cy during the last two months of such fiscal year.

Mr. Chairman, what we have to look to on a limitation bill is the rules, and I would refer to chapter 25, section 10.6 of Deschler, which states, with regard to H.R. 11612, in the 91st Congress, 1st session:

> An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds.

Clearly, that is precisely what this language does, and I rely very strongly upon Deschler's, chapter 25, section 10.6. . . .

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Indiana (Mr. Myers) makes the point of order that the amendment offered by the gentleman from Virginia (Mr. Harris) constitutes legislation on an appropriation bill in violation of clause 2, rule XXI, by prohibiting the incurring of obligations of any funds appropriated in the bill in excess of 20 percent of the total amount appropriated in the last 2 months of availability of those funds.

The Chair has examined existing law (31 U.S.C. 665(c)(3)) with respect to distribution of appropriations. The Chair interprets this law to confer discretionary authority upon the Office of Management and Budget, and thereby upon the agency incurring the actual obligation, to determine the most appropriate time frame for the distribution of funds within the period of availability for which appropriated.

Under the precedents of the House cited on page 532 of the House Rules and Manual, it is not in order on a general appropriation bill to affirmatively take away a discretionary authority conferred by law. Because the pending amendment could conceivably restrict the specific authority conferred by existing law upon contracting officers to incur obligations at the time deemed most appropriate by them the Chair must sustain the point of order.

Parliamentarian's Note: On July 28, 1980,[11] the Chair made a comparable ruling on a similar amendment, but based the ruling on a burden of proof test, upon a determination that the June 25, 1980, ruling, in its characterization of the extent of discretionary authority conferred upon recipient agencies by the statute, was unnecessarily broad.

§ 52. Provisions as Imposing New Duties

This section discusses those issues raised when a purported limitation either directly or indirectly requires a federal official to perform duties which are arguably not required of him under the existing laws pertaining to his office.[12]

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11. See § 22.26, supra.

12. As to the effect of provisions imposing additional duties on persons who are not federal officials, see Sec. 53, infra.

Of course, the application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

In making a ruling on such issues, the Chair may be called upon to interpret the responsibilities imposed upon federal officials by an existing law to determine whether a purported limitation constitutes a change in the law's requirements. The proponent of an amendment, or the manager of the bill if a point of order is raised against the bill, should be required to assume the burden of proving that duties being imposed by the provision in question are merely ministerial or are already required by law. In the absence of such a showing, the Chair would not be required to determine for himself whether the proposed duties were already required by existing law.[13]

General Rule

§ 52.1 Language in an appropriation bill imposing duties upon an executive not contemplated by law is legislation and not in order.

On May 17, 1937,[14] a provision in a general appropriation bill that "no part of this appropriation shall be available for construction of such project until it is determined by the Secretary of the Interior, upon approval, as to legality by the Attorney General, that authorization therefor has been approved by act of Congress," was ruled out as legislation. Points of order were made as follows against such language which was contained in an Interior Department appropriation bill (H.R. 6958):

> MR. [FRANK H.] BUCK [of California]: Mr. Chairman, I make a point of order against the language beginning in line 24 with the word *"Provided."*
>
> MR. [JOHN] TABER [of New York]: Mr. Chairman, I make a point of order against the entire paragraph.
>
> THE CHAIRMAN:[15] Does the gentleman from New York make a point of order against the entire paragraph?

13. See the discussion of the ruling of June 23, 1971, in the "Note on Contrary Rulings," which follows § 53.6, infra.
14. 81 CONG. REC. 4687, 4688, 75th Cong. 1st Sess.
15. Jere Cooper (Tenn.).

MR. TABER: I do.

THE CHAIRMAN: The gentleman from California made a point of order against the proviso?

MR. BUCK: Against the proviso.

THE CHAIRMAN: The gentleman from California makes a point of order against the proviso appearing in line 24, page 81. The gentleman from New York (Mr. Taber) makes a point of order against the entire paragraph. Of course, that presents to the Chair the necessity of ruling upon the point of order as it relates to the entire paragraph, because if any part of a paragraph is subject to a point of order it naturally follows that the entire paragraph is subject to a point of order. . . .

It appears to the Chair there can be no doubt that the language appearing in the proviso is legislation on an appropriation bill. The language imposes additional duties upon two executive officers of the Government, the Secretary of the Interior and the Attorney General. Therefore, the language in the proviso constituting legislation on an appropriation bill, in violation of the rules of the House, and a point of order being good as to part of a paragraph, it naturally applies to the entire paragraph. The Chair, therefore, sustains the point of order made by the gentleman from New York as to the entire paragraph.

General Principles; Requiring Certification of Satisfaction as Condition Precedent to Disbursement

§ 52.2 An amendment in the form of a limitation on an appropriation bill providing an appropriation shall not be available until the agency charged with the administration of such appropriation shall be satisfied and shall so certify that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization was held to be legislation and not in order in that it imposed additional affirmative duties on the executive branch (overruling 4 Hinds' Precedents § 3942).

On May 14, 1941,[16] the Committee of the Whole was considering H.R. 4590, an Interior Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Clare E.] Hoffman [of Michigan]: On page 87, after line 24, insert "*Provided,* That no part of the appropriation herein made shall be available until the agency charged with the administration of the fund shall be satisfied, and shall so certify to the Secretary of the Treasury, that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization."
>
> MR. [FRANK E.] HOOK [of Michigan]: Mr. Chairman, I make a point of order against the amendment. It is legislation on an appropriation bill.

16. 87 CONG. REC. 4053–55, 77th Cong. 1st Sess.

THE CHAIRMAN:[17] Does the gentleman from Michigan desire to be heard on the point of order?

MR. HOFFMAN: No; the precedents sustain the amendment.

THE CHAIRMAN: The Chair would be pleased to have the gentleman from Michigan cite the precedents.

MR. HOFFMAN: Fourth Hinds', section [3942]. I copied it from that precedent. . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, if I may be permitted, from what I have heard of the amendment, this seems to be a pure limitation that no funds shall be permitted to be paid to any person who is required as a condition precedent to employment to do certain things. There is no additional duty in any way imposed upon anyone and there is no legislation contained in the limitation. . . .

THE CHAIRMAN: The Chair is prepared to rule. . . .

The author of the amendment has cited as a precedent supporting his contention that the amendment is in order, a decision appearing in section 3942 of the fourth volume of Hinds' Precedents. The Chair has examined that decision and is inclined to agree with the gentleman from Michigan that there is some analogy between the question under consideration here and the question under consideration under that decision, but the Chair invites attention to the fact that this decision was made in 1901. The Chair also invites attention to a subsequent decision, on January 6, 1923, which appears in section 1706 of volume 7 of Cannon's Precedents. This is a rather lengthy decision, but it appears to the Chair to be directly in point on the question here presented.

After citing numerous precedents, the Chairman of the Committee of the Whole, Mr. Hicks, had the following to say:

> As a general proposition the Chair feels that whenever a limitation is accompanied by the words "unless," "except," "until," "if," "however," there is ground to view the so-called limitation with suspicion, and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. By doing so appropriation bills will be relieved of much of the legislation which is being constantly grafted upon them and a check given a practice which seems to the Chair both unwise and in violation of the spirit, as well as the substance, of our rules. Without endeavoring to lay down any hard and fast rule, the Chair feels that the following tests may be helpful in deciding a question of order directed against a limitation, first having determined the powers granted or the duties imposed by existing law:
>
> Does the limitation apply solely to the appropriation under consideration?
>
> Does it operate beyond the fiscal year for which the appropriation is made?
>
> Is the limitation accompanied or coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?
>
> Is it accompanied by a phrase which might be construed to impose additional duties or permit an official to assume an intent to change existing law?
>
> Does the limitation curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones? If it does, then it must be

17. Jere Cooper (Tenn.).

conceded that legislation is involved, for without legislation these results could not be accomplished.

If the limitation will not fairly stand these tests then in my opinion the point of order should be sustained. Applying in the present instance the standards set forth, the judgment of the Chair is that the point of order is well taken and the Chair sustains it.

The Chair invites attention to the fact that the pending amendment provides—

That no part of the appropriation herein made shall be available until the agency charged with the administration of the fund shall be satisfied, and shall so certify to the Secretary of the Treasury, that no person employed upon the work provided has been required as a condition precedent to employment to join or not to join or to pay any sum to any organization.

The Chair is of opinion that this amendment would impose additional duties upon the officials who would have to make the certificate contemplated by the amendment. The Chair is likewise of opinion the effect of this amendment would be to impose additional duties upon the Secretary of the Treasury, at least to the extent of requiring him to receive the certificate contemplated under the amendment. Therefore, under the precedents cited by the Chair, appearing in section 1706 of volume VII, Cannon's Precedents, the Chair is of opinion that the amendment does embrace legislation on an appropriation bill. The Chair, therefore, sustains the point of order.

Parliamentarian's Note: The Chair in effect overruled the decision in 4 Hinds' Precedents § 3942 on the basis of the rationale contained in the ruling in 7 Cannon's Precedents § 1706 as reiterated in the headnote. The Chair's ruling in 4 Hinds' Precedents § 3942 is clearly not supportable under the modern practice. See also § 51.6, supra. The well-reasoned statement of the doctrine of limitations by Chairman Hicks, contained in 7 Cannon's Precedents § 1706, serves as an essential basis for determining the propriety of amendments in the form of limitations.

Requiring a Hearing Before Making Determination

§ 52.3 During consideration of an appropriation for the Office of Information of the Department of Agriculture, language providing that transfers from other appropriations to this appropriation, where authorized, should be adjusted as determined by the Bureau of the Budget, whenever such other appropriations are found to vary from the original budget estimates therefor, was ruled out as legislation.

On Apr. 27, 1950,[18] during consideration in the Committee of the Whole of a general appropriation

18. 96 CONG. REC. 5914, 81st Cong. 2d Sess.

bill (H.R. 7786), a provision as described above was under consideration. The following proceedings took place:

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order to the language appearing on page 207[19] . . .

. . . I make the point of order that these provisions require additional duties upon the part of both the Secretary of Agriculture and the Bureau of the Budget and constitute legislation on an appropriation bill and are, therefore, subject to a point of order.

THE CHAIRMAN:[20] Does the gentleman from Mississippi desire to be heard? . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: . . . I am of the opinion that the point of order should be sustained.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from New York [Mr. Keating] makes the point of order against the language appearing on page 207 of the bill, which has been pointed out by him, on the ground that it includes legislation on an appropriation bill in violation of the rules of the House. The gentleman from Mississippi concedes the point of order. The Chair sustains the point of order.

19. The language objected to stated: that if the total amounts of the appropriations from which transfers to this appropriation are herein authorized exceed or fall below the amounts estimated therefor in the budget, the amounts transferred therefrom to this appropriation shall be increased or decreased in such amounts as the Bureau of the Budget, after a hearing thereon with representatives of the Department, shall determine are appropriate to the requirements.

20. Jere Cooper (Tenn.).

Duty of Determining Rationale or Motive

§ 52.4 The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation; but when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or inevitably requires them to make investigations, compile evidence, discern the motives or intent of individuals, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

On July 31, 1969,[1] the Committee of the Whole was consid-

1. 115 CONG. REC. 21653, 21675, 91st Cong. 1st Sess.

Note: The principles stated in this precedent are difficult to apply, of

ering H.R. 13111, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The Clerk read as follows:

Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I offer amendments and I ask unanimous consent that the amendments be considered en bloc.

THE CHAIRMAN:[(2)] Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. Conte: On page 56, line 11, strike lines 11 through 15 and insert the following:

"Sec. 408. No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parent or parents, in order to overcome racial imbalance."

And on page 56, line 16. Strike lines 16 through 20 and insert the following:

"Sec. 409. No part of the funds contained in this act may be used to force busing of students, the abolishment of any school or the attendance of students at a particular school in order to overcome racial imbalance as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Chairman, I wish to make a point of order against the amendment.

THE CHAIRMAN: The Chair will hear the gentleman.

MR. SIKES: Mr. Chairman, it appears to me that the rulings of the Chair heretofore on this bill this afternoon show clearly that this is legislation on an appropriation bill and not a simple limitation in that the language of the amendment will require someone in the executive department to determine whether busing is to overcome racial imbalance. Therefore, it imposes additional duties and as such I consider it to be legislation on an appropriation bill. The Chair has so ruled on a number of occasions on this bill to date. . . .

MR. CONTE: . . . Mr. Chairman, I do not see where these amendments I

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course, and some rulings may seem to have departed from the strictest application thereof. Thus, as an example, in one line of rulings, amendments were held in order which sought to withhold payments under military or defense contracts in situations in which work stoppages or strikes had impeded performance of the contracts. (See 87 CONG. REC. 4837, 4838, 4890, 4891, and 4901, 77th Cong. 1st Sess., rulings of June 6 and June 9, 1941; and 106 CONG. REC. 12269, 12270, 86th Cong. 2d Sess., June 9, 1960.) Such rulings would probably not be regarded as within the guidelines noted above for determining whether proposed limitations are allowable under Rule XXI clause 2.

2. Chet Holifield (Calif.).

have, which only change several words in order to overcome racial imbalance, and these are the words that I add, and that is the crucial term—I do not see where it gives the Department of Health, Education, and Welfare or its head or anyone under the Secretary any additional burdens that the present Jamie Whitten sections 408 or 409 do not. I think it is certainly a limitation on the expenditure of funds, and, therefore, the point of order should be overruled.

Further, I may say, Mr. Chairman, if a point of order would lie on this, it will certainly lie on sections 408 and 409, and I will offer such. . . .

