
this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.⁹⁶⁸

⁹⁶⁷(...continued)

1990). The error has no effect on the supermajority required for waiver of section 310(g), however, as the Budget Enforcement Act also mistakenly failed to repeal section 271(b) of Gramm-Rudman-Hollings, which also sets forth a supermajority requirement for waiving section 310(g). *See infra* note 968.

Note that this subsection does not apply to provisions of the Impoundment Control Act having functions similar to those of the provisions of the Congressional Budget Act listed here. *Compare, e.g.,* section 1017(d)(2) *infra* pp. 399-400 ("No amendment that is not germane to the provisions of a rescission bill shall be received.") with section 305(b)(2) *supra* pp. 124-136 ("No amendment that is not germane to the provisions of such concurrent resolution [on the budget] shall be received.").

⁹⁶⁸ That is, 60 Senators, no matter how many Senators are present and voting.

Section 275(b) of Gramm-Rudman-Hollings provides that this sentence will expire on September 30, 1995, when Gramm-Rudman-Hollings expires. *See infra* p. 691.

Section 13208(a)(1) of the Budget Enforcement Act amended subsection (c) to read as it does now. *See infra* p. 728. Congress intended this last sentence of subsection (c) to supersede section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 671), although when section 13208 of the Budget Enforcement Act (*see infra* pp. 728-729) added this sentence, it mistakenly did not repeal section 271(b) of Gramm-Rudman-Hollings. To the extent that direct conflicts exist, however, this later-enacted language takes precedence over that of section 271(b). Section 271(b) provides:

(b) OTHER WAIVERS AND SUSPENSIONS IN THE SENATE. — Sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a) of the Congressional Budget Act of 1974 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution.

See infra p. 671.

Section 271(a) of Gramm-Rudman-Hollings added section 904(c) to the Congressional Budget Act in the first place. *See infra* p. 671. Before enactment of the Budget Enforcement Act, section 904(c) read as follows:

(c) Sections 305(b)(2) and 306 of this Act may be waived or sus-
(continued...)

Origin of 60-Vote Points of Order

Point of Order Section Number	Which legislation added the requirement?			
	Budget Act Section 904(c)	The Byrd Rule	Gramm-Rudman Section 271(b)	Budget Enforcement Act
	Congressional Budget Act sections			
301(i)	-	-	X	-
302(c)	-	-	X	-
302(f)	-	-	X	-
304(b)	-	-	X	-
305(b)(2)	X	-	-	-
305(c)(4)	-	-	-	X
306	X	-	-	-
310(d)(2)	-	-	X	-
310(f)	-	-	-	- X
310(g)	-	-	X	-
311(a)	-	-	X	-
313	-	X	-	-
601(b)	-	-	-	X
606(c)	-	-	-	X
904(c)	-	-	-	X
904(d)	-	-	-	X
	Gramm-Rudman-Hollings sections			
258(a)(4)(C)	-	-	-	X
258A(b)(3)(C)(i)	-	-	-	X
258B(f)(1)	-	-	-	X
258B(h)(1)	-	-	-	X
258B(h)(3)	-	-	-	X
258C(a)(5)	-	-	-	X
258C(b)(1)	-	-	-	X

⁹⁰⁸(...continued)

At first blush, it may appear that the Budget Enforcement Act vastly expanded the occasions on which the law requires 60 votes to waive a point of order. On one level this is true, as what used to require a majority vote now requires 60 votes under the sections added to the list. Nonetheless, the real change in the behavior of the Senate will be minimal, for the new sections added to the list by the Budget Enforcement Act all deal with the same subject matter as sections that the law already required 60 votes to waive. Thus, Senators would have been more likely to find themselves surprised by the former law, which would have allowed waiver of these sections by a majority vote, than by the revised law, which made waiver consistent across points of order on the same subject.

Specifically, among the sections newly added to the list of sections requiring 60 votes to waive, section 305(c)(4) of the Congressional Budget Act and sections 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258C(b)(1) of Gramm-Rudman-Hollings all require (sometimes among other things) that amendments be germane, just as does section 305(b)(2) of the Congressional Budget Act, which was already on the list. Similarly, section 258(a)(4)(C) of Gramm-Rudman-Hollings prohibits any amendment. Section 601(b) of the Congressional Budget Act prohibits spending more than the discretionary spending limits allow, in a fashion similar to the way that section 302(f) prohibits spending more than allowed by the allocations to a subcommittee. Section 606(c) of the Congressional Budget Act and section 258C(a)(5) of Gramm-Rudman-Hollings prohibit violation of the maximum deficit amount, much as did section 301(i) of the Congressional Budget Act before the Budget Enforcement Act amended it. Section 258B(h)(3) of Gramm-Rudman-Hollings requires that amendments be deficit-neutral, much as does section 310(d)(2) of the Congressional Budget Act. Sections 904(c) and 904(d) of the Congressional Budget Act are the sections that themselves provide the supermajority requirement, and the Budget Enforcement Act added them to the list (in the same way that what used to be the Byrd Rule required a supermajority to waive the subsection that required a supermajority) to counter the argument that one could do away with the entire scheme of supermajority requirements simply by waiving section 904(b) or 904(c). Finally, the Budget Enforcement Act only added section 310(f) to the list by mistake, as discussed in this note above.

Note that the Budget Enforcement Act changed the nature of the point of order provided by section 301(i) of the Congressional Budget Act, which has been on the list of sections requiring a supermajority to waive since the enactment of Gramm-Rudman-Hollings and remains on the list. Whereas section 301(i) used to provide a point of order against a budget resolution violating the maximum deficit amount (much as section 606(c) of the Congressional Budget Act does now), section 301(i) now provides the Social Security "fire wall" point of order in the Senate, which prohibits the Senate Budget Committee from reporting budget resolutions that would decrease the surplus in the Social Security trust funds.

Note also that section 13112(a)(8) of the Budget Enforcement Act (*see infra* p. 709) repealed what used to be section 304(b), which used to require that revisions of budget resolutions remain within the maximum deficit amount and is on the old list of points of order requiring 60 Senators to waive under section 271(b). Section 13111 of the Budget
(continued...)

§ 904(d)

(d) Appeals in the Senate from the decisions of the Chair relating to any provision of title III⁹⁶⁹ or IV⁹⁷⁰ or section 1017⁹⁷¹ shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill,



⁹⁶⁸(...continued)

Enforcement Act (*see infra* p. 707) added the new section 606(c) of the Congressional Budget Act (*see supra* p. 334) to fulfill much the same function as did the old section 301(i). (Compare the text of what used to be section 301(i) (*see supra* note 912) with that of the new section 606(c). *See supra* 334.) Section 606(c) does not, however, apply to revisions of budget resolutions under section 304, even though the parallel language for the House of Representatives in section 606(b) (*see supra* p. 329) explicitly mentions revisions of budget resolutions under section 304. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

Similarly, note also that the Budget Enforcement Act moved from what used to be section 311(a) (*see supra* note 907) to section 605(b) (*see supra* pp. 329-330) the point of order that prohibits legislation from violating the maximum deficit amount in the Senate. (Section 13112(a)(10) of the Budget Enforcement Act (*see infra* p. 709) struck the maximum deficit amount point of order from what used to be section 311(a), and section 13111 of the Budget Enforcement Act (*see infra* p. 707) added what is now section 605.) The Budget Enforcement Act neglected, however, to add section 605(b) to the list of sections requiring 60 votes to waive. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

⁹⁶⁹ *See supra* pp. 43-194.

⁹⁷⁰ *See supra* pp. 247-272.

⁹⁷¹ *See infra* pp. 393-402.