
EFFECTS OF POINTS OF ORDER

§ 312(a)

SEC. 312.⁵⁵² [(a)]⁵⁵³ POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES. — Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.⁵⁵⁴

⁵⁵² Section 13207(b)(1) of the Budget Enforcement Act added section 312. *See infra* p. 724.

⁵⁵³ The original lacks this initial letter, but the presence of subsection (b) below makes it apparent that this should be "(a)."

⁵⁵⁴ Section 13207(b)(1) of the Budget Enforcement Act added section 312(a). *See infra* p. 724. The statement of managers accompanying the conference report on the Budget Enforcement Act explains subsection (a) briefly: "The conference agreement . . . corrects a precedent in the Senate that effectively kills amendments between Houses if points of order under the Congressional Budget Act are sustained against them (see Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database)) . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.C.A.N. 2374, 2875.

The precedent to which the managers referred reflects the ruling of the chair on a point of order on March 13, 1986. On that date, the Presiding Officer correctly ruled that points of order under the Congressional Budget Act apply to amendments between the Houses, as they apply by their terms to "amendments." The Presiding Officer went on to advise, however, that the effect of sustaining such a point of order is that the amendment of the House is no longer before the Senate, but retains its status as a House message at the desk. This result would effectively stop any further action on the bill. The Parliamentarian's notation of the precedent appears as follows:

SENATE PRECEDENT PRL19860313-003

CALENDAR DATE = 1986-03-13

HEADNOTE(S)

(continued...)

³⁵⁴(...continued)

If the concurrent resolution on the budget for a fiscal year has been adopted, a point of order will lie against an amendment of the House to an amendment of the Senate to an appropriations bill, if that amendment increases outlays at a time when the appropriate level of outlays for that fiscal year has been breached, and the effect of sustaining such a point of order is that the amendment of the House is no longer before the Senate, but retains its status as a House message at the desk.

STATEMENT OF FACT

On March 13, 1986, the Senate was considering the conference report in disagreement on H.J.Res. 534, making urgent supplemental appropriations for the Department of Agriculture (relative to the Commodity Credit Corporation), which was accompanied by an amendment of the House to the amendment of the Senate reported in disagreement. The Senator from Texas (Mr. Gramm) moved to waive section 311 of the Budget Act of 1974, as amended by the Balanced Budget and Emergency Deficit Control Act of 1985 (the Gramm-Rudman-Hollings Act), and after that motion was defeated and the conference report agreed to, the following occurred:

Mr. GRAMM. Mr. President, I raise a point of order under section 311, as amended by the Balanced Budget and Emergency Deficit Control Act, that the amendment of the House to the amendment of the Senate will exceed the appropriate level of budget authority and outlays set forth in the concurrent resolution on the budget for fiscal year 1986 and, therefore, is not in order.

The PRESIDING OFFICER (Mr. Tribble of Virginia).
The point of order is well taken.

Mr. Cochran of Mississippi appealed the ruling of the chair, and Mr. Domenici of New Mexico successfully moved to table that appeal, 61 yeas, 33 nays.

Shortly thereafter, the majority leader (Mr. Dole of Kansas) made the following inquiry which, with the response of the Chair (Mr. Pressler of South Dakota), is as follows:

Mr. DOLE. Mr. President, a parliamentary inquiry.
What is the status of the conference report?

The PRESIDING OFFICER. The conference report was agreed to. The House message is no longer before the Senate.

(continued...)

§ 312(b)

(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE. — In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.⁵⁵⁵

⁵⁵⁴(...continued)

CONGRESSIONAL RECORD : (99-2) pp. S 2642-56.

PARLIAMENTARIAN'S NOTE(S)

Since the point of order under section 311 of the Budget Act precluded consideration of the House amendment, it was not construed to "kill" the amendment (the Senate not having the authority to negate the action of the House in adopting it), but simply to prevent Senate consideration.

Consequently, the message was not interpreted as having been "considered" and therefore could not be sent back to the House. The only status it could have was that it be back at the desk where it was before the Senate attempted to consider it.

Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database).

Under this precedent, at least in cases where there was only one amendment in disagreement, the amendment would remain at the desk and it would not be in order for the Senate to consider it. The Senate would then be powerless to complete action on the vehicle received from the House because it could not act on the piece remaining at the desk. This led to the perverse result that a point of order raised against an amendment (and an amendment only) resulted in effectively killing the entire measure. This result is contrary to the intent of the drafters of the Congressional Budget Act, who wanted to make points of order available in an effective manner to address violations. The result dictated by this precedent, however, renders the point of order of limited value: A Senator would only raise it when the Senator opposed the entire bill, and a Senator would feel constrained not to raise the point of order against an offending provision — even if the Senator opposed the provision — if the Senator valued the passage of the bill as a whole.

Section 312(a) remedies this anomaly by setting forth a new rule: If a point of order against an amendment between the Houses is raised and sustained, then the effect will be the same as if the Senate had disagreed with the amendment. The Senate will then be able to work its will on the balance of the bill and send the measure back to the House.

⁵⁵⁵ Section 13207(b)(1) of the Budget Enforcement Act added section 312(b). *See infra* p. 724. The statement of managers accompanying the conference report on the Budget Enforcement Act explains subsection (b) briefly: "The conference agreement . . . makes clear that if a point of order under the Act is sustained against a bill, the bill should be
(continued...)

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION⁵⁵⁶

§ 313(a) **SEC. 313.**⁵⁵⁷ (a) **IN GENERAL.**⁵⁵⁸ — When the Senate is considering a reconciliation bill or a reconciliation resolution⁵⁵⁹ pursuant to section 310,⁵⁶⁰ (whether that bill or reso-

⁵⁵⁵(...continued)

sent back to committee instead of the calendar, so that the committee may then take corrective action to improve the bill." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1170 (1990), *reprinted in* 1990 U.S.C.A.N. 2374, 2875.

⁵⁵⁶ Section 13214(b)(2)(A) of the Budget Enforcement Act added the heading here. *See infra* p. 742.

⁵⁵⁷ Section 313 is codified as amended at 2 U.S.C. § 644 (Supp. IV 1992). This section is often called "the Byrd Rule," after its principal sponsor, Senator Robert C. Byrd of West Virginia.

Section 13214(b)(1) of the Budget Enforcement Act (*see infra* p. 742) transferred this section here from section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *as amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and as amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987). For legislative history of this section, see *infra* note 616 (at the end of the section). For an excellent discussion of the section, see ROBERT KEITH & EDWARD DAVIS, *THE SENATE'S "BYRD RULE" AGAINST EXTRANEOUS MATTER IN RECONCILIATION MEASURES* (July 9, 1993) (Cong. Res. Serv. rep. no. 93-642 GOV).

⁵⁵⁸ Section 13214(a)(1)(A) of the Budget Enforcement Act inserted the heading "IN GENERAL. —" here. *See infra* p. 740.

⁵⁵⁹ Section 310(b) defines "reconciliation resolution." *See supra* pp. 163-166.

⁵⁶⁰ *See supra* pp. 158-177. Section 310 sets forth the reconciliation process in the context of Congress's annual cycle of concurrent resolutions on the budget. For other budget process legislation dealing with reconciliation, see section 300, *supra* p. 47 (budget timetable, including that for reconciliation); section 301(b)(2) & (3), *supra* pp. 58-60 (empowering budget resolutions to include reconciliation instructions, as well as a provision providing for delayed enrollment of legislation pending completion of reconciliation); section 305, *supra* pp. 120-142 (procedures for budget resolutions and reconciliation bills); section 604, *infra* pp. 325-327 (providing an optional reconciliation process in the House
(continued...))