THE CHAIRMAN: The Chair is prepared to rule. The Chair recognizes that this is a very difficult matter. The proposed amendment for section 408 is different from section 408 of the bill in that it has added the words "in order to overcome racial imbalance."

The Chair believes that this would impose duties upon officials which they do not have at the present time, and therefore, it is legislation on an appropriation bill.

MR. CONTE: Mr. Chairman, may I be heard for a minute?

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Chairman, regular order.

THE CHAIRMAN: The gentleman will please desist until the Chair has finished his ruling on the second amendment because they are being considered en bloc.

The additional words in the amendment to section 409 are "in order to overcome racial imbalance" and this clearly requires additional duties on the part of the officials. Therefore, it is not negative in nature and is legislation on an appropriation bill.

The Chair, therefore, sustains the point of order.

Parliamentarian's Note: While the Chair was not asked to rule on the sections of the bill being amended, requiring the determination of whether a student was being bused "against the choice of his parents or parent", that language might also have been construed as legislation.

Receiving Information

§ 52.5 While it is not in order in an appropriation bill to insert by way of amendment a proposition which places additional duties on an executive officer, the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order.

The ruling of June 11, 1968,[3] is discussed in the "Note on Contrary Rulings," which follows § 53.6, infra. One of the issues also addressed in the proceedings of that day was the effect of a seeming imposition of duties on private individuals or others not

3. 114 CONG. REC. 16712, 90th Cong. 2d Sess.

in the employ of the federal government.

New Determinations

§ 52.6 An amendment to an appropriation bill proposing reduction of expenditures through an apportionment procedure authorized by law, but requiring such reduction to be made "without impairing national defense," was held to require the executive branch to make new determinations and therefore to be out of order as legislation.

On May 29, 1957,[4] during consideration in the Committee of the Whole of the Defense Department appropriation bill (H.R. 7665), amendments were offered as indicated below:

> The Clerk read as follows:
>
> Amendment offered by [Gerald R.] Ford [of Michigan]: On page 10, line 5, strike out "$392 million" and insert "$400 million". . .
>
> The Clerk read as follows:
>
> Amendment offered by Mr. [August E.] Johansen [of Michigan] as a substitute for the amendment offered by Mr. Ford: On page 10, line 5, strike out "$392 million" and insert in lieu thereof "400 million" and on page 10, line 6, immediately before the period insert the following: "*Provided,* That appropriations made by this title shall, without impairing national defense, be reduced in the amount of not less than $8 million through the apportionment procedure provided for in section 3679 of the Revised Statutes of the United States (31 U.S.C. 665)." . . .

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I renew my point of order that the gentleman's amendment is legislation on an appropriation bill, also that it imposes additional duties.

THE CHAIRMAN:[5] Does the gentleman from Michigan [Mr. Johansen] desire to be heard?

MR. JOHANSEN: Mr. Chairman, may I say that in the appropriation bill in the 81st Congress, second session, a provision, section 1214, to the effect that appropriations, reappropriations, contract authorizations, and reauthorizations made by this act for departments and agencies in the executive branch of the Government shall without impairing national defense be reduced in an amount of not less than $550 million.

It is on the basis of that sort of limitation that I offered the amendment.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Michigan [Mr. Johansen] offers an amendment in the nature of a substitute to the pending amendment, on page 10, line 6, by adding language contained in the proviso of the substitute. That language indicates that the appropriations made by this title shall without impairing the national defense be reduced in the amount of not less than $8 million through the apportionment procedures provided for in another section of exist-

4. 103 CONG. REC. 8069, 8070, 85th Cong. 1st Sess.

5. Eugene J. Keogh (N.Y.).

ing law, which section vests authority in the executive branch to make certain apportionments.

It is the opinion of the Chair that the language of this proviso imposing, as it does, an obligation and requirement on the executive branch to make reductions without impairing the national defense and without establishing any standards therefor is legislation on an appropriation bill, is subject to the point of order, and the Chair sustains the point of order.

Duties Indirectly Resulting From Operation of Other Laws

§ 52.7 Language in an appropriation bill providing that none of the funds therein shall be used to pay any employee of the Department of Agriculture who serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation was held to be a negative limitation and in order although indirectly effecting a change in policy.

On May 11, 1960,[6] the Committee of the Whole was considering H.R. 12117, an Agriculture Department appropriation bill. The Clerk read as follows:

Sec. 408. No part of the funds appropriated by this Act shall be used to pay the compensation of any employee or officer of the Department, except the Secretary of Agriculture, who, in addition to other regularly assigned responsibilities, serves as a member of the Board of Directors or as an officer of the Commodity Credit Corporation after February 1, 1961.

MR. [PAUL] BROWN of Georgia: Mr. Chairman, a point of order.

THE CHAIRMAN:[7] The gentleman will state it.

MR. BROWN of Georgia: . . . This reverses a decision made by the Banking and Currency Committee and the Congress in 1949, when the CCC Charter Act was amended to strike out a similar restriction which had been enacted in 1948. It is, therefore, legislation, and the mere fact it is put in the form of a limitation on the use of funds appropriated by the bill does not save it. As paragraph 1691, volume 7, of Cannon's Precedents of the House of Representatives puts it:

> The purpose rather than the form of a proposed limitation is the proper criterion by which its admissibility should be judged, and if its purpose appears to be a restriction of executive discretion to a degree that may be fairly termed a change of policy rather than a matter of administrative detail it is not in order.

Again in paragraph 1606 of the same volume, the following is found:

> Whenever a purported limitation makes unlawful that which before was lawful or makes lawful that which before was unlawful it changes existing law and is not in order on an appropriation bill.
>
> A proper limitation is negative and in the nature of a veto, and when it

6. 106 CONG. REC. 10053, 10054, 86th Cong. 2d Sess.

7. Paul J. Kilday (Tex.).

assumes affirmative form by direction to an executive in the discharge of his duties under existing law it ceases to be a limitation and becomes legislation.

Section 408 in effect requires the Secretary to take affirmative action. To carry out the farm programs financed by CCC, the Secretary would have to appoint new Board members, recruited from private life, to replace the six Department officers other than himself who now serve on the Board. He would also have to recruit and appoint new personnel to serve as officers of the Corporation. This not only means the section constitutes legislation, but also means it is not entitled to the protection of the Holman rule, because it would not save the Government money. On the contrary, it would require hiring new employees at additional expense to the Government. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, the section clearly provides a limitation on the use of funds that are appropriated in this bill. It does not change the Commodity Credit Corporation charter. It does not change any basic law. It just simply limits what the money in this bill can be used for. It has been my experience and observation during the years here that the Chair has many times said that it is a negative limitation on the use of money and that it is clearly in order, and on that I rest the committee's position.

THE CHAIRMAN: The Chair is prepared to rule. . . .

The Chair has had an opportunity to examine the precedents in this connection, including the precedents to which the gentleman from Georgia has referred and from which he has read. The Chair would also refer to paragraph 1694 of Cannon's Precedents, volume 7, the language being:

> While a limitation may not involve change of existing law or affirmatively restrict executive direction, it may properly effect a change of administrative policy and still be in order.

The Chair has examined additional precedents bearing on this question. The Chair is constrained to hold that section 408 is a restriction on a manner in which the funds can be used, and constitutes a negative limitation, and, therefore, overrules the point of order.

Parliamentarian's Note: A discussion comparing the precedents cited above, 7 Cannon's Precedents §§ 1691 and 1694 can be found in the introduction to § 51, supra. An issue suggested by the debate on May 11, 1960, is whether language in an appropriation bill should be ruled out if it may lead prospectively or indirectly to the imposition of duties on officials, by the operation of other laws. The ruling suggests that only where the duties are imposed directly by the language of the provision in question is it subject to a point of order.

Discretionary Transfer of Funds

§ 52.8 Language in an appropriation bill making an appropriation for specific ob-

jects "together with such amounts [transferred] from other appropriations . . . as may be determined by the Secretary," was conceded to be legislation on an appropriation bill and held not in order.

On May 17, 1951,[8] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 3973), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF INFORMATION

For necessary expenses in connection with the publication . . . and distribution of bulletins, documents, and reports, the preparation, distribution, and display of agricultural motion and sound pictures . . . and the coordination of informational work and programs authorized by Congress in the Department, $1,271,000, together with such amounts from other appropriations or authorizations as are provided in the schedules in the budget for the current fiscal year for such expenses, which several amounts or portions thereof, as may be determined by the Secretary, not exceeding a total of $16,200, shall be transferred to and made a part of this appropriation, of which total appropriation amounts not exceeding those specified may be used for the purposes enumerated as follows: For preparation and display of exhibits, $104,725. . . .

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make a point of order against the language in lines 4 to 9, inclusive, page 46, on the ground that it involves additional duties on the part of the Secretary of Agriculture.

THE CHAIRMAN:[9] Does the gentleman from Mississippi care to be heard on the point of order?

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is sustained.

Requiring Annual Report

§ 52.9 Language in a general appropriation bill requiring that all interchanges of appropriations made under the authority granted the Commissioner of Indian Affairs "shall be reported to Congress in the annual Budget" was held legislation on an appropriation bill and not in order.

On Mar. 1, 1938,[10] the Committee of the Whole was considering H.R. 9621, an Interior Department appropriation. At one point the Clerk read as follows:

For administrative expenses, including personal services in the District of Columbia and elsewhere; not to exceed $2,500 for printing and binding; purchase of periodicals, directories, and books of reference; purchase and oper-

8. 97 CONG. REC. 5468, 5469, 82d Cong. 1st Sess.

9. Aime J. Forand (R.I.).

10. 83 CONG. REC. 2651, 2652, 75th Cong. 3d Sess.

ation of motor-propelled passenger-carrying vehicles; traveling expenses of employees; rent of office and storage space; telegraph and telephone tools; and all other necessary expenses not specifically authorized herein, $204,000; in all, $1,745,000, to be immediately available and to remain available until June 30, 1940: *Provided further,* That not to exceed 5 percent of the amount of any specific authorization may be transferred, in the discretion of the Commissioner of Indian Affairs, to the amount of any other specific authorization, but no limitation shall be increased more than 10 percent by any such transfer. All interchanges under this authorization shall be reported to Congress in the annual Budget.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Chairman, I make the point of order to the language beginning on page 68, line 23, down to the end of the paragraph. It is legislation on an appropriation bill. . . .

THE CHAIRMAN:[11] The Chair is ready to rule.

The gentleman from Pennsylvania makes the point of order that the proviso beginning in line 23 on page 68 provides an expenditure not authorized by existing law. The particular language of this proviso was the subject of a point of order last year as shown by the Record of May 14, 1937, page 4603. The language is very clear and specific and is exactly the same as the language carried in last year's bill with the exception of the last sentence, which reads:

> All interchanges under this authorization shall be reported to Congress in the annual Budget.

It seems to the Chair that the last sentence is clearly subject to a point of order.

The Chair, therefore, sustains the point of order against the proviso beginning in line 23 of page 68.

§ 52.10 Language in a general appropriation bill providing that a statement of any transfer of appropriations made thereunder shall be included in the annual budget was held to be legislation and not in order on an appropriation bill.

On Apr. 23, 1937,[12] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6523), a point of order was raised against the following provision:

The Clerk read as follows:

INTERCHANGE OF APPROPRIATIONS

> Not to exceed 10 percent of the foregoing amounts for the miscellaneous expenses of the work of any bureau, division, or office herein provided for shall be available interchangeably for expenditures on the objects included within the general expenses of such bureau, division, or office; but no more than 10 percent shall be added to any one item of appropriation except in cases of extraordinary emergency, and then only upon the written order of the Secretary of Agriculture: *Provided,* That a statement of any transfers of appropriations made hereunder shall be included in the annual Budget.

11. Marvin Jones (Tex.).

12. 81 CONG. REC. 3801, 3802, 75th Cong. 1st Sess.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Chairman, I make a point of order against the entire section on the ground it is legislation. It gives additional authority to the Secretary of Agriculture and places new duties upon him.

THE CHAIRMAN:[13] The Chair is ready to rule. The proviso at the bottom of the paragraph is clearly legislation, and therefore the point of order of the gentleman from New York [Mr. Snell] is sustained.

Requiring Administration and Disbursement in Certain Manner

§ 52.11 A provision in the District of Columbia appropriation bill providing that the appropriation for public assistance shall be so administered as to constitute the total amount that will be utilized during such fiscal year for such purposes was held to place additional duties upon the Commissioners and therefore legislation on an appropriation bill and not a retrenchment within the Holman rule exception.

On Feb. 1, 1938,[14] the Committee of the Whole was considering H.R. 9181, a District of Columbia appropriation bill. The following proceedings took place:

PUBLIC ASSISTANCE

For the purpose of affording relief to residents of the District of Columbia who are unemployed or otherwise in distress because of the existing emergency, to be expended by the Board of Public Welfare of the District of Columbia by employment and direct relief, in the discretion of the Board of Commissioners and under rules and regulations to be prescribed by the board and without regard to the provisions of any other law, payable from the revenues of the District of Columbia, $900,000, and not to exceed 7½ percent of this appropriation and of Federal grants reimbursed under this appropriation shall be expended for personal services: *Provided*, That all auditing, disbursing, and accounting for funds administered through the Public Assistance Division of the Board of Public Welfare, including all employees engaged in such work and records relating thereto, shall be under the supervision and control of the Auditor of the District of Columbia: *Provided further*, That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered, during such fiscal year, as to constitute the total amount that will be utilized during such fiscal year for such purposes: *Provided further*, That not more than $75 per month shall be paid therefrom to any one family.

MR. [GERALD R.] BOILEAU [of Wisconsin]: Mr. Chairman, I make a point of order against the proviso appearing

13. Franklin W. Hancock, Jr. (N.C.).

14. 83 CONG. REC. 1364, 75th Cong. 3d Sess.

on page 58, line 2, after the word "Columbia" and ending on line 7 with the word "purposes."

