are waived, and to the extent that the provision to which the gentleman from Maryland referred is itself incorporated in the rules of the House, which do, after all, provide for the consideration of these budget resolutions, I would suggest that his objection is not relevant to this resolution and, therefore, is not germane.

Mr. BAUMAN. Mr. Speaker, may I be heard further?

The gentleman makes the contention that by making a motion to suspend the rules of the House, this wipes out a rule against consideration in any form, including the suspension of the requirements of the Budget Act. There is ample precedent in the House for situations in which the Chair has ruled that a bill may not even be brought up under suspension if it has not in fact been considered by the committee of proper jurisdiction. I refer the Chair to Hinds Precedents, volume 5, section 6848, page 925, in which it was ruled by the Chair that a committee, the Committee on the Census, could not bring up for consideration under a motion to suspend the rules a bill relating to the printing of a compendium of a census, because it had not been brought before the Committee on Printing.

It is quite obvious that this is a question of consideration. It is written into the statutory law that no such bill can be considered, and I am not aware that that rule of consideration can be suspended or repealed by a simple motion to suspend the rules. If, in fact, that is the case, the Budget Act is meaningless.

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Speaker, may I be heard on the point of order?

The SPEAKER pro tempore. The Chair recognizes the gentleman from Connecticut.

Mr. GIAIMO. Mr. Speaker, the charge has been made and the objection has been raised that this legislation, particularly section 2, invades the jurisdiction of the Budget Committee in that it purports to prohibit the Budget Committee from exercising its jurisdiction over budget resolutions insofar as they would apply to pay raises and cost-of-living increases. I must submit that that is a proper interpretation.

However, I do believe that the argument of the gentleman from New York that this matter is being brought up under suspension of the rules is a very valid one and that the House of Representatives can in its wisdom by a two-thirds vote suspend the rules and deprive the Budget Committee and in fact the Appropriations Committee of jurisdiction in effecting pay raises or cost-of-living increases by a two-thirds vote.

The SPEAKER pro tempore (Mr. BROWN of California). Are there any other Members who desire to be heard on the point of order? If not, the Chair is prepared to rule.

The gentleman from Maryland makes a point of order against the consideration of the bill H.R. 9282 under suspension of the rules on the grounds that section 306 of the Congressional Budget Act states that no bill or resolution nor 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 consideration of which such committee has been discharged or unless it is an amendment to such a bill or resolution.

The Chair need not rule on the jurisdictional issue raised by the gentleman and points out to the gentleman from Maryland that under the specific provisions of section 904 of the Budget Act, the provisions of title III including section 306, which he cites, are stipulated as being an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of either House to change such rules so far as relating to such House at any time in the same manner and to the same extent as in the case of any other rule of such House. It is the opinion of the Chair therefore that it is within the discretion of the Chair under rule XXVII to entertain a motion to suspend the rules and to consider the bill at this time. Of course, the precedent cited by the gentleman from Maryland applies only to a provision which is no longer in rule XXVII<sup>(6)</sup>

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6. Now Rule XV clause 1, *House Rules and Manual* § 885 (2011).

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relating to motions to suspend the rules made by committees.<sup>(7)</sup> Accordingly the point of order is overruled.

Mr. BAUMAN. Mr. Speaker, may I be heard further, at the sufferance of the Chair? The SPEAKER pro tempore. The Chair will hear the gentleman.

Mr. BAUMAN. I thank the Speaker for permitting me to be heard further.

I would just point out that the Speaker has pointed out that it is within the prerogatives of the House to change the rules of the House, but this is not a rule of the House. It is a provision of a statute which is being waived, and while I would not appeal the ruling, I do not think that is a proper basis for the ruling.

The SPEAKER pro tempore. The specific provision which the gentleman states has the status of a rule of the House of Representatives under the statute and under the Constitution.

## § 9. Section 303

### *Background*

Section 303(a) of the Congressional Budget Act<sup>(1)</sup> provides that it shall not be in order in the House to consider a measure that first provides new budget authority in that fiscal year or first provides an increase or decrease in revenues<sup>(2)</sup> or the public debt limit for that fiscal year, before the adoption of the concurrent resolution on the budget.

Section 303(a) is fundamentally a timing point of order: it is no longer applicable to a given fiscal year *after* the adoption of a pertinent concurrent resolution on the budget. Its purpose is to prevent the consideration of certain fiscal measures prior to congressional adoption of a comprehensive budget framework, as represented by the concurrent resolution on the budget.

Unlike sections 302<sup>(3)</sup> and 311<sup>(4)</sup> of the Congressional Budget Act, section 303 does not contain language of causation and does not require the Chair to consider arguments on points of order focusing on levels of revenue or budget authority. Estimates as to such levels provided by the Committee on the Budget or the Congressional Budget Office, while potentially useful in maintaining scorekeeping consistency, are not conclusive as to points of

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7. *Parliamentarian's Note*: Rep. Bauman's earlier reference to 5 Hinds' Precedents 6848 was inapplicable to the instant proceeding, as the division of suspension days between "individual" and "committee" days had been eliminated in the 93d Congress. See *House Rules and Manual* § 888 (2011).

1. 2 USC § 634(a).

2. See § 9.5, *infra*.

3. See § 11, *infra*.

4. See § 10, *infra*.