
order is sustained by the Chair, any part²² of

²¹(...continued)

subsection (b)(1)(A) against Byrd-Dorgan amendment to increase the time limit on debate in Senate on reconciliation legislation; Exon motion to waive rejected 47-52; point of order sustained; amendment fell); 142 CONG. REC. S8332-33 (daily ed. July 19, 1996) (Dodd point of order under subsection (b)(1)(A) against Frist amendment expressing the sense of Congress that the President should ensure approval of state welfare reform waiver requests; Frist motion to waive rejected 55-43; point of order sustained; amendment fell); 143 CONG. REC. S6298 (daily ed. June 25, 1997) (Domenici point of order under subsection (b)(1)(A) against Levin amendment allowing vocational educational training to be counted as a work activity under the Temporary Assistance for Needy Families program; Levin motion to waive rejected 55-45; point of order sustained; amendment fell); *id.* at S6307-08 (daily ed. June 25, 1997) (Domenici point of order under subsection (b)(1)(E) against Lautenberg for Kennedy amendment reducing fees on student loan programs; Dodd motion to waive rejected 43-57; point of order sustained; amendment fell); *id.* at S6316-17 (daily ed. June 25, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against Lautenberg for Kennedy amendment to immediately transfer to Medicare part B certain home health benefits; Kennedy motion to waive rejected 38-62; point of order sustained; amendment fell); *id.* at S6673-74 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against Gramm amendment to create balanced budget enforcement procedures; Gramm motion to waive rejected 37-63; point of order sustained; amendment fell); *id.* at S6674-75 (daily ed. June 27, 1997) (Domenici point of order implicitly under subsection (b)(1)(A) against Bumpers amendment to prohibit scoring, for budget purposes, revenues from sale of certain federal lands; Bumpers motion to waive rejected 48-52; point of order sustained; amendment fell); *id.* at S6675-76 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against Craig amendment to change the pay-go procedures by establishing a 60-vote point of order against using tax increases to pay for new mandatory spending increases; Craig motion to waive rejected 42-58; point of order sustained; amendment fell); *id.* at S6677 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against Brownback amendment to create balanced budget enforcement procedures; Brownback motion to waive rejected 57-43; point of order sustained; amendment fell); *id.* at S6678 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against Frist amendment to create balanced budget enforcement procedures; Frist motion to waive rejected 59-41; point of order sustained; amendment fell); *id.* at S6679-80 (daily ed. June 27, 1997) (Lautenberg point of order under subsection (b)(1)(A) against Abraham amendment to ensure that future revenue windfalls to the Federal treasury are reserved for tax or deficit reduction; Abraham motion to waive rejected 53-47; point of order sustained; amendment fell); 145 CONG. REC. S9887, S9889 (daily ed. July 30, 1999) (Domenici point of order under subsection (b)(1)(A) against Bingaman amendment to express the sense of the Senate on investment in education; Bingaman motion to waive rejected 48-52; point of order sustained; amendment fell); *id.* at S9891 (daily ed. July 30, 1999) (Baucus point of order under subsection (b)(1)(A) against Frist amendment to express the sense of the Senate regarding the Medicare Reserve Fund; Frist motion to waive rejected 54-46; point of order sustained; amendment fell); 146 CONG. REC. S6804 (daily ed. July 14, 2000), *id.* at S7045 (daily ed. July 17, 2000) (Moynihan point of order under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the committee-reported bill; Roth motion to waive rejected 48-47; point of order sustained; amendment fell); *id.* (Roth point of order implicitly under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the Democratic substitute; covered by same Roth motion to waive as previous point of order; point of order sustained; amendment fell); 149 CONG. REC. S6431 (daily ed. May 15, 2003) (Baucus point of order implicitly under subsection (b)(1)(E) against Sessions amendment applying sunset provision to revenue increase provisions; Sessions motion to waive rejected 51-49; point of order sustained; amendment fell).

²² During the debate on the amendment that would later become section 313, Senator Johnston asked the principal sponsor, Senator Byrd, what “part” meant:

(continued...)