I make the point of order that this proviso is legislation on an appropriation bill. . . .

MR. [ROSS A.] COLLINS [of Mississippi]: Mr. Chairman, the language about which the gentleman complains reads as follows:

> *Provided further*, That this appropriation shall be so apportioned and distributed by the Commissioners over the fiscal year ending June 30, 1939, and shall be so administered during such fiscal year as to constitute the total amount that will be utilized during such fiscal year for such purposes.

Unquestionably that is a limitation upon an appropriation and therefore comes within the rules of the House. The object is to save money, and the provision shows on its face that it will save money. . . .

THE CHAIRMAN:[15] . . . The Chair has examined the language employed very carefully, and if I am correct in my construction of that language, it seeks to impose an additional burden upon the Commissioners who are charged with the duty of administering the fund sought to be appropriated. In addition to that, there is nothing apparent in the language of the section that will result in a saving. The inference that we have from the statement of the chairman of the Subcommittee on Appropriations is not sufficient to bring it within the rule that a saving will be effected.

The Chair is therefore of the opinion that the point of order is well taken and so rules.

15. William J. Driver (Ark.).

Additional Determination to That in Pending Language

§ 52.12 Legislation permitted to remain in an appropriation bill may be perfected by germane amendments which do not provide additional legislation, but to a legislative provision in an appropriation bill authorizing transfers between appropriations with the approval of the Director of the Budget an amendment requiring the Director to first determine that such transfers would not result in a deficiency requiring restoration of funds was held to add requirements for additional determinations.

On Feb. 19, 1953,[16] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 3053), a point of order was raised against an amendment, as indicated:

> The Clerk read as follows:
>
> "Military personnel requirements," Department of the Air Force, $115 million; the foregoing amounts under this heading to be derived by transfer from such appropriations available to the Department of Defense for obligation during the fiscal year 1953 as may be designated by the Secretary of Defense with the approval of the Director of the Bureau of the Budget.

16. 99 CONG. REC. 1280, 83d Cong. 1st Sess.

MR. [SAMUEL W.] YORTY [of California]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Yorty: On page 12, line 17, after the word "Budget", insert a new sentence as follows: "Before approving any such transfer, the Director of the Bureau of the Budget shall first determine that such transfer will not result in a deficiency requiring restoration of any of the amount transferred to the appropriation from which the transfer is approved.". . .

MR. [RICHARD B.] WIGGLESWORTH [of Massachusetts]: Mr. Chairman, I make a point of order against the amendment, that it is legislation on an appropriation bill and imposes new duties on the Director of the Bureau of the Budget.

THE CHAIRMAN:[17] Does the gentleman from California desire to be heard on the point of order?

MR. YORTY: Yes, Mr. Chairman. I am simply spelling out one of the conditions under which the transfer of funds is to be approved by the Director of the Bureau of the Budget. This appropriation bill already legislates, in that it requires the approval of the Director of the Bureau of the Budget. I am simply saying that he find a condition precedent before he approves that transfer. I do not think the point of order is well taken.

THE CHAIRMAN: The Chair is ready to rule.

In the opinion of the Chair the amendment contains legislation, contrary to the rules of the House.

The Chair sustains the point of order.

17. Leo E. Allen (Ill.).

Requirement for Promulgation of Regulations

§ 52.13 A paragraph in a general appropriation bill providing that appropriations in the bill available for travel expenses shall be available for expenses of attendance of officers and employees at meetings or conventions "under regulations prescribed by the Secretary," was conceded to be legislation and held not in order.

On May 2, 1951,[18] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 3790), a point of order was raised against the following provision:

The Clerk read as follows:

> Sec. 104. Appropriations in this act available for travel expenses shall be available, under regulations prescribed by the Secretary, for expenses of attendance of officers and employees at meetings or conventions of members of societies or associations concerned with the work of the bureau or office for which the appropriation concerned is made.

MR. [KENNETH B.] KEATING [of New York]: Mr. Chairman, I make the point of order against section 104 that it is legislation on an appropriation bill and involves additional duties.

THE CHAIRMAN:[19] Does the Chair understand that the gentleman from New York raises objection to the para-

18. 97 CONG. REC. 4738, 82d Cong. 1st Sess.

19. Wilbur D. Mills (Ark.).

graph because of the use of the language "under regulations prescribed by the Secretary" in lines 18 and 19?

MR. KEATING: I do object to those words, and feel that that makes the section out of order as it now stands, but I would still press the point of order even with those words eliminated.

MR. [HENRY M.] JACKSON of Washington: I wonder if the gentleman would accept the section if it remains as is except for the elimination of the words "under regulations prescribed by the Secretary."

MR. KEATING: I feel that even with the elimination of those words it would still involve legislation on an appropriation bill, for exactly the same reasons for which the Chair has held section 102 subject to a point of order.

MR. JACKSON of Washington: Mr. Chairman, I concede the point of order.

THE CHAIRMAN: The point of order is sustained.

To the Extent the Secretary Finds Necessary

§ 52.14 In an appropriation bill, providing funds for grants to states for unemployment compensation, language stating "only to the extent that the Secretary finds necessary," was held to impose additional duties and to be legislation on an appropriation bill and not in order.

On Mar. 27, 1957,[20] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

> Grants to States for unemployment compensation and employment service administration: For grants in accordance with the provisions of the act of June 6, 1933, as amended (29 U.S.C. 49–49n), for carrying into effect section 602 of the Servicemen's Readjustment Act of 1944, for grants to the States as authorized in title III of the Social Security Act, as amended (42 U.S.C. 501–503), including, upon the request of any State, the purchase of equipment, and the payment of rental for space made available to such State in lieu of grants for such purpose, for necessary expenses including purchasing and installing of air-conditioning equipment in connection with the operation of employment office facilities and services in the District of Columbia, and for expenses not otherwise provided for, necessary for carrying out title IV of the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 684) and title XV of the Social Security Act, as amended (68 Stat. 1130), $262 million, [of which $12 million shall be available only to the extent that the Secretary finds necessary to meet increased costs of administration resulting from changes in a State law or increases in the numbers of claims filed and claims paid for increased salary costs resulting from changes in State salary compensation plans embracing employees of the State generally over those upon which the State's basic grant (or the allocation for the District of Columbia) was based, which increased costs of administration cannot be provided for by normal budgetary adjustments:] . . .

MR. [JOHN] TABER [of New York]: Mr. Chairman, a point of order.

20. 103 CONG. REC. 4559, 4560, 85th Cong. 1st Sess.

THE CHAIRMAN:[1] The gentleman will state it.

MR. TABER: Mr. Chairman, I make the point of order against the language beginning after the first figure in line 5, with the words "of which" down to the word "adjustments", in line 15, as legislation upon an appropriation bill and not authorized by law.

THE CHAIRMAN: Does the gentleman from Rhode Island wish to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: I do, Mr. Chairman. This language has been carried in the bill for about 10 years, I think. It was first put in, I believe, under the leadership of Mr. Keefe when he was chairman of this subcommittee because we thought it was in the form of a limitation on an appropriation bill and would discourage supplementals and deficiencies that had previously occurred. This $12 million was set aside for the specific reason of taking care of unseen workloads that developed during the year and increased States salaries which by law we are bound to provide when the States increase salaries. So, in order to provide a fund like this that would prevent them from coming back with supplementals each year we agreed on this language. It was the intention of the committee to be a limitation upon an appropriation.

MR. TABER: Mr. Chairman, I should like to add to my point of order that it requires additional duties of the Secretary.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from New York makes the point of order that the words referred to, beginning in line 5 and ending in line 15, are legislation on an appropriation bill.

The Chair has studied the legislation and finds in agreement with the statement of the gentleman from New York that additional duties are imposed upon the Secretary, as shown in line 6, which reads, "that the Secretary finds necessary," and so forth. Therefore, the Chair must uphold the point of order.

1. Aime J. Forand (R.I.).

Mandating Contracting Practices

§ 52.15 To the Departments of State, Justice, Commerce, and the Judiciary appropriation bill an amendment providing that "all repair and overhaul on Civil Aeronautics Administration airplanes costing more than $100 shall be done on contract after submission of bids" was held to be legislation on an appropriation bill and not in order.

On May 3, 1946,[2] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 6056), a point of order was raised against the following amendment:

MR. [JENNINGS] RANDOLPH [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

2. 92 CONG. REC. 4424, 4425, 79th Cong. 2d Sess.

Amendment offered by Mr. Randolph:

On page 56, line 25, strike out "$1,500,000" and insert "$1,200,000."

On page 57, line 9, strike out the period, insert a colon and the following: "*Provided*, That no funds in this paragraph shall be expended for the pay of any employees of the Civil Aeronautics Administration for the maintenance of more than one parts warehouse, nor for the repair or overhaul of aircraft costing more than $100 per airplane: *And provided further*, That all repair and overhaul on Civil Aeronautics Administration airplanes costing more than $100 shall be done on contract after submission of bids. . . ."

MR. [LOUIS C.] RABAUT [of Michigan]: Mr. Chairman, I insist on my point of order. The amendment is a directive under the guise of a limitation in the last proviso.

THE CHAIRMAN:[3] Does the gentleman from West Virginia desire to be heard on the point of order?

MR. RANDOLPH: Not at this point.

THE CHAIRMAN: The Chair is prepared to rule.

MR. RANDOLPH: I am ready to hear the Chair.

THE CHAIRMAN: The gentleman from West Virginia offers an amendment to page 56, line 25, and page 57, line 9, to the bill H.R. 6056. The amendment down to and including the word "airplanes" and the comma, is perhaps nothing more than a limitation and in order. The language following the comma after the word "airplane" seems to require of the Civil Aeronautics Administration other responsibilities and to impose additional duties upon that agency of Government. Therefore it would be legislation and subject to a point of order. The Chair sustains the point of order.

Requiring Subjective Determination of "Full Benefit"

§ 52.16 An amendment in the form of a limitation prohibiting use of an appropriation for promulgation of orders establishing wholesale prices on commodities to be sold at retail which do not give all retail distributors full benefit of the lowest wholesale prices established for any retail distributor was held to impose affirmative duties not already in the law and therefore not in order.

On June 18, 1943,[4] the Committee of the Whole was considering H.R. 2968, a war agencies appropriation bill. The Clerk read as follows:

Amendment offered by Mr. August H. Andresen [of Minnesota]: At the end of the paragraph on page 13 insert the following language: "*Provided further*, That no part of this appropriation shall be used for the promulgation of orders or directives establishing wholesale prices on commodities to be sold at retail, which do not give all retail distributors the full benefit of the lowest wholesale price established for any retail distributor."

3. Wilbur D. Mills (Ark.).

4. 89 CONG. REC. 6126, 6127, 78th Cong. 1st Sess.

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make a point of order against the amendment on the ground that under the guise of limitation it proposes affirmative legislation. It is a proposition to restrict executive discretion. It constitutes legislation and is not in order on an appropriation bill. . . .

THE CHAIRMAN:[5] The Chair is ready to rule. . .

The Chair calls the attention of the committee to the fact that the language attempted to be inserted by the amendment of the gentleman from Minnesota really divides itself into two parts and in order that the Members may understand it the Chair will read the amendment for the information of the committee:

> *Provided further,* That no part of this appropriation shall be used for the promulgation of orders or directives establishing wholesale prices on commodities and articles sold at retail, which do not give all retail distributors the full benefit of the lowest wholesale price established for any retail distributor.

The Chair is of opinion that the first part of the amendment ending with the comma, were it offered alone, would be a limitation within the rules of the House and would not be subject to a point of order; but when the latter part is added, it goes beyond the point of a limitation and imposes upon the officials charged with the administration of this act certain affirmative duties and is subject to a point of order.

The point of order is therefore sustained.

5. John J. Sparkman (Ala.).

Requiring Determination That Recipient "Participates, Cooperates, or Supports"

§ 52.17 To a general appropriation bill providing funds, inter alia, for a national foundation on the arts, an amendment prohibiting payment of such funds to any person or organization which supports any action resulting in the destruction of a structure of historic or cultural significance [thus requiring the official administering the program to make certain new determinations], was held to impose additional duties and was ruled out as legislation.

On Apr. 5, 1966,[6] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 14215), a point of order was raised against the following amendment:

MR. [WILLIAM B.] WIDNALL [of New Jersey]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Widnall: Page 42, before the period in line 2, insert the following: "*Provided further,* That the amounts appropriated under this paragraph shall be available to any organization, or entity, only on condition that not more than 12½ percent of the

6. 112 CONG. REC. 7688, 7689, 89th Cong. 2d Sess.

amount so made available be expended in any one State: *And provided further,* That no part of any amount appropriated under this paragraph shall be used to make grants to any organization, or entity, or to pay the salary of (or to cover expenses incurred by) any person who, or organization which, in his, or its, official, or unofficial capacity, participates in, cooperates with, or supports any action which could result in the destruction of any structure, or place, of local or national historic or cultural significance, including the Metropolitan Opera House located at 39th Street and Broadway in New York City".

MR. [WINFIELD K.] DENTON [of Indiana]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN: [7] The gentleman will state the point of order.

MR. DENTON: Mr. Chairman, this changes existing legislation. It provides that there should be quotas among the States when the existing legislation does not contain such a provision. This is legislation that changes existing legislation.

THE CHAIRMAN: Does the gentleman from New Jersey desire to be heard on the point of order?

MR. WIDNALL: Mr. Chairman, I believe this is a type of amendment that has been accepted before on similar legislation. It seeks to protect the interests of the States in these grants and in the distribution of funds under this program. I think it is a very equitable amendment and should be accepted by the Committee.

