
LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

§ 306

SEC. 306.³⁷⁷ No bill,³⁷⁸ resolution, amendment,³⁷⁹ motion,³⁸⁰ or conference report,³⁸¹ dealing with any matter which is within the jurisdiction³⁸² of the Committee on the Budget of either House shall be considered³⁸³ 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



³⁷⁷ Section 306 is codified as amended at 2 U.S.C. § 637 (Supp. IV 1992).

Section 904(c) provides that the Senate may waive or suspend section 306 only by the affirmative vote of three-fifths of the Members, duly chosen and sworn — that is, 60 Senators. *See infra* p. 362.

³⁷⁸ Because section 306 does not contain the words "as reported" here, points of order under section 306 should apply to bills and resolutions as amended by amendments against which points of order would lie under section 306. *Cf. infra* note 514 (regarding the meaning of "as reported" in section 311(a)).

³⁷⁹ 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).

³⁸⁰ Section 13207(a) of the Budget Enforcement Act added the word "motion" here. *See infra* p. 723. For a discussion of the motivation for the addition, *see supra* note 235.

³⁸¹ Section 13207(a)(1)(D) of the Budget Enforcement Act struck "bill or resolution, and no amendment to any bill or resolution" here and inserted "bill, resolution, amendment, motion, or conference report." *See infra* p. 723.

³⁸² For a discussion of the Budget Committee's jurisdiction, *see infra* note 384.

³⁸³ 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)).

amendment to such a bill or resolution.³⁸⁴

³⁸⁴ For examples of applications of the point of order under section 306, see, e.g., 138 CONG. REC. S15,001-18 (daily ed. Sept. 25, 1992) (Smith motion to waive Sasser point of order rejected 36-58 regarding his amendment on a tax-form check-off to trigger deficit reductions or sequesters); *id.* at S14,915-19 (daily ed. Sept. 24, 1992) (McCain motion to waive a Sasser point of order rejected 32 to 60 regarding his amendment no. 3172 to require a supermajority to raise taxes and remove the supermajority requirement to cut taxes); *id.* at S2457-78 (daily ed. Feb. 27, 1992) (McCain motion to waive Sasser point of order rejected 44-54 regarding his amendment no. 1698 to enhance the President's rescission authority); 136 CONG. REC. S8197 (daily ed. June 19, 1990) (the Senate agreed to a Cranston unanimous consent request to waive points of order regarding a Heinz amendment regarding congressional action to remove Social Security trust funds from the definition of the deficit); *id.* at S7457-78 (daily ed. June 6, 1990) (McCain motion to waive rejected 43-50 regarding his amendment no. 1995 regarding enhancing the President's rescission authority); 135 CONG. REC. S15,336-58 (daily ed. Nov. 9, 1989) (Coats motion to waive rejected 40-51 regarding his amendment no. 1092 regarding enhancing the President's rescission authority); 133 CONG. REC. S11,025 (daily ed. July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); *id.* at S10,584 (daily ed. July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, to revise Gramm-Rudman-Hollings); *id.* at S10,579 (daily ed. July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, to revise Gramm-Rudman-Hollings); 129 CONG. REC. S3587-603 (1983); Senate Precedent PRL19830322-002 (Mar. 22, 1983) (LEGIS, Rules database) (Heinz motion to waive tabled 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

Three sources provide the basis for the Budget Committee's jurisdiction. First, section 102(a) amended rule XXV of the Standing Rules of the Senate, which now reads as follows (in relevant part):

(e)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.

(2) Such committee shall have the duty —

(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

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(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and

(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

STANDING RULES OF THE SENATE Rule XXV(1)(e) (1992).

A second source of Budget committee Jurisdiction is the standing order on referral of budget process legislation. The Senate requires joint referral to the Budget and Governmental Affairs Committees of all legislation to change the budget and impoundment control process. The Senate agreed by unanimous consent on August 4, 1977:

that legislation affecting the congressional budget process, as described below, be referred jointly to the Committees on the Budget and on Governmental Affairs. If one committee acts to report a jointly-referred measure, the other must act within 30 calendar days of continuous possession, or be automatically discharged.

Legislative proposals affecting the congressional budget process to which this order applies are:

First. The functions, duties, and powers of the Budget Committee — as described in title I of the act;

Second. The functions, duties, and powers of the Congressional Budget Office — as described in title[s] II and IV of the act[;]

Third. The process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt — including subdivisions thereof. That process includes the establishment of:

mandatory ceilings on spending and appropriations;

a floor on revenues;

timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriations bills; and

enforcement mechanisms for the limits and timetables,

all as described in titles III and IV of the act[;]

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Fourth. The limiting of backdoor spending device[s] — as described in title IV of the act;

Fifth. The timetables for Presidential submission of appropriations and authorization requests — as described in title VI of the act;

Sixth. The definitions of what constitutes impoundment — such as "rescissions" and "deferrals," as provided in the Impoundment Control Act, title X;

Seventh. The process and determination by which impoundments must be reported to and considered by Congress — as provided in the Impoundment Control Act, title X;

Eighth. The mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X — such as GAO review and lawsuits; and

Ninth. The provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act — as set forth in title I thereof.

123 CONG. REC. S13,553 (daily ed. Aug. 4, 1977).

The reference to "30 calendar days of continuous possession" in the first paragraph of the standing order is so in the original. It probably should be to "30 calendar days of continuous session."

The Parliamentarian interprets the period of "30 calendar days of continuous session" to equate to 30 calendar days not interrupted by a sine die adjournment after the committee files its report with the Senate. In other words, "30 calendar days of continuous session" means 30 calendar days (including Saturdays, Sundays, legal holidays, and days in which the Senate stands in recess) unless the Senate adjourns sine die during those 30 days. If the Senate adjourns sine die during the 30 days, the 30 days begin counting again when the Senate next reconvenes.