²²(...continued)

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. JOHNSTON. I say I support very strongly what the Senator is trying to do, but for purpose of setting the legislative record, I would like to get an understanding what happens in some instances.

First of all, according to the amendment when a matter is not within the jurisdiction of the committee or is extraneous to the instructions, that matter shall be deemed stricken from the bill. Now the question is: Where you have a whole provision, some of which is germane and some of which is not, does the Parliamentarian go through that and excise those sentences or clauses or subsections which are nongermane or extraneous and leave the rest, or does he excise the entire section as to which there is offending language?

Mr. BYRD. I am not sure I can answer that question with respect to what the Parliamentarian will do.

It might depend upon whether or not the language is divisible. I do not know. Perhaps the distinguished Senator would want to address his question to the Chair on this particular question.

Mr. JOHNSTON. When it says, "Any part of a bill not in the jurisdiction of the committee," I am just wondering what the intent of the authors is with respect to "any part of a bill." Does it mean the entire portion of the bill reported by a committee, or just as the offending extraneous or nongermane language?

Mr. BYRD. If it is any part of the bill that is not within the jurisdiction of the reporting committee, it would fall. If it is not within the jurisdiction of the —

Mr. JOHNSTON. When you say "part," if you have, let us say, a 30-page section of legislation as to which there is one subsection that is not germane, would you simply knock out the subsection or would you take the whole 30-page section?

Mr. BYRD. I think the Senator may be confusing — let me say this: the Senator is talking about germaneness?

Mr. JOHNSTON. The Senator is correct.

Mr. BYRD. And also talking about legislation that has been reported by a committee which does not have jurisdiction over the subject matter. So there are two different things.

The language, I think, would explain the answer. Any part of the bill not in the jurisdiction of the reporting committee, whether it is germane or not, any part that is not within the jurisdiction of the reporting committee, would fall.

Mr. JOHNSTON. For example, we usually put a severability clause in legislation which means that if any section of the bill is declared unconstitutional by the Court, then the rest of the bill does not fall.

I am asking, I guess, whether you intend for there to be, in effect, a severability clause here, or whether the whole section as to which there is any

(continued...)

said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b)²³ shall be deemed stricken from the bill and may not be offered as an amendment from the floor.²⁴

§ 313(b)(1)(A) **(b)²⁵ EXTRANEOUS PROVISIONS.²⁶ — (1)(A) Except as**

²²(...continued)
offending language falls.

Mr. BYRD. I say any part of the bill that is not within the jurisdiction of the reporting committee would fall.

Mr. JOHNSTON. You can take out that part and in effect rewrite the bill by striking sentences, clauses, subsections.

Mr. BYRD. That are not within the jurisdiction of the reporting committee.

131 CONG. REC. S14,034 (daily ed. Oct. 24, 1985).

²³ See *infra* pp. 8-50. Section 13214(b)(4)(B) of the Budget Enforcement Act changed this reference from (d) to (b) to conform with the redesignation of subsection (d) as subsection (b) made by section 13214(b)(2)(C) of the Budget Enforcement Act.

²⁴ Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be the last sentence of subsection (a), which read as follows:

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 section, as well as to waive or suspend the provisions of this subsection.

Section 904(d) supersedes this sentence by listing sections 313 and 904(d) among those sections for which 60 Senators must vote affirmatively to sustain an appeal.

²⁵ Section 13214(b)(2)(C) of the Budget Enforcement Act redesignated as subsection (b) what used to be subsection (d). Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be subsection (b), which read as follows:

(b) No motion to waive or suspend the requirement of section 305(b)(2) of the Congressional Budget Act of 1974, as it relates to germaneness with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order raised under that section, as well as to waive or suspend the provisions of this subsection.

Section 904(c) supersedes this old subsection (b) by listing sections 313 and 904(c) among those sections requiring 60 Senators to waive. For an early example of a motion to waive this section see, *e.g.*, 132 CONG. REC. S13,047 (daily ed. Sept. 19, 1986).

²⁶ Section 13214(a)(2) of the Budget Enforcement Act inserted the heading “EXTRANEOUS PROVISIONS. —” here.

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