THE CHAIRMAN: The Chair is prepared to rule.

This amendment would impose new duties on the officials charged with the administration of this program in determining whether grants should be made to any person or organization which participates and cooperates with or supports any action which could result in the destruction of any structure or place of local or national historic or cultural significance.

For the reasons above stated, the amendment is obviously legislation on an appropriation bill.

The Chair sustains the point of order.

New Determinations Not Required by Law in Making Allocation of Funds

§ 52.18 Where existing law (20 USC § 238) provides, in its allotment formula for determining entitlements of local educational agencies to a certain category of assistance in federally affected areas, that the Commissioner shall determine the "number of children who . . . resided with a parent employed on federal property situated in the same State as such agency or situated within reasonable commuting distance from the school district of such agency", an amendment to an appropriation bill containing funds for "impacted school assistance" prohibiting the use of funds in that bill for assistance "for children whose parents are em-

7. Charles M. Price (Ill.).

ployed on Federal property outside the school district of such agency" was held to impose the additional duty on federal officials of determining whether the parent was employed within the school district and was ruled out as legislation in violation of Rule XXI clause 2.

On June 26, 1973,[8] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 8877), a point of order was raised against the following amendment, and proceedings ensued as indicated below:

The Clerk read as follows:

Amendment offered by Mr. [William] Lehman [of Florida]: Page 19, line 19, after "Act" insert the following: ": *Provided further,* That none of the funds contained herein shall be available to make any payment to a local educational agency under the Act of September 30, 1950, which is attributable to children described in section 3(b) of title I whose parents are employed on Federal property outside the school district of such agency".

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, a point of order.

THE CHAIRMAN:[9] The gentleman will state it.

MR. FLOOD: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill.

First, Mr. Chairman, this amendment would change the existing law in that it would distinguish between children whose parents work in a key school district and children whose parents work outside the school district. The present law which we have makes absolutely no such distinction.

The second point, Mr. Chairman, is that this would obviously impose additional duties upon whatever Federal officials there are in the entire program and would require them to establish procedures with all sorts of red tape to determine where the place of work is, whether they work there or not, whether the parents were in the school district or not.

Such procedures do not exist in the law because they are not required under present law. . . .

MRS. [PATSY T.] MINK [of Hawaii]: Mr. Chairman, I rise in support of the point of order made by the chairman of the subcommittee of the Appropriations Committee against the amendment offered by the gentleman from Florida (Mr. Lehman). Mr. Chairman, the point of order I wish to concur in is that the language of the amendment is legislation in an appropriation bill. It requires a different method of allocating funds to eligible school districts than that provided in the authorizing legislation, Public Law 81–874.

Mr. Chairman, I realize that the gentleman from Florida has carefully phrased his amendment in an attempt to avoid this prohibition in clause 2 of rule XXI. But in this attempt, the gentleman has failed. The exception to the rule dealing with a retrenchment of

8. 119 CONG. REC. 21393, 21394, 93d Cong. 1st Sess.

9. Chet Holifield (Calif.).

appropriations is subject to the qualification that it must not impose additional administrative burdens and ministerial duties on the administration in carrying out the basic law for which the appropriation is made. In this regard, Mr. Chairman, I call attention to the annotations to rule XXI, clause 2, appearing on page 472 of the House Rules and Manual for the 93d Congress in which it is noted:

> But such limitations must not give affirmative directions (IV, 3854–3859, 3975; VII, 1637), and must not impose new duties upon an executive officer (VII, 1676; July 31, 1969, p. 21631–33; June 11, 1968, p. 16712), and must not be coupled with legislation not directly instrumental in affecting a reduction (VII, 1555, 1557).

I have checked to determine whether or not any additional ministerial duties will be required in carrying out the amendment offered by the gentleman from Florida and I am advised that this will require administrators of the program to make an additional extraction from survey data gathered from parents to determine whether or not the place of work of the parent is located within or without the school district.

Mr. Chairman, this is not a simple task. In many school systems, these survey forms run into many thousands and nationwide, this would multiply this ministerial task by each of the several thousand school districts participating in Public Law 91–874.

The ruling which I seek is consistent with the rulings of the Chair June 26, 1968, February 19, 1970, and April 14, 1970, found on pages H18894, H1088, and H3036 of the Congressional Record for those respective dates. I urge that the Chair sustain the point of order. . . .

MR. [SIDNEY R.] YATES [of Illinois]: I suggest, Mr. Chairman, this is an appropriate retrenchment under the Holman Rule and that the legislation is appropriate under that rule.

THE CHAIRMAN: . . . The Chair feels that while the amendment is in the form of a limitation it also would require additional determinations not now required by law. Since it would require additional duties, the amendment is legislation on the appropriation bill and not in order.

The Chair sustains the point of order.

Parliamentarian's Note: It should be emphasized that the provisions in question above did not comprise a negative prohibition on the availability of funds for an otherwise eligible class of recipients, but rather a redefinition of the entire class, contrary to that class of eligible recipients found in existing law. See also §§ 36.8–36.12, supra, for discussion of other examples of provisions affecting allocation of educational assistance.

New Direction in Fund Distribution Not Required by Law

§ 52.19 A provision in an amendment to a general appropriation bill denying the use of any funds for im-

pacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[10] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:

TITLE I—OFFICE OF EDUCATION

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[11] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard further?

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say

10. 116 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

11. Chet Holifield (Calif.).

first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'Hara), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds appropriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Requiring Investigation

§ 52.20 To an appropriation bill an amendment imposing

new conditions and formulas for determining amounts to be charged as rent for public housing units was held to alter existing law and ruled out of order as legislation on an appropriation bill.

On Mar. 20, 1952,[12] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7072), a point of order was raised against the following provision:

> The Clerk read as follows:
>
> Amendment offered by Mr. [Hubert B.] Scudder [of California]: On page 24, after line 6, insert the following: "*Provided further,* That the Public Housing Administration shall investigate the income of the occupants of each housing unit, and the rental for each such unit shall be the rental established by law or 20 percent of the total income of the occupants thereof, whichever is the greater."
>
> MR. [ALBERT] THOMAS [of Texas]: Mr. Chairman, I make a point of order against the amendment, but I reserve it at this time. . . .
>
> THE CHAIRMAN:[13] The Chair is ready to rule.
>
> The gentleman from California has offered an amendment, to which the gentleman from Texas [Mr. Thomas] makes a point of order.
>
> The Chair has had an opportunity to examine the amendment offered by the gentleman from California, and is of the opinion that the amendment proposes to add new conditions regarding determination of rentals of public housing thus altering existing law. The amendment also would impose additional duties not required by existing law upon housing officials.
>
> It is the opinion of the Chair, therefore, that the amendment is legislation on an appropriation bill and the point of order is sustained.

Affirmative Directive to Recipient of Funds; Imposing Duty to Monitor Actions of Recipients

§ 52.21 An amendment to an appropriation bill in the form of a limitation not negative in effect (rather: providing that none of the funds appropriated would be used for support of military training courses in civil schools unless the authorities of such institutions make known to prospective students certain information) was held to be legislation and not in order.

On Feb. 14, 1936,[14] the Committee of the Whole was considering H.R. 11035, a War Department appropriation bill. At one point the Clerk read as follows:

> For the procurement, maintenance, and issue, under such regulations as

12. 98 CONG. REC. 2638, 2639, 82d Cong. 2d Sess.

13. Wilbur D. Mills (Ark.).

14. 80 CONG. REC. 2091–94, 74th Cong. 2d Sess.

may be prescribed by the Secretary of War, to institutions at which one or more units of the Reserve Officers' Training Corps are maintained, of such public animals, means of transportation, supplies, tentage, equipment, and uniforms as he may deem necessary . . . $4,067,996; of which $400,000 shall be available immediately: . . . *Provided further,* That none of the funds appropriated elsewhere in this act, except for printing and binding and pay and allowances of officers and enlisted men of the Regular Army, shall be used for expenses in connection with the Reserve Officers' Training Corps.

MR. [FRED] BIERMANN [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Biermann: On page 59, line 6, after the word "corps", insert "*Provided further,* That none of the funds appropriated in this act shall be used for or toward the support of military training courses in any civil school or college the authorities of which choose to maintain such courses on a compulsory basis, unless the authorities of such institutions provide, and make known to all prospective students by duly published regulations, arrangements for the unconditional exemption from such military courses, and without penalty, for any and all students who prefer not to participate in such military courses because of convictions conscientiously held, whether religious, ethical, social, or educational, though nothing herein shall be construed as applying to essentially military schools or colleges."

MR. [TILMAN B.] PARKS [of Arkansas]: Mr. Chairman, I make the point of order that the amendment is legislation on an appropriation bill and is in no sense a limitation. . . .

MR. BIERMANN: Mr. Chairman, the purpose of this amendment is to make an exception of the compulsory feature of this military training for those students who have a genuine conscientious scruple against taking military training. The amendment is of the same piece of cloth as the amendment of the gentleman from New York [Mr. Marcantonio], which has been ruled in order many times in this House.

THE CHAIRMAN:[15] The Chair is ready to rule. The first part of the amendment offered by the gentleman from Iowa is very much the same as the amendment offered by the gentleman from New York [Mr. Marcantonio], but there is further language in the amendment offered by the gentleman from Iowa which involves legislation which is as follows:

> That unless the authorities of such institutions provide and make known to all prospective students by duly published regulation—

And so forth. That is an affirmative command and direction to the officers of the institution. The Chair thinks the amendment is not in order because it provides legislation on an appropriation bill, and, therefore, sustains the point of order.

§ 52.22 To a paragraph of an appropriation bill making appropriations for soil conservation payments, an amendment providing that no payment in excess of $1,000 shall be paid to any one person or corporation

15. Claude V. Parsons (Ill.).

unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made was held to be legislation and not in order, in that, under the guise of a limitation it provided affirmative directions that imposed new duties.

On Mar. 28, 1939,[16] the Committee of the Whole was considering H.R. 5269, an Agriculture Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [Francis H.] Case of South Dakota: Page 89, line 9, after the colon, insert "*Provided further,* That of the funds in this paragraph no payment in excess of $1,000 shall be paid for any one farm operated by one person: *Provided further,* That no payment in excess of $1,000 shall be paid to any one person or corporation unless at least one-half of the amounts so paid shall be paid to sharecroppers or renters of farms for which payments are made.". . .
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment proposed by the gentleman from South Dakota that it is legislation under the guise of a limitation. . . .
>
> MR. CASE of South Dakota: Mr. Chairman, this amendment is a limitation on payments; and in the present instance one would have to turn from the gentleman from Missouri as chairman of the subcommittee to the gentleman from Missouri as parliamentarian. The Chair will find the following on page 62 of Cannon's Procedure:
>
> > As an appropriation bill may deny an appropriation for a purpose authorized by law, so it may by limitation prohibit the use of money for part of the purpose while appropriating for the remainder of it. It may not legislate as to qualifications of recipients, but may specify that no part shall go to recipients lacking certain qualifications.
>
> In this particular instance the qualification is set up for the landlord that he shall give at least half this payment to his sharecropper or renter. Viewed in this light I believe the Chair will find it is a pure limitation.
>
> MR. CANNON of Missouri: Mr. Chairman, the proposed amendment couples with the purported limitation affirmative directions and is legislation in the guise of a limitation.
>
> THE CHAIRMAN:[17] Cannon's Precedents, page 667, volume 7, 1936, section 1672, states:
>
> > An amendment may not under guise of limitation provide affirmative directions which impose new duties.
>
> The last part of the pending amendment states:
>
> > Unless at least one-half of the amount so paid shall be paid to these croppers or renters of farms for which payments are made.
>
> It is the opinion of the Chair that this requires affirmative action; therefore the point of order is sustained.

16. 84 CONG. REC. 3427, 3428, 76th Cong. 1st Sess.

17. Wright Patman (Tex.).

Limitation is Negative, Not Affirmative Direction

§ 52.23 A limitation on a general appropriation bill must be in effect a negative prohibition which proposes an easily discernible standard for determining the application of the use of funds, and not an affirmative direction to an executive officer.

On May 5, 1960,[18] The Committee of the Whole was considering H.R. 11998, a Defense Department appropriation bill. The Clerk read as follows:

> Amendment offered by Mr. [James G.] O'Hara of Michigan: On page 45, after line 6, insert the following:
>
> "Sec. 535. No funds appropriated in this Act shall be used to pay any amount under a contract, made after the date of enactment of this Act, which exceeds the amount of a lower bid if such contract would have been awarded to the lower bidder but for the application of any policy which favors the award of such a contract to a person proposing to perform it in a facility not owned by the United States."
>
> MR. [GERALD R.] FORD [of Michigan]: Mr. Chairman, I am constrained to make a point of order against the amendment offered by the gentleman from Michigan [Mr. O'Hara]. It seems to me this language is clearly subject to a point of order in that it imposes additional duties on the Secretary of Defense. . . .
>
> MR. O'HARA of Michigan: Mr. Chairman, I would like to suggest in connection with the point of order that this is a limitation on an appropriation. It does not attempt to impose any additional duties on the executive branch nor does it attempt to legislate in an appropriation bill.
>
> THE CHAIRMAN:[19] The Chair is ready to rule. . . .
>
> The Chair calls the attention of the committee to previous rulings made on similar points of order and would like in addition to call to the attention of the Committee the ruling that appears in 4 Hinds' Precedents, page 660, in which it is clearly indicated that a limitation is permitted on a general appropriation bill that in effect provides a negative prohibition on the use of the money, and no affirmative direction on the executive branch.
>
> In the opinion of the Chair, the language here offered is a negative prohibition and the Chair, therefore, overrules the point of order.[20]

Requiring Special Screening of Each Loan Application

§ 52.24 Language in the Agriculture Department appro-

18. 106 CONG. REC. 9641, 86th Cong. 2d Sess.

