
⁶⁵(...continued)

possible unintended result of the Byrd amendment to the reconciliation bill, section [20001] of the Consolidated Omnibus Budget Reconciliation Act of 1985.

That provision imposes a discipline upon this body which is not imposed on the other body. Basically, it requires that Senators not place extraneous provisions in reconciliation bills and resolutions.

However, if Members of the other body are free to load up their bills and resolutions with extraneous provisions, I fear that our body will be at a disadvantage within respect to the other body. Since we cannot tell the other body how to conduct its business, the solution is to create a new Senate procedure for handling extraneous material originating in the other body and coming to us as part of a House amendment or a conference report. The situation is analogous to that in the other body when we send provisions to them which would violate their rule on germaneness if offered there rather than here.

The other body's response to that situation has been to adopt clauses 4 and 5 of rule XXVIII of the House rules. The remedy proposed here is similar. It would permit a point of order to be raised against the extraneous material in House amendments or conference reports. With respect to a House amendment, if such point of order is sustained, the effect will be like that of a successful motion to strike out the offending language, and the Senate will be able to consider and act upon the remainder, if any, of the amendment.

With respect to a conference report, if such point of order is sustained, the effect will be like that under rule XXVIII of the House rules; the Senate will be able, for example, to request further conference or to insist on its disagreement or to recede and concur in the House amendment with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order.

It should be noted that points of order may be made only with respect to two of the four categories of extraneous material in [the Byrd Rule]. This is because the two categories omitted are not applicable to matters to be transacted between the Houses. Moreover, it is intended that the remaining two categories be applied without reference to any instructions that may have been given to committees. Thus points of order may be raised against a provision which does not produce a change in outlays or revenues or which produces a change which is merely incidental to the nonbudgetary components of the provision.

I believe that this resolution is a necessary step to protect the prerogatives of this body. With this protection, the Byrd amendment will be able to achieve a necessary reform without disadvantaging this body.

131 CONG. REC. S18,255 (daily ed. Dec. 19, 1985). The Senate then agreed to the resolution by a voice vote. *See id.*

Clauses 4 and 5 of House Rule XXVIII (to which Senator Roth referred) provide:

4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House, and which —

(1) is contained in any Senate amendment to that measure

(continued...)