Thus, on July 14, 1988, the Committee on Governmental Affairs ordered reported the Biennial Budget Act of 1988, S. 2478, 100th Cong., 2d Sess., 134 CONG. REC. S7295-302 (daily ed. June 7, 1988), sponsored by Senators Ford and Roth and others. On August 25, 1988, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate, under the authority of an order of August 11, 1988, providing for filing during the August recess. On that date, August 25, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on September 26, 1988, the

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Senate discharged the Committee on the Budget and placed the bill on the Legislative Calendar under General Orders. 134 CONG. REC. S13,263 (daily ed. Sept. 26, 1988) (measures placed on the calendar).

Similarly, on November 17, 1989, the Committee on Governmental Affairs ordered reported the Biennial Budget Act, S. 29, 101st Cong., 1st Sess., 135 CONG. REC. S291 (daily ed. Jan. 25, 1989), sponsored by Senators Ford and Roth and others. On March 21, 1990, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate and on that date, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on April 20, 1990, the Senate discharged the Committee on the Budget and placed the bill on the calendar. 1990 SEN. J. H1.

Again on August 4, 1990, the Committee on the Budget reported four budget process bills, the Honest Budget/Balanced Budget Act, S. 101, the Debt Ceiling Reform Act, S. 532, the Social Security Preservation Act, S. 2999, and the Federal Hospital Insurance Preservation Act, S. 3008. See 136 CONG. REC. S12,475 (daily ed. Aug. 4, 1990). The Senate discharged the Governmental Affairs Committee and placed all four bills on the calendar. See *id.* at S12,722 (daily ed. Sept. 10, 1990). On August 30, 1990 the Committee on the Budget reported two more bills, the Gross Interest Legislation Act, S. 3011, and the National Priorities Review Act, S. 2835, each of which the Chair referred to the Committee on Governmental Affairs. See 136 CONG. REC. S12,724 (daily ed. Sept. 10, 1990).

Specifying that an activity will not affect the deficit is a matter within the jurisdiction of the Budget Committee. See, e.g., *id.* at S5405 (daily ed. May 1, 1990). On May 1, 1990, during consideration of H.R. 4404 (Making dire emergency supplemental appropriations for disaster assistance, food stamps, unemployment compensation administration, and other urgent needs, and transfers, and reducing funds budgeted for military spending for the fiscal year ending September 30, 1990, and for other purposes), the chair ruled that the following language contained matters within the jurisdiction of the Budget Committee, in violation of section 306:

Sec. 320. Section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended —

- (1) in subparagraph (J), by striking "and" at the end thereof;
- (2) in subparagraph (K), by striking the period at the end thereof and inserting a semicolon; and
- (3) by adding after subparagraph (K) the following:

"(L) assuming, for purposes of this paragraph, paragraph(3)(A)(i), and the Congressional Budget Act of 1974, and notwithstanding sections 3(6) and 406(b) of that Act, that disbursements and receipts equalling the principal amounts of borrowings or repayments of principal of direct

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loans from the Federal Financing Bank to the Resolution Trust Corporation that are used for working capital requirements in liquidating Federal deposit insurance claims or for any other working capital purpose (pursuant to title V of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), shall not alter the deficit or produce any change in the budget baseline, and

^{*(M)} assuming, for purposes of this paragraph, paragraph 3(A)(I), and the Congressional Budget Act of 1974, notwithstanding sections 3(6) and 406(b) of that Act, and excluding receipts and disbursements subject to subparagraph (L), the sum of the amount of any offsetting collections from the Resolution Funding Corporation for purchase of capital certificates and any other offsetting collections of the Resolution Trust Corporation in any fiscal year shall equal the amount of any Resolution Trust Corporation disbursements for that fiscal year, effective beginning with the fiscal year 1991 budget.*

H.R. 4404, 101st Cong., 2d Sess. § 320, 136 CONG. REC. S4991, S4999 (daily ed. Apr. 25, 1990) (as reported to the Senate). Upon a point of order raised by Senator Hollings against the committee amendment under section 306, the amendment fell. *Id.* at S5405 (daily ed. May 1, 1990). For the discussion of the point of order and the section, see *id.* at S5383-405.

Any new mechanism to enhance the President's power to rescind funds fall within the Budget Committee's jurisdiction. See *id.* at S7457-78 (daily ed. June 6, 1990) (McCain amendment no. 1995 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction); 135 CONG. REC. S15,336-58 (daily ed. Nov. 9, 1989) (Coats amendment no. 1092 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction). On June 6, 1990, the Senate considered a McCain amendment (identical to S. 1553, 101st Cong., 1st Sess., 135 CONG. REC. S10,293-96 (daily ed. Aug. 4, 1989)) to add a new title to the Impoundment Control Act of 1974 changing what would happen if Congress failed to act on a rescission. See 136 CONG. REC. S7457 (daily ed. June 6, 1990) (statement of Sen. McCain). After the Senate rejected 43-50 Senator McCain's motion to waive section 306 of the Congressional Budget Act, the Chair ruled: "The amendment by the Senator from Arizona modifies the President's authority to rescind funds, which is a subject within the Budget Committee's jurisdiction." 136 CONG. REC. S7478 (daily ed. June 6, 1990) (Sen. Wirth acting as Presiding Officer).

Mandating the annual amounts of deficit and debt reduction affects the process by which Congress annually establishes the appropriate levels of budget authority, outlays, deficits, and public debt, and thus deals with matter within the jurisdiction of the Budget Committee. See 138 CONG. REC. S15,001-18 (daily ed. Sept. 25, 1992) (Smith amendment on a tax-form check-off to trigger deficit reductions or sequesters).

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