19. Eugene J. Keogh (N.Y.).

20. 4 Hinds' Precedents Sec. 3975. See also id. at Sec. 3968, where discussion is had concerning the proposition that limitations must be a negative restriction on the use of money and not an affirmative direction to an executive officer. See also 7 Cannon's Precedents § 1694.

priation bill in the form of a limitation which provided in effect that no part of the appropriation shall be paid to any employee of the department or agencies thereof to engage in the execution of any loan which has not first been offered to and refused by private lending agencies customarily engaged in making such loans at comparable rates, was held to provide additional functions for employees not required under existing law to determine customary loan practices, and therefore legislation on an appropriation bill.

On Apr. 19, 1943,[1] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 2481), a point of order was raised against the following provision:

> Sec. 8. None of the funds herein appropriated or authorized hereby to be expended shall be used to pay the compensation or expenses of any officer or employee of the Department of Agriculture, or of any bureau, office, agency, or service of the Department or any corporation, institution, or association supervised thereby, who engages in, or directs or authorizes any other officer or employee of the Department or of any such bureau, office, agency, service, corporation, institution, or association to engage in the negotiation, solicitation, or execution of any loan which has not first been offered to and refused by the private lending agencies customarily engaged in making loans of similar character and at comparable rates in the region where such loan is proposed to be made. . . .
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Chairman, I make a point of order against section 8 on the ground that this section is legislation on an appropriation bill. . . .
>
> MR. [CLIFFORD R.] HOPE [of Kansas]: Mr. Chairman, I simply call the attention of the Chair to the fact that while many of the Government lending agencies or semi-Government lending agencies are not included in this bill, yet there are appropriations here for the Commodity Credit Corporation, the Rural Electrification Administration, and Federal Farm Mortgage Corporation, all of which make loans to farmers. If this provision stays in the bill it means that the officials of these organizations must in addition to the duties which are imposed upon them by law make an investigation in the case of every application, to determine whether or not the application has been offered to and refused by private lending agencies customarily engaged in making loans of a similar character in the region where the loan is to be made. It has been held time and time again that where a provision of this kind imposes duties upon a Federal official which are not required by law it is legislative in character and subject to a point of order. . . .
>
> THE CHAIRMAN:[2] The Chair is ready to rule. . . .

1. 89 CONG. REC. 3600, 3601, 78th Cong. 1st Sess.

2. William M. Whittington (Miss.).

The matter is not altogether free from doubt, but in view of the language of section 8, and in view of the additional duties imposed and the additional determinations that must be made, it seems to the Chair that such language is legislative in character. Therefore the Chair sustains the point of order.

Requirement of Satisfactory Performance as Condition Precedent

§ 52.25 An amendment to a general appropriation bill in the form of a limitation providing that no part of the money therein appropriated shall be paid to any state unless and until the Secretary of Agriculture was satisfied that state had complied with certain conditions was held to be legislation imposing new discretionary authority on a federal official.

On Apr. 23, 1937,[3] during consideration in the Committee of the Whole of the Agriculture Department appropriation bill (H.R. 6523), a point of order was raised against the following amendment:

The Clerk read as follows:

Amendment offered by Mr. [Jesse P.] Wolcott [of Michigan]: Page 72, line 13, after the word "probation", insert "*Provided further,* That no part of the money herein appropriated shall be paid to any State unless and until, to the satisfaction of the Secretary of Agriculture, such State shall have provided by law or regulation modern means and devices to safeguard against accidents and the loss of life on highway projects within such State."

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I make the point of order against the amendment. It is legislation under the guise of a limitation. The amendment provides affirmative direction which is clearly legislation on an appropriation bill.

MR. WOLCOTT: Mr. Chairman, I would like to be heard on the point of order.

THE CHAIRMAN:[4] The Chair will be pleased to hear the gentleman from Michigan.

MR. WOLCOTT: Mr. Chairman, I call the attention of the Chair to the fact we have previously authorized appropriations to be made under the Federal Highway Act which was passed and approved by the President on July 11, 1916. Yearly there is authorized under that act an appropriation of $125,000,000 which is disbursed according to regulations set up not only by the Congress in the organic act but also by regulations of the Bureau of Public Roads. If the Bureau of Public Roads under the terms of the act can withhold any funds which have been authorized by the Congress from any of the States by reason of a regulation which it might set up, likewise the Bureau can limit the expenditure within any State by providing certain traffic safeguards to those using the highways as a condition precedent to the spend-

3. 81 CONG. REC. 3783, 3784, 75th Cong. 1st Sess.

4. Franklin W. Hancock, Jr. (N.C.).

ing of Federal funds in the construction and maintenance of Federal-aid roads. For this reason my amendment is purely a limitation upon the distribution among and the use of the highway funds by the State.

THE CHAIRMAN: The Chair is ready to rule.

The Chair sustains the point of order on the ground that although the amendment is drawn in the guise of a limitation, it constitutes new legislation in that it imposes additional duties upon the Secretary.

Change of Official Authorized to Make Expenditure

§ 52.26 An amendment providing that certain funds for river and harbor projects shall be allocated and expended by the Secretary of War and the Chief of Engineers, rather than the Secretary upon the advice of the Chief of Engineers as required by existing law, was held to constitute a change in existing law and was therefore not in order on an appropriation bill.

On Feb. 14, 1936,[5] during consideration in the Committee of the Whole of the War Department appropriation bill (H.R. 11035), a point of order was raised against the following amendment:

MR. [JOSEPH J.] MANSFIELD [of Texas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Mansfield: On page 68, after the colon, at the end of line 10, insert the following:

"*Provided further,* That expenditures under this appropriation for river and harbor improvements shall be limited to projects that have heretofore been specifically authorized by Congress and all projects so authorized shall be taken under consideration by the Secretary of War and the Chief of Engineers, and the funds shall be allocated and expended in such manner as in their judgment will best serve the interests of commerce and navigation."

MR. [TILLMAN B.] PARKS [of Arkansas]: Mr. Chairman, I desire to make a point of order against that because it is legislation on an appropriation bill.

I invite the attention of the Chair to section 627 of title XXXIII of the Code. The gist of that section is that when an appropriation has been made in lump sum and there should be a surplus for the projects the lump sum was intended to cover that, that surplus may be applied to other authorized projects as determined by the Secretary of War upon the advice of the Chief of Engineers. I also cite the chairman's attention to section 622.

MR. MANSFIELD: Mr. Chairman, the amendment does not change existing law. If the amendment is adopted, the money will be expended just exactly as it has been expended ever since the Budget was adopted. It is a limitation

5. 80 CONG. REC. 2103, 74th Cong. 2d Sess.

and not legislation. It simply provides that the money shall be expended in the manner in which the law now prescribes.

THE CHAIRMAN:[6] The Chair is ready to rule. The section quoted by the gentleman from Arkansas [Mr. Parks], 627 of United States Code, title XXXIII, states how funds for river and harbor improvements shall be expended. Among other things, it says that the allotments to the respective works consolidated shall be made by the Secretary of War upon recommendation by the Chief of Engineers.

The language of this amendment is in order down to and including the word "Congress," but then it seeks to make mandatory upon the Secretary of War and the Chief of Engineers the allocation of these funds. The organic law provides that these allocations shall be made by the Secretary of War and by him alone, although upon the recommendation of the Chief of Engineers.

The Chair thinks that it is legislation upon an appropriation bill and therefore sustains the point of order.

Approval of Expenditure Rates

§ 52.27 Language in an appropriation bill making money available for the hire of draft animals with or without drivers at local rates approved by the director was held legislative in nature and not in order.

On May 19, 1937,[7] during consideration in the Committee of the Whole of the Interior Department appropriation bill (H.R. 6958), a point of order was raised against the following provision:

The Clerk read as follows:

Salaries and expenses, National Capital parks: For administration, protection, maintenance, and improvement of the Mount Vernon Memorial Highway, Arlington Memorial Bridge, George Washington Memorial Parkway, Federal parks in the District of Columbia, and other Federal lands authorized by the act of May 29, 1930 (46 Stat. 482), including the pay and allowances in accordance with the provisions of the act of May 27, 1924, as amended, of the police force for the Mount Vernon Memorial Highway and the George Washington Memorial Parkway, and the purchase of one passenger-carrying automobile and operation, maintenance, repair, exchange, and storage of three automobiles, revolvers, ammunition, uniforms, and equipment, per-diem employees at rates of pay approved by the Director not exceeding current rates for similar services in the District of Columbia, the hire of draft animals with or without drivers at local rates approved by the Director, traveling expenses and carfare, and leather and rubber articles for the protection of public property and employees, $176,000.

MR. [JOHN] TABER [of New York]: Mr. CHAIRMAN, I make a point of order on the last paragraph. It creates additional duties and imposes discretion in the Director of the Service. This language appears on page 114, line 23. It

6. Claude V. Parsons (Ill.).

7. 81 CONG. REC. 4814, 75th Cong. 1st Sess.

imposes additional duties on the Director. . . .

THE CHAIRMAN:[8] The Chair inquires of the gentleman as to whether or not this language is intended to increase or add new duties to the Director?

MR. [JED] JOHNSON of Oklahoma: I would say it does not, and restricts the rates. It states they are not to exceed the current rates.

THE CHAIRMAN: Are these draft animals hired now with or without drivers?

MR. JOHNSON of Oklahoma: I am not sure I can give the Chair that information.

MR. [JAMES G.] SCRUGHAM [of Nevada]: They are hired with or without.

THE CHAIRMAN: The Chair is trying to ascertain whether or not this changes existing law; that is, whether there is a change in the method in which these animals have to be hired.

MR. JOHNSON of Oklahoma: It is my information at the present time they are hired either way, with or without.

THE CHAIRMAN: What is the necessity for this language, then?

MR. JOHNSON of Oklahoma: I may say to the Chair it has been in the appropriation bill several years and there have been no changes.

THE CHAIRMAN: The fact it has been carried in previous bills does not necessarily mean it is in order. Unless the gentleman can cite some provision of law which would control the question, the Chair is of the opinion that the point of order is good.

In the absence of a citation, the Chair sustains the point of order.

8. Jere Cooper (Tenn.).

Travel Expenses and Attendance at Meetings at Discretion of Commission

§ 52.28 Appropriations for traveling expenses, including expenses of attendance at meetings considered necessary by the National Bituminous Coal Commission, in the exercise of its discretion, for the efficient discharge of its responsibilities were held authorized by a law permitting inclusion of such language in a general appropriation bill.

On Mar. 14, 1939,[9] the Committee of the Whole was considering H.R. 4852, an Interior Department appropriation. The Clerk read as follows, and proceedings ensued as indicated below:

> Salaries and expenses: For all necessary expenditures of the National Bituminous Coal Commission in performing the duties imposed upon said Commission by the Bituminous Coal Act of 1937, approved April 26, 1937 (50 Stat. 72), including personal services and rent in the District of Columbia and elsewhere; traveling expenses, including expenses of attendance at meetings which, in the discretion of the Commission, are necessary for the efficient discharge of its responsibilities . . . $2,900,000. . . .

9. 84 CONG. REC. 2739, 2740, 76th Cong. 1st Sess.

MR. [JOHN] TABER [of New York]: Mr. CHAIRMAN, A POINT OF ORDER.

THE CHAIRMAN:[10] The gentleman will state it.

MR. TABER: I make a point of order against the paragraph on the ground it delegates additional power and discretion to the Commission, and I call particular attention to lines 23, 24, and 25 of page 9, which also contain the words "in the discretion of the Commission."

It seems to me this makes an appropriation and leaves the amount of the appropriation which shall be spent to the discretion of the Commission or gives the Commission power to determine whether the appropriation should be made. It is the same thing as delegating authority to the Commission to make an appropriation, and is clearly legislation.

MR. [JED] JOHNSON of Oklahoma: Mr. Chairman, I desire to be heard in opposition to the point of order.

If the distinguished gentleman from New York will read title V, section 83, he will find full and ample authority for the language to which he objects. . . .

THE CHAIRMAN: The Chair is ready to rule. The Chair rules that the inclusion of the words "in the discretion of the Commission" is probably covered by the citation given by the gentleman from Oklahoma [Mr. Johnson]. Title V, section 83, of the United States Code provides:

> That no money appropriated by any act shall be expended for membership fees or dues of any officer or employee of the United States in any society or association, etc., or for the expenses or attendance of any person at any meeting or convention of members of any society or association unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purpose and are provided for in express terms in some general appropriation.

The language in the paragraph under consideration seems to comply with that provision, and the point of order is overruled.

Parliamentarian's Note: This statutory authority, now contained in 5 USC § 5946, and 5 USC § 4110, also specifically authorizes appropriations for attendance at any meetings necessary to improve an agency's efficiency. Thus, new discretionary authority is not conferred by this language, since the law provides for its inclusion in a general appropriation bill.

No Funds Except Where Secretary Determines National Security Dictates

§ 52.29 To a proviso in a general appropriation bill denying the use of funds to pay price differentials on contracts made for the purpose of relieving economic dislocations, an amendment exempting from that prohibition contracts determined by the Secretary of the Army pursuant to existing laws and regulations as not to be inappropriate therefor by

10. Frank H. Buck (Calif.).

reason of national security considerations was ruled out as legislation imposing new duties on the Secretary, absent any showing of existing provisions of law requiring such a determination to be made.

On Sept. 16, 1980,[11] during consideration in the Committee of the Whole of H.R. 8105, the Defense Department appropriation bill, a point of order was sustained against an amendment offered to a provision of the bill as indicated below:

> *Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further,* That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

The Clerk read as follows:

> Amendment offered by Mr. [Joseph P.] Addabbo [of New York]: Page 41, line 23, strike out "*Provided further*" and all that follows through "economic dislocations:" on page 42, line 1, and insert in lieu thereof "*Provided further,* That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than contracts made by the Defense Logistics Agency and such other contracts of the Department of Defense as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations:". . .

MR. [JACK] EDWARDS of Alabama: Mr. Chairman, I make a point of order against the amendment as legislation in a general appropriation bill, and therefore in violation of clause 2 of rule XXI.

I respectfully direct the attention of the Chair to Deschler's Procedure, chapter 25, section 11.2 which states:

> It is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make.

I also respectfully direct the attention of the Chair to section 843 of the House Manual, which states in part:

> The fact that a limitation on the use of funds may . . . impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken under existing law.

The amendment prohibits the payment of price differentials on contracts except "as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations."

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense

11. 126 CONG. REC. 25606, 25607, 96th Cong. 2d Sess.

which is not now required under current law.

Although the determination is limited "pursuant to existing laws and regulations", there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law, and require this new determination. . . . Mr. Chairman, the amendment prohibits the payment of price differentials on contracts except—and I quote:

> As may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations.

The exception makes the availability of funds for payment of price differentials contingent on a substantive determination by the Secretary of Defense which is not now required under the current law. Although the determination is limited "pursuant to existing laws and regulations," there is no existing law at the present time, and if this amendment is enacted, it will constitute the existing law and require this new determination.

I would urge that the Chair rule that this amendment is out of order. . . .

THE CHAIRMAN:[12] The Chair is ready to rule.

The amendment would appear to call for a determination by the Secretary of Defense as to appropriateness by reason of national security considerations. Unless the gentleman from New York (Mr. Addabbo) can cite to the Chair those provisions of existing law requiring such determinations with respect to defense contracts, the Chair must conclude that the amendment would impose new duties upon the Secretary and would constitute legislation.

MR. ADDABBO: I accept the point of order, Mr. Chairman.

THE CHAIRMAN: The Chair has sustained the point of order.

Making Lesser Determination Than That Contemplated by Law

§ 52.30 To a section of a general appropriation bill exempting cases where the life of the mother would be endangered if the fetus were carried to term from a denial of funds for abortions, an amendment exempting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health, and the amendment did not therefore require any different or more onerous determinations.

On June 27, 1984,[13] during consideration in the Committee of the Whole of the Treasury Department and Postal Service appro-

12. Daniel D. Rostenkowski (Ill.).

13. 130 CONG. REC. ——, 98th Cong. 2d Sess.

priation bill (H.R. 5798), an amendment was offered to the bill as follows:

The Clerk read as follows:

> Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, under such negotiated plans after the last day of the contracts currently in force. . . .
>
> Sec. 619. The provisions of section 618 shall not apply where the life of the mother would be endangered if the fetus were carried to term.

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Schroeder: On page 51, in line 6, delete "life" and insert in lieu thereof "health". . . .

MR. [CHRISTOPHER H.] SMITH [of New Jersey]: Mr. Chairman, this is legislating on an appropriations bill, in violation of rule XXI, clause 2, and I ask that it be ruled in such a way by the Chair. . . .

MRS. SCHROEDER: Mr. Chairman, clause 2(b) of rule XXI states, "No provision changing existing law shall be reported in any general appropriation bill. . . ." Out of this language comes the general restriction prohibiting the consideration of legislation as part of an appropriation bill. One way the Chair decides whether a limitation constitutes legislation is to determine whether the provision adds new affirmative directions for administrative officers.

Clearly, section 619 of H.R. 5798 would have been subject to a valid point of order, had any Member sought to raise one. The "life of the mother" exception to a limitation on funding for abortions on an appropriations measure has on numerous occasions been ruled out of order. This happened last year on this very legislation.

But, no Member raised that point of order on section 619. My amendment seeks to amend section 619 by enlarging the exception to apply to the "health of the mother," rather than to the "life of the mother." The appropriate test is not whether section 619, as amended, would be subject to a point of order but, rather, the test is whether my amendment adds new or different affirmative directions to an administrative officer. The question is whether my amendment would change the nature of the legislation already on this bill.

To answer that question, we must refer to section 618 of the bill, which prohibits the use of funds appropriated by the bill to pay for an abortion or for administrative expenses in connection with any health plan under the Federal Employees Health Benefit Program [FEHBP] which provides benefits or coverages for abortions. Clearly, the first part of this section is a nullity, because there is no authorization to use one penny appropriated by the bill to pay directly for an abortion. The operative language is the second part.

The administrative burden imposed by section 619 is that the Director of the Office of Personnel Management is required to review contracts with health care providers to ensure that they provide no reimbursement for abortions, unless the life of the mother

is at stake. Examining those same contracts to ensure that they provide no reimbursement for abortions unless the health of the mother is at stake is precisely the same administrative burden. Each involves reviewing 130 contracts to see whether certain language appears in them. There is no different administrative burden.

Arguably, section 619 creates another administrative burden which requires the Director of the Office of Personnel Management to monitor the implementation of health benefit plans to ensure compliance with the restriction. In this role, section 619 asks the Director of the Office of Personnel Management to second guess doctors and insurance carriers to decide whether the life of the mother would truly have been endangered if the fetus had been carried to term. Undoubtedly, this is an affirmative obligation which is nowhere authorized in law and which the Director of the Office of Personnel Management is uniquely unqualified to perform.

My amendment reduces this administrative obligation. If the Director of the Office of Personnel Management were obliged to ensure compliance with section 619, as amended, he would merely have to determine whether the health of the mother would have been endangered if the fetus were carried to term. This is a much smaller burden.

The life of the mother is a narrow subset of the health of the mother. Medical personnel can say with far greater assurance that the health of a patient might be impaired than that the life of the patient might be lost. To make a determination that the life of the mother would be endangered if the fetus were carried to term, one must make a prior determination that the health of the mother was also endangered. Hence, section 619, as amended by my amendment, would impose a part of the administrative burden imposed by section 619, as reported, but a substantially reduced part. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

Under the precedents, a legislative provision permitted to remain in a general appropriations bill may be perfected by amendment so long as the amendment does not add further legislation. The Chair would refer to Mr. Deschler, chapter XXVI, section 2.3.

In the opinion of the Chair, the determinations required by section 619 of this bill, the present bill, as to whether the life of the mother is in danger necessarily subsume determinations as to whether the health of the mother is in danger and, for that reason, the amendment adds no different or more onerous requirements for medical determination to those already required and contained in section 619.

The Chair, therefore, would overrule the gentleman's point of order.

Requiring Determination of Interest Costs

§ 52.31 Language in a general appropriation bill prohibiting the use of funds therein as contributions to international organizations in excess of the U.S. share of the organization's assessment budget after deducting inter-

14. Anthony C. Beilenson (Calif.).

est costs for loans through external borrowing was ruled out as legislation, requiring federal officials to determine certain interest costs, a duty not discernably required by existing law.

On Dec. 9, 1982,[15] during consideration in the Committee of the Whole of the Departments of Commerce, Justice, State, and the Judiciary appropriation bill (H.R. 6957), a point of order against a provision was sustained as follows:

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Chairman, I have a point of order to the proviso on page 30.

The portion of the bill to which the point of order relates is as follows:

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties, conventions, or specific Acts of Congress, including funds for the payment of 1983 assessed contributions to the Inter-American Institute for Co-operation on Agriculture, $449,815,000: *Provided*, That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization in excess of the United States share of the organization's assessment budget after deducting from that budget any interest costs for loans incurred on or after October 1, 1982 through external borrowing. . . .

A major test of whether a provision in an appropriations bill constitutes legislation under clause 2 of rule XXI is whether the provision imposes on the Executive a new duty not mandated in existing law.

With respect to the issue addressed in the proviso, it is not the normal practice of these international organizations to engage in external borrowing. Thus, U.S. assessed contributions are not normally used for this purpose.

In the event that such organizations were to engage in external borrowing and to pay off such loans from their assessed budgets, the executive branch would be required to perform a series of actions in order to comply with the proviso in question.

First, because in some cases the United States pays its contribution in installments, the executive branch would be required to ask each organization if it, in fact, intends to engage in any external borrowing, and if so, the amount they intend to borrow and at what interest rate.

Second, prior to final payment of the U.S. assessed contribution, the executive branch is required to again inquire of each of the 44 organizations whether it has, in fact, engaged in any borrowing and the precise amount of interest paid as a result.

Third, the executive branch would be required to verify the response from each organization.

Fourth, the executive branch would be required to calculate the U.S. pro

15. 128 CONG. REC. ——, 97th Cong. 2d Sess. For a ruling on a subsequent amendment to the bill having a similar purpose, see § 59.19 infra.

rata share of such interest payments for each organization engaged in such borrowing.

Fifth, the executive branch would be required to subtract the U.S. pro rata share determined in the preceding procedure from its final assessed payment to each affected organization.

None of these actions are required of the executive branch under existing law and none are currently performed by the executive branch as a matter of routine practice. . . .

More fundamentally, under existing law, the United States is obligated to pay the full amount of its assessed contribution to an international organization. This obligation can only be changed by a superseding provision of law. The proviso attempts to be such a law and as such is legislative in nature. . . .

THE CHAIRMAN:[16] Does the gentleman from Iowa desire to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I do not think it is subject to a point of order, but at this time of the night we want to save time. So, I am going to concede the point of order.

THE CHAIRMAN: The point of order is conceded, and the Chair upholds the point of order.

Requiring Evaluation of "Propriety" and "Effectiveness"

§ 52.32 Language in the guise of a limitation requiring federal officials to make evaluations of propriety and effectiveness not required to be made by existing law is legislation; a proviso in a general appropriation bill prohibiting the use of funds therein for grants "not properly reviewed under procedures used in the prior fiscal year" or for grantees not having "an established and effective program in place" was held to require new determinations by federal officials not required by existing law for the fiscal year in question and to be legislation in violation of Rule XXI clause 2.

On Oct. 6, 1981,[17] during consideration in the Committee of the Whole of the Departments of Labor, and Health and Human Services appropriation bill (H.R. 4560), a point of order was sustained against a provision in the bill, as follows:

MR. [EUGENE] JOHNSTON [of North Carolina]: Mr. Chairman, I make a point of order against the language on page 13 of the bill, lines 15 through 24.

The portion of the bill to which the point of order relates is as follows:

Provided further, That none of the funds appropriated under this paragraph shall be used to fund any grant to any business, union, trade association, or other grantee which is not properly reviewed under the peer review procedures used in fiscal year 1980. Furthermore, none of the

16. George E. Brown, Jr. (Calif.).

17. 127 CONG. REC. 23361, 97th Cong. 1st Sess.

funds appropriated under this paragraph shall be used to provide grants to any business, union, trade association, or other grantee that does not have an established and effective program for educating employers or employees about occupational hazards and disease.

Mr. Chairman, the language prohibits grants to any grantee which does not have "an established and effective program" for education. In order to implement this requirement, the Department would have to establish a new procedure for determining what represents an "established and effective" program.

In addition, this would preclude as a recipient any group establishing such a program in the future.

Both of these requirements impose additional duties on the Department and those represent legislation on an appropriations bill.

In addition, it precludes the Secretary from monitoring the expenditures of these funds in the future—all of this in violation of clause 2, rule XXI, of the House. . . .

MR. [DAVID R.] OBEY [of Wisconsin]: . . . I would like to make the point that the Department has established procedures under which these grants are made available, and this simply is a limitation of the funds which can be expended under the procedures which the Department has now and has had in the past.

THE CHAIRMAN:[18] The Chair is prepared to rule.

The gentleman from North Carolina (Mr. Johnston) makes a point of order against the language contained on page 13 of the bill. The Chair has been persuaded by the argument, because he is not sure what is meant by "properly reviewed" or what is contained in "an established and effective program," as contained on line 23, and upholds the point of order of the gentleman from North Carolina (Mr. Johnston) on the basis that those terms impose new duties and determinations on executive officials.

18. Don Fuqua (Fla.).

Determining That Life of Mother Endangered if Fetus Carried to Term

§ 52.33 A provision in a general appropriation bill requiring new determinations by federal officials is legislation and subject to a point of order, regardless of whether or not private or state officials administering the federal funds in question routinely make such determinations.

On June 17, 1977,[19] during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare and related agencies appropriation bill (H.R. 7555), a point of order was made and sustained against a provision in the bill as follows:

THE CHAIRMAN:[20] When the Committee of the Whole rose on Thursday,

19. 123 CONG. REC. 19698, 19699, 95th Cong. 1st Sess.

20. Richard Bolling (Mo.).

June 16, 1977, the Clerk had read from section 209, line 2, on page 40.

Are there any amendments? . . .

MR. [CLIFFORD R.] ALLEN [of Tennessee]: Mr. Chairman, I make a point of order against section 209 which states:

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

My point of order is simply that this is legislation in an appropriation act. Obviously and implicitly in this language is the duty on the part of some administrative agency, or on the part of whoever is going to disburse the funds, to ascertain from some physician that the life of the mother or the pregnant woman would be endangered if the fetus is carried to term. This is imposing an additional burden on whatever administrative agency has to carry out this task. On that basis I make a point of order that this is legislation in an appropriation act. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . Mr. Chairman, I rise in opposition to the point of order.

The provision in question here is identical—I repeat for the purpose of emphasis, the provision in question is identical—to the provisions of Public Law 94–439, that is the Labor-HEW Appropriation Act for fiscal year 1977. It does not impose any additional burdens on any officer of the Federal Government. The determination as to whether the life of the mother is endangered would of course be made by a physician, but not a Federal official, and the physician would have to make that determination anyway whether or not this provision is in the bill, and any physician who is treating a woman seeking an abortion would have to make a judgment as to her state of health. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, in support of the argument presented by the gentleman from Pennsylvania, it should be noted by the Chair that medicaid funds which this section affects are administered by the States and not by the Federal Government.

In addition to that, the judgment required by section 209 would have to be made by private physicians who might be reimbursed, but it would be State officials who would be doing reimbursing with Federal funds, not Federal officials.

As the Chair knows, the imposition of additional duties on Federal officials, is a proper test of whether or not the language goes beyond a limitation. In this case it does not involve a judgment by a Federal official, only by a reimbursing State official on the certification in most cases by a private doctor. Therefore I do not believe it imposes any additional duties. It simply is a limitation on the manner in which the funds may be expended. . . .

THE CHAIRMAN: The Chair is prepared to rule. . . .

The language in question, section 209 of the bill, prohibits the use of funds in the act to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. It is well established that a limitation is not in order on an appropriation bill if it requires new duties and determinations on the executive branch and requires investiga-

tions. Section 209 by its terms requires the Federal Government to determine, in each and every case where an abortion may be performed with Federal funds, whether the life of the mother was endangered. Whether or not such determinations are routinely made by practicing physicians on a voluntary basis, the language in the bill addresses determinations by the Federal Government and is not limited by its terms to determinations by individual physicians or by the respective States.

For the reasons stated, the Chair sustains the point of order.

Duty of Determining Compliance With Federal Law

§ 52.34 It is in order on a general appropriation bill to deny funds for the payment of salary to a federal employee who is not in compliance with a federal law, for such limitation places no new duties on a federal official who is already charged with enforcing the law.

On Sept. 10, 1981,[1] an amendment to a general appropriation bill prohibiting the use of funds therein to rehire certain federal employees engaged in a strike in violation of federal law (5 USC § 7311; 18 USC § 1918) was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law (5 USC § 3333) requiring an affidavit undertaking not to strike to be signed by federal employees, and a court order enjoining the strike in question, already imposed an obligation on the administering officials to enforce the law. The proceedings are discussed in § 74.6, infra.

Parliamentarian's Note: The precedents cited by the Chair in 7 Cannon's Precedents §§ 1661 and 1662 were examples of limitations held in order to deny payments to federal employees who "willfully" refuse to perform their duties. The determination of "willfulness" arguably involves an investigation into intent or motive, and might have rendered those amendments suspect under more recent precedents.

Funds Conditioned Upon Duties Already Required by Existing Law

§ 52.35 Where existing law authorizing public works employment programs required a federal official to consider the severity and duration of unemployment in project areas and to make grants to local governments to be administered for the direct benefit and employment of

1. 127 CONG. REC. 20109, 20110, 97th Cong. 1st Sess.

unemployed residents of the affected community, language in a general appropriation bill prohibiting the use of funds therein where less than a certain percentage of the prospective employees had resided in the area and had been unemployed for a stated length of time was held in order as a limitation which did not impose upon federal officials any substantially new duties not already required by existing law.

The proceedings of Aug. 25, 1976,[2] are discussed in § 65.1, infra.

§ 52.36 An amendment to a general appropriation bill denying availability of funds therein to pay certain benefits to persons simultaneously entitled by law to other benefits, or in amounts in excess of those other entitlement levels, was held in order as a limitation, since existing law already required executive officials to determine whether and to what extent recipients of funds contained in the bill were also receiving those other entitlement benefits.

The determination of the Chair on June 18, 1980,[3] was that, where existing law (19 USC § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance did not impose new duties upon officials, who were already required to make those reductions. The amendment was as follows:

> Amendment offered by Mr. [Robert H.] Michel [of Illinois]: Page 39, line 4, strike out "$1,841,000,000" and insert "$1,486,000,000". . . .
>
> On line 7, after "1980" insert ": *Provided further,* That none of the funds appropriated in this paragraph and made available on October 1, 1980 shall be used to pay trade readjustment benefits under part I of subchapter B of chapter 2 of Title I of the Trade Act of 1974 for any week to any individual who is entitled to unemployment insurance benefits for such week:

2. 122 CONG. REC. 27737–39, 94th Cong. 2d Sess.

3. 126 CONG. REC. 15354–56, 96th Cong. 2d Sess.

Provided further, That none of the funds appropriated in this paragraph and made available on October 1, 1980 shall be used to pay trade readjustment benefits under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974 to any individual in an amount for any week in excess of the weekly unemployment insurance benefits which he received or which he would have received if he applied for such insurance.". . .

MR. [ELWOOD H.] HILLIS [of Indiana]: Mr. Chairman, I make a point of order against the amendment.

Mr. Chairman, the amendment violates rule XXI of clause 2 of the rules of the House in that it constitutes legislation in an appropriation bill. The amendment is a change in law and not a mere limitation of the expenditure of the funds appropriated.

The amendment does not on its face retrench Federal expenditures covered by the bill. Under the precedents of the House in order for an amendment to be covered by the so-called Holman rule, it must on its face reduce Federal expenditures. . . .

Mr. Chairman, it appears to me that a similar situation is presented by the pending amendment which has two parts. Part one of the amendment would reduce the appropriations. The second part of the amendment, the legislative part, must stand by itself and on its face retrench expenditures, which it fails to do.

Chapter 26, section 10.4 of Deschler's procedure states:

> An amendment to a general appropriation bill, proposing legislation which will not patently reduce expenditures, though providing for a reduction in the figures of an appropriation, is not in order under clause 2 Rule XXI. . . .

MR. MICHEL: Mr. Chairman, this is a straight limitation on an appropriations bill which does nothing more than limit the use of the funds under this program. In order to be considered as a proper limitation on the use of funds, the amendment must prohibit the use of money for some purpose already authorized by law. It has been consistently upheld that the House has the right to refuse to appropriate for any purpose which it may deem improper, even though that purpose may be authorized by law. The principle of limitations on appropriation bills is derived from this concept. If the House has the right to refuse to appropriate anything for a particular purpose authorized by law, it can appropriate for only a part of that purpose and prohibit the use of money for the rest of the purpose authorized by law. My amendment clearly passes this test.

This language will not require any extra work on the part of the executive officer administering the funds. Both the trade adjustment assistance program and the regular unemployment insurance programs are administered by the same agencies, the State unemployment insurance agencies and the amount and length of an individual's regular unemployment insurance benefits must currently be determined in order to determine the size of the trade adjustment benefit.

The language of the current law is significant in this regard; part (c) of section 232 states the following:

> The amount of trade readjustment allowance payable to an adversely affected worker . . . for any week

shall be reduced by any amount of unemployment insurance which he receives, or which he would receive if he applied for such insurance, with respect to such week; but, if the appropriate State or Federal agency finally determines that the worker was not entitled to unemployment insurance with respect to such week, the reduction shall not apply with respect to such week.

The only determinations required under my amendment are: First, the point in time when an individual's regular unemployment benefits are exhausted; and second, the amount per week of such benefits.

Both such determinations are required under current law, in the section I just cited, as part of the process for calculating the trade adjustment benefit to which an individual may be entitled. Consequently, no additional duties are required of the executive officers administering these funds under the language of my amendment. Therefore, Mr. Chairman, I submit that my amendment is not legislation and the point of order should not lie.

THE CHAIRMAN PRO TEMPORE:[4] The Chair is ready to rule.

For the reasons stated by the gentleman from Illinois and because a reading of section 2292 of title 19, United States Code indicates that the determinations required by the amendment offered by the gentleman from Illinois are precisely those required by the existing law in 19 U.S.C. 2292, the amendment, therefore, is in order as a negative limitation on use of funds in this bill and the "Holman rule" is not applicable.

The point of order is overruled.

4. John B. Breaux (La.).

Parliamentarian's Note: Had the language of the amendment been considered legislation, the "Holman rule" exception would not have been applicable, since the reduction of the lump-sum figure was not the necessary result of the language contained in the amendment.

Requiring Determination of Motive or Intent

§ 52.37 An amendment to a general appropriation bill prohibiting the use of funds therein for abortions or abortion-related material and services, and defining "abortion" as the intentional destruction of unborn human life, which life begins at the moment of fertilization was conceded to impose affirmative duties on officials administering the funds (requiring determinations of intent of recipients during abortion process) and was ruled out as legislation in violation of Rule XXI clause 2.

The proceedings of June 27, 1974,[5] are discussed in § 25.14, supra.

5. 120 CONG. REC. 21687–94, 93d Cong. 2d Sess.

Requiring Substantive Determination Not Required by Law

§ 52.38 A restriction on the use of funds in a general appropriation bill which requires a federal official to make a substantive determination not required by any law applicable to his authority, thereby requiring new investigations not required by law, is legislation in violation of Rule XXI clause 2.

On Aug. 20, 1980,[6] an amendment to a general appropriation bill prohibiting the use of funds therein for the General Services Administration to dispose of United States owned agricultural land declared surplus was ruled out as legislation requiring the finding that surplus United States owned lands are "agricultural", where the law cited by the proponent of the amendment defining that term was not applicable to the GSA.

The proceedings are discussed in § 57.17, infra.

Requiring Evaluation and Interpretation

§ 52.39 To a general appropriation bill containing funds for operation of the Smithsonian Institution, an amendment prohibiting the use of those funds for programs that present the theory of evolution as the sole explanation of life's origins was held to require new determinations as to the theoretical basis of the funded programs and to be legislation in violation of Rule XXI clause 2.

On July 22, 1981,[7] the Chair held that an amendment to a general appropriation bill in the form of a limitation which required a federal official to evaluate the theoretical basis of a program in determining whether to apply the limitation was legislation, where that duty was not already required by law. Under consideration was H.R. 4035, Department of the Interior appropriation for fiscal 1982, providing in part:

> For necessary expenses of the Smithsonian Institution, including research in the fields of art, science, and history, development, preservation, and documentation of the National Collections; . . . $136,374,000: *Provided,* That funds appropriated herein are available for advance payments to independent contractors performing research services or participating in official Smithsonian presentations: *Provided further,* That none of these funds

6. 126 Cong. Rec. 22156, 22158, 96th Cong. 2d Sess.

7. 127 Cong. Rec. 16822, 97th Cong. 1st Sess.

shall be available to a Smithsonian Research Foundation.

The Clerk read as follows:

> Amendments offered by Mr. [William E.] Dannemeyer [of California]: On page 44, line 25, strike the period and insert in lieu thereof the following: "*Provided further,* That none of these funds shall be available for public exhibits and performances that present the theory of evolution as the sole explanation of life's origins.".
>
> Page 45, line 16, strike the period and insert in lieu thereof the following: "*Provided further,* That none of the funds shall be made available for museum programs that present the theory of evolution as the sole explanation of life's origins". . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order that the amendment offered by the gentleman is legislation on an appropriation bill contrary to clause 2 of rule XXI. The amendment provides that funds would not be available for exhibits and performances that present the theory of evolution as the sole explanation of life's origins. This would require Smithsonian officials to make a determination whether or not an exhibition or performance presents the theory of evolution as the sole explanation of life's origins. . . .

Because this amendment does require that a determination be made that is not now required by law, it legislates on an appropriation bill. These determinations are not ministerial in nature. They would require a determination regarding the sole explanation of life's origins. This is a matter which academicians for centuries have not agreed upon. It would require a significant level of activity on the part of Smithsonian officials to determine the sole explanation of life's origins. . . .

MR. DANNEMEYER: . . . There would be a preferred way to offer the thought expressed by this amendment, and that would be through an authorization bill. But it relates to an authorization, or the subject relates to the Smithsonian Institution, and I am advised that we do not have an authorization bill going through the House that governs or covers or relates to the Smithsonian Institution. It has just been there so long, the memory of man runneth not to the contrary, we do not have an authorization, so the only ability a Member has, in effect, in a matter of this type is the appropriation vehicle. . . .

The second argument is that the amendment would—I concede there is some merit to the gentleman from Illinois' argument—that it would, one interpretation would cause the operator of the museum to survey the field to determine what theories exist as to the origin of man and, therefore, it could be argued that it imposes new duties.

I submit in response to that contention that there is nothing in this amendment that would preclude the museum operator from exhibiting the theory of evolution, but they could not use it as a means, as an explanation of life's origin. To that extent I do not believe that it imposes any new duties.

THE CHAIRMAN:[8] . . . If there is no further argument, the Chair has considered the amendments, the arguments of the gentleman raising the point of order and the response thereto and is prepared to rule and does now rule.

The amendments would require more than incidental determinations

8. George E. Danielson (Calif.).

by some public official. The amendments would require that a Federal official substantially evaluate public exhibits and performances, and in the case of the second amendment, museum programs, to draw conclusions therefrom as to their theoretical basis.

The Chair finds that the amendments constitute legislation which would be in violation of clause 2 of rule XXI prohibiting legislation on an appropriation bill, and the point of order is sustained.

Relationship of Limitation to All Agencies Funded

§ 52.40 In determining whether a restriction on the use of funds in a general appropriation bill constitutes legislation in violation of Rule XXI clause 2, the Chair must assess the impact of that language on all of the agencies funded in the bill to which the limitation applies in order to discern whether new duties would be imposed on any federal official so affected.

On June 14, 1978,[9] The Chair found that, to a general appropriation bill from which all funds for the Federal Trade Commission had been stricken as unauthorized, an amendment prohibiting the use of all funds in the bill to limit advertising of (1) food products containing ingredients found safe by the Food and Drug Administration or considered "generally recognized as safe", or not containing ingredients found unsafe by the FDA, and (2) toys not declared hazardous or unsafe by the Consumer Product Safety Commission, imposed new duties upon the Federal Communications Commission (another agency funded by the bill) to evaluate findings of other federal agencies—duties not imposed upon the FCC by existing law and therefore violated Rule XXI clause 2. The proceedings are discussed in § 58.7, infra.

Limiting Funds to Administer or Enforce Law With Respect to Small Firms

§ 52.41 While an amendment to a general appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity, or a portion thereof, authorized by law if the limitation does not require new duties or impose new determinations.

Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintain-

9. 124 CONG. REC. 17644–47, 95th Cong. 2d Sess.

ing a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill.

The proceedings of Aug. 27, 1980,[10] are discussed in § 73.11, infra.

Requiring "Buy American" Policy Where There is Domestic Production

§ 52.42 A section in a general appropriation bill prohibiting the use of funds therein for the purchase of foreign-made tools except to the extent that General Services Administration determines that domestically produced tools are not available for procurement, was held to impose additional duties on a federal official and was ruled out as legislation in violation of Rule XXI clause 2.

On Nov. 30, 1982,[11] during consideration in the Committee of the Whole of H.R. 7158 (Treasury Department and Postal Service appropriation bill), a point of order was sustained against the following provision in the bill:

The Clerk read as follows:

> Sec. 505. No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s) not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6–104.4(b) of Armed Services Procurement Regulation dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment. . . .

MR. [BILL] FRENZEL [of Minnesota]: The point of order is against section 505 of H.R. 7158 as constituting legislation on an appropriation bill. . . .

Section 505 prohibits appropriated funds from being used in the procurement of any hand or measuring tool not produced in the United States or its possessions unless the Administrator of General Services makes a determination that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States cannot be procured as and when needed from domestic sources. . . .

Section 505 is not merely a limitation on appropriated funds but establishes a procurement requirement not contained in existing law, and requires a determination with respect to such procurement by the General Services Administrator that would not be required to be performed under existing law. . . .

THE CHAIRMAN:[12] The Chair is prepared to rule.

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10. 126 CONG. REC. 23519–21, 96th Cong. 2d Sess.

11. 128 CONG. REC. 28067, 97th Cong. 2d Sess.

12. Gerry E. Studds (Mass.).

The Chair would cite Deschler and Brown's Procedure, chapter 26, section 19.5:

> A section in a general appropriation bill prohibiting the use of funds in the bill for the purchase of foreign-made tools except to the extent that the administrator of the General Services Administration determines that domestically produced tools are unavailable for procurement, was held to impose additional duties on the Federal official and was ruled out as legislation in violation of clause 2, rule XXI.

So for the reasons as stated precisely by the gentleman from Minnesota (Mr. Frenzel) the Chair sustains the point of order and the section is stricken.

Prohibiting Funds to Interfere With Rulemaking Authority —Implicitly Requiring Agency to Reevaluate Directives and Regulations

§ 52.43 A provision in a general appropriation bill prohibiting the use of funds therein by the Office of Management and Budget to "interfere with" the rulemaking authority of any regulatory agency was ruled out as legislation which would implicitly require that agency to make determinations not required by law in evaluating and executing its responsibilities mandated by law.

On Nov. 30, 1982,[13] during consideration in the Committee of the Whole of H.R. 7158 (Treasury Department and Postal Service appropriation bill), a point of order was sustained against the following provision of the bill:

The Clerk read as follows:

> OFFICE OF MANAGEMENT AND BUDGET
>
> SALARIES AND EXPENSES
>
> For necessary expenses for the Office of Management and Budget, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, and not to exceed $2,500 for official representation expenses, $33,000,000: *Provided,* That none of the funds made available by this Act may be used by the Office of Management and Budget to interfere with the rulemaking authority of any regulatory agency.

MR. [FRANK] HORTON [of New York]: Mr. Chairman, I rise to make a point of order against the limitation on the use of funds by the Office of Management and Budget contained in lines 18 through 21 on page 14. . . .

. . . [T]his limitation provides "that none of the funds made available by this act may be used by OMB to interfere with the rulemaking authority of any regulatory agency."

This proviso is subject to a point of order because it is legislation in an appropriation bill, and therefore violates clause 2 of rule XXI of the House of Representatives. . . .

Mr. Chairman, I would suggest that the word "interfere" might be easily in-

13. 128 CONG. REC. 28062, 28063, 97th Cong. 2d Sess.

terpreted to change existing law. Under the Paperwork Reduction Act of 1980, no agency can require anyone to comply with a form requesting information from more than nine persons unless that form has been approved by OMB. Some forms are, of course, designed to fulfill some regulatory objective. To the extent that OMB rejects or modifies a form which was originated for a regulatory purpose, it might be thought to be "interfering" with rulemaking authority. More specifically, if a form is proposed as a part of a regulation, OMB might file public comments on the form, and if the OMB Director finds that the agency's response to his comments were unreasonable, he could disapprove the form. This might be, of course, interpreted as "interference."

Furthermore, under Executive Order 12,291, entitled "Federal Regulation," OMB is given authority to require agencies to comply with various administrative requirements before proposing certain regulations, and to consider advice on those proposed regulations before issuing them in final form. Although the executive order is carefully written to indicate that OMB's authority exists only "to the extent permitted by law," activities under the order might also be thought by some people to be "interference" in agencies' rulemaking authority. . . .

THE CHAIRMAN:[14] The Chair is prepared to rule.

The Chair would cite the following provision from Deschler's [Procedure], chapter 26, section 11.1, under the general heading "Imposing Duties on an Executive Official."

§ 11.1 *Parliamentarian's Note:* The application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds falls within that prohibited by the limitation. But when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order.

With that citation in mind, and with the arguments made by the gentleman from New York, the maker of the point of order, and because of the entire scope of the duties imposed by law upon the Office of Management and Budget in relationship to regulatory agencies, the Chair feels that the Committee on Appropriations has not sustained the burden of showing that the proposed language would not change and augment the responsibilities imposed by law on the Office of Management and Budget and, therefore, sustains the point of order.

Duties Already Being Performed Pursuant to Provisions in Annual Appropriation Acts

§ 52.44 A provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to

14. Gerry E. Studds (Mass.).

term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, notwithstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years.

On Sept. 22, 1983,[15] during consideration in the Committee of the Whole of the Departments of Labor, and Health and Human Services appropriation bill (H.R. 3913), a point of order was sustained as indicated below:

> Sec. 204. None of the funds provided by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term: *Provided*, however, That the several States are and shall remain free not to fund abortions to the extent that they in their sole discretion deem appropriate. . . .
>
> Mr. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I rise in opposition to the point of order.
>
> The gentleman is correct that this language was ruled out of order in 1977.
>
> However, the fact is that while Chairman Bolling could in 1977 say with justification that this language then imposed a determination on Federal officials, the same situation does not exist today as we consider this bill today.
>
> Mr. Chairman, our requirement that Federal officials determine danger to the life of the mother has been in effect now for 8 consecutive years. What was in 1977 a new determination is not new today. We have had 8 years of experience.
>
> The administrative requirements and the procedures for making this determination have been in operation, as I said, under the existing law for the past 8 years. Therefore, Mr. Chairman, this language does not now require a new determination and I ask that the Chair overrule the point of order. . . .
>
> The CHAIRMAN PRO TEMPORE:[16] The Chair is prepared to rule.
>
> The precedent cited by the gentleman from Oregon (Mr. AuCoin) reads as follows:
>
> > A paragraph in a general appropriation bill prohibiting the use of funds in the bill to perform abortions except [where] the mother's life would be endangered if the fetus were carried to term was ruled out of order as legislation requiring Federal officials to make new determinations and judgments not required by law as to the danger to the mother in each individual case.
>
> The argument of the gentleman from Massachusetts that for the past several years this provision has been in the law does not necessarily stand muster. The fact that a legislative provision has been carried in general appropriation bills in the past does not protect that provision from a timely point of order under rule XXI, clause 2.

15. 129 CONG. REC. ——, 98th Cong. 1st Sess.

16. Abraham Kazan, Jr. (Tex.).

Therefore the Chair must sustain the point of order. Apparently the point of order was not raised in the past several years so the 1977 rule would still apply.

Eligibility for Food Stamps Where Principal Wage Earner is on Strike

§ 52.45 An amendment to a general appropriation bill prohibiting the use of funds therein for food stamps to a household whose principal wage earner is on strike on account of a labor dispute to which he or his organization is a party, except where the household was eligible for and participating in the food stamp program immediately prior to the dispute, and except where a member of the household is subject to an employer's lockout, was held to impose new duties and require new investigations by executive branch officials and was ruled out as legislation.

On June 21, 1977,[17] during consideration of H.R. 7558 (Department of Agriculture and related agencies appropriations, 1978), an amendment was offered, as follows:

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Ashbrook: On page 39, line 13, add the following new paragraphs: "*Provided further*, That no funds appropriated in this Act shall be used to make food stamps available for the duration of a strike to a household while its principal wage-earner is, on account of a labor dispute to which he is a party or to which a labor organization of which he is a member is a party, on strike: *Provided further*, That such ineligibility shall not apply to any household that was eligible for and participating in the food stamp program immediately prior to the start of such strike, dispute, or other similar action in which any member of such household engages: *Provided further*, That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout."

Mr. Jamie L. Whitten, of Mississippi, made a point of order.

MR. WHITTEN: . . . Mr. Chairman, I would like to point out that with regard to the pending amendment that the language provides not only the limitation, but it provides that food stamps shall not be available for the duration of a strike to a household while its principal wage earner is out of work on account of a labor dispute.

The question of "on account of a labor dispute" would require, first, an investigation and determination.

Next it says to which he is a party. That in turn would require an investigation and a determination of whether he is "a party."

17. 123 CONG. REC. 20150–52, 95th Cong. 1st Sess.

Then it goes further and says "a labor organization of which he is a member is a party". That, too, would require an investigation and a determination.

Going down further we come to the statement where it says "immediately prior to the start of such strike." I do not know how anybody—even though that would require special duties—I do not know how a fellow would perform those duties by knowing how to anticipate what is just in advance of a strike. Certainly it would require a very far-seeing man, knowing some of the things we read about.

Then it goes further and says, "or other similar action in which any member of such household engages."

All of these, Mr. Chairman, would require special duties.

As I read the last proviso it says:

> *Provided further,* That such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.

That, in turn, would require a special investigation and special determination. . . .

Mr. ASHBROOK: . . . I fully recognize the fact that the Congress has had this exact amendment before it on a number of occasions, and in no way would make it in order if it were not. I would suggest, however, that in the food stamp program, determinations must be made. By its very nature, the food stamp program does not go to all American families, but goes to families after complete investigations as to the income of the family, as to whether they are at work; if they are not at work, why they are not at work.

I would further point out that nine States limit all forms of welfare to strikers. The case in point yesterday in the Supreme Court justified that particular ruling by the States. Programs are administered by the States, and I suggest that it does not call upon the Department of Agriculture to ask any questions or have any duties that are not now in law. . . .

THE CHAIRMAN:[18] The Chair has had an opportunity to examine the amendment offered by the gentleman from Ohio (Mr. Ashbrook) and also to consult the precedents.

The amendment offered by the gentleman from Ohio (Mr. Ashbrook) does provide that no funds appropriated in this act shall be used to make food stamps available for the duration of a strike to a household while its principal wage earner is, on account of a labor dispute to which he is a party or to whom a labor organization of which he is a member is a party, on strike.

The amendment further provides that such ineligibility shall not apply to any household if any of its members is subject to an employer's lockout.

The amendment on this general subject which was offered in 1974, the Chair would point out, was not challenged by a point of order.

The amendment that was offered in the 92d Congress in 1972, which was ruled in order, was in fact different from the amendment presently being offered by the gentleman from Ohio (Mr. Ashbrook).

The Chair would state that the amendment offered by the gentleman from Ohio (Mr. Ashbrook) differs in a number of significant respects from the amendment held in order in the 92d

18. Samuel S. Stratton (N.Y.).

Congress, 2d session, insofar as it does specify that the ineligibility would apply to an individual who was the principal wage earner of a household, that it applies to one who is determined to be a member of a labor organization which is on strike, and it further requires, in order to be carried out, a determination whether that individual in the household, or any of its members, is subject to an employer's lockout.

In the opinion of the Chair, the amendment does, therefore, impose additional duties upon a Federal official who is not merely the recipient of information—going beyond language that was held in order in previous Congresses and, therefore, does amount to legislation on an appropriation bill. Therefore, the Chair sustains the point of order.

Parliamentarian's Note: In the 1972 ruling referred to above, an amendment to a general appropriation bill prohibiting the use of funds in the bill for making food stamps available during a strike to a household "which needs assistance solely because any member of such household is a participant in such strike" was held in order as a valid limitation.[19] Although the Chair tried to distinguish the 1972 ruling, the 1977 precedent above should be considered as effectively overruling the earlier decision. The amendment at issue in 1972 would be viewed in the current practice as requiring new determinations by executive officials, such as whether, for example, a household needed assistance "solely" because a member of the household was participating in a strike.

§ 53.—Duties Imposed on Nonfederal Officials or Parties

It has been seen that the inclusion in an appropriation bill of language that imposes new duties, not authorized in law, on federal officials is subject to the point of order that such language is impermissible legislation.[20] A more difficult question arises where language seems to impose new duties on nonfederal officials or on private individuals. Whether the mere imposition of certain duties on such parties, without more, constitutes an impermissible attempt to legislate, does not clearly emerge from the precedents. Many cases which seem to decide the question appear, on closer analysis, to turn on somewhat different issues, express or implied; perhaps such cases can be better understood if they are analyzed in