

§ 313(b)(3)(A) **(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or**

§ 313(b)(3)(B) **(B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.**

§ 313(c) **(c)<sup>54</sup> EXTRANEOUS MATERIALS. — Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B),<sup>55</sup> and (b)(1)(E) of this section to the instructions of a committee as provided in this section.<sup>56</sup> The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.**

§ 313(d) **(d)<sup>57</sup> CONFERENCE REPORTS — When the Senate is consider**

<sup>54</sup> There once were two subsections (c), here and what is now subsection (d), *infra* pp. 24-26. The Budget Enforcement Act added both at the end of what used to be the Byrd Rule.

Section 13214(a)(8) of the Budget Enforcement Act added this subsection and section 13214(b)(2)(C) of the Budget Enforcement Act redesignated it as subsection (c). Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be subsection (c), which read as follows:

(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.

By virtue of this repeal of the expiration provision, the Byrd Rule is permanent law.

<sup>55</sup> The Parliamentarian has advised (in July of 1993) that he considers it impossible to apply section 313(b)(1)(B) to conference reports.

<sup>56</sup> For examples of such lists, see, *e.g.*, 139 CONG. REC. S15,832 (daily ed. Oct. 26, 1995).

<sup>57</sup> Section 10113(b)(1)(A) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, 688 (Aug. 5, 1997), struck “(c) When” and inserted “(d) CONFERENCE REPORTS — When” here. Formerly section 313 had two subsections (c), here and *supra* p. 24. The Budget Enforcement Act added both at the end of what used to be the Byrd Rule. Section 13214(b)(3) of the Budget Enforcement Act transferred this subsection from Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session). For (continued...)

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**ing a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution<sup>58</sup> pursuant to section 310, upon —**

§ 313(d)(1)

**(1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A),<sup>59</sup> (b)(1)(B),<sup>60</sup> (b)(1)(D),<sup>61</sup> (b)(1)(E),<sup>62</sup> or (b)(1)(F),<sup>63</sup> and**



§ 313(d)(2)

**(2) such point of order being sustained,<sup>64</sup> such material**

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<sup>57</sup>(...continued)

the history of these Senate Resolutions, see *infra* note 65. Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be subsection (c), which read: “(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.” The Byrd Rule is thus permanent law.

<sup>58</sup> Section 310(b) defines “reconciliation resolution.”

<sup>59</sup> Subsection (b)(1)(A) concerns provisions without deficit effect. See *supra* p. 8. For examples of the application of this subsection to conference reports, see, e.g., 141 CONG. REC. S17,315-27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 143 CONG. REC. S8449-51 (daily ed. July 31, 1997) (Durbin point of order against section 1604(f)(3) of the conference committee-reported bill crediting a new cigarette tax against the global settlement; Roth motion to waive approved 78-22).

<sup>60</sup> Subsection (b)(1)(B) concerns provisions that worsen the deficit where the title fails to comply with instructions. See *supra* p. 14. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference. The Parliamentarian has advised (in July of 1993) that he considers it impossible to apply subsection (b)(1)(B) to conference reports.

<sup>61</sup> Subsection (b)(1)(D) concerns provisions with deficit effects “which are merely incidental to the non-budgetary components of the provision.” See *supra* p. 14. For examples of the application of this subsection to conference reports, see, e.g., 141 CONG. REC. S17,315-27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained).

<sup>62</sup> Subsection (b)(1)(E) concerns provisions that worsen the deficit in the out-years beyond the reconciled years. See *supra* p. 19. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference.

<sup>63</sup> Subsection (b)(1)(F) concerns provisions that deal with Social Security. See *supra* p. 22. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference.

<sup>64</sup> For examples of the application of this section to conference reports, see, e.g., 141 CONG. REC. S17,315-27 (daily ed. Nov. 17, 1995) (Exon point of order under subsections (b)(1)(A) and (b)(1)(D) against sections 8001 and 13301 of the bill as proposed by the conference report on application of antitrust rule to provider-sponsored organizations (Medicare Plus) and exemption

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**contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.<sup>65</sup>**



<sup>64</sup>(...continued)

of physician office laboratories; Abraham motion to waive rejected 54-45; point of order sustained); 143 CONG. REC. S8449-51 (daily ed. July 31, 1997) (Durbin point of order against section 1604(f)(3) of the conference committee-reported bill crediting a new cigarette tax against the global settlement; Roth motion to waive approved 78-22).

<sup>65</sup> Section 13214(b)(3) of the Budget Enforcement Act transferred this subsection (c) from Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session).

On December 19, 1985, Senator Simpson, on behalf of Senators Armstrong, Roth, and Domenici, introduced a Senate Resolution 286 to apply the Byrd Rule to conference reports. As agreed to that day, that resolution read as follows:

S. RES. 286

RESOLVED, That when the Senate is considering a conference report or House amendment with respect to a reconciliation bill or reconciliation resolution pursuant to section 310 of the Budget Act, upon a point of order being made by any Senator against extraneous material meeting the definition of subsections (d)(1)(A) and (d)(1)(D) of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and such point of order is sustained, any part of such report or amendment containing such material shall be deemed stricken, but it shall be in order to continue consideration of the remainder under the Rules and practices of the Senate and applicable law. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this resolution, as well as to waive or suspend the provisions of this resolution.

The provisions of this resolution shall remain in effect until the date of termination of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

131 CONG. REC. S18,255 (daily ed. Dec. 19, 1985).

Senator Roth described the resolution:

Mr. ROTH. Mr. President, the purpose of this resolution is to remedy a  
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