

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

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

<sup>22</sup>(...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).

<sup>23</sup> 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.

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 Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be the last sentence of subsection (a), which read as follows: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

<sup>25</sup> 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 Section 13214(b)(2)(B) of the Budget Enforcement Act repealed what used to be subsection (b), which read as follows: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).

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

(continued...)

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<sup>26</sup>(...continued)

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

Mr. JOHNSTON. My final question has to do with the meaning of the word “extraneous” and what your intention is as to how that is interpreted. Frequently, in fact, usually directions are given by the Budget Committee in the very broadest of terms, and the authorizing committees report legislation which is detailed and which, in one sense, might contain matter that is extraneous. It might be germane to the instructions, but extraneous in the sense that it is not specifically called for within the four corners of the instructions from the Budget Committee to the authorizing committee. Could the Senator tell me what he means by “extraneous” in this context of that question?

. . . .

Mr. JOHNSTON. If I may repeat it. The question is as to the meaning of the word “extraneous,” as used in this amendment. . . .

. . . . But the question is: What is the meaning of the word “extraneous”? Do you mean that it must be contained within the four corners of the instructions from the Budget Committee, or may the Budget Committee supplement those instructions by filling out the spirit of the instructions within the jurisdiction of that committee and all within the germaneness rule, if the Senator understands the question?

Mr. BYRD. The word “extraneous” here would be interpreted in the future just as it is presently being interpreted. And I understand that, at the present time, “extraneous,” in the context, is determined by whether or not the language contributes to reducing the deficit and balancing the budget; otherwise, it is extraneous. So the same interpretation that is now given to the word “extraneous” would continue to be given.

Mr. JOHNSTON. So, for example, a committee would be able to go beyond the instructions and save more money?

Mr. BYRD. Well, if such language does not serve to balance the budget or to reduce the deficit, the language would be extraneous — then it would be up to the Chair to determine whether or not the point of order is well taken.

. . . .

Mr. DOMENICI. Mr. President, will the distinguished minority leader [Senator Byrd] permit me to respond to what “extraneousness” means thus far in its evolution in the Senate? Let me suggest that, going back to 1981, we have evolved these four definitions, and I believe they are used by minority and majority members of the committee now. I would just read them quickly:

One, provisions that have no direct effect on spending and which are not essential to achieving the savings.

Two, provisions which increase spending and are not so closely related to saving provisions that they cannot be separated.

Three, provisions which extend authorizations without saving money, and which are not so closely related to saving provisions that they

(continued...)

**provided in paragraph (2),<sup>27</sup> a provision of a reconciliation bill or reconciliation resolution<sup>28</sup> considered pursuant to section 310 shall be considered extraneous if such provision does not produce a change in outlays<sup>29</sup> or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected<sup>30</sup> (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous**

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<sup>26</sup>(...continued)

cannot be separated.

Four, provisions which invade another committee's jurisdiction, whether or not they save money.

And I am not saying that is all inclusive, but, up to this point, that is what we have been using. . . .

131 CONG. REC. S14,034-35 (daily ed. Oct. 24, 1985).

<sup>27</sup> See *infra* pp. 22-23. Paragraph (2) provides exceptions to paragraph (1)(A) upon the certification of the Chairman and Ranking Minority Member of the Budget Committee and the Chairman and Ranking Minority Member of the Committee that reported the provision.

<sup>28</sup> Section 310(b) defines "reconciliation resolution."

<sup>29</sup> Section 3(1) defines "outlays." To "produce a change in outlays" within the meaning of this subparagraph, a provision must cause a different level of outlays to result without further legislative action. Thus a cut in the level of appropriations authorized would not "produce a change in outlays" in this context, as later appropriations action would be necessary to achieve the reduction in outlays.

<sup>30</sup> Within the meaning of this subparagraph, the words "including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected" modify the words "a change in outlays or revenues." Thus, the reader should understand this subparagraph to state that "a provision of a reconciliation bill . . . shall be considered extraneous if such provision does not produce [either: (1)] a change in outlays or revenues [or (2) a] change[] in the terms and conditions under which outlays are made or revenues are required to be collected."

Examples of terms and conditions include mechanisms to enforce changes in outlays or revenues and procedures for collecting outlays or revenues. The drafter cannot use this "terms and conditions" language as an artifice to attach extraneous language unrelated to the language that produces a change in outlays or revenues. The language setting forth the terms and conditions must deal with the same issue as does the language that produces the change in outlays or revenues and must have a logical link to that language. The Parliamentarian analyzes language with a view to whether inclusion of the language would be an abuse of the fast-track procedures under reconciliation. The Parliamentarian asks why language asserted to be a term or condition is integral to the change in outlays or revenues, why it is essential or necessary to achieving the change in outlays or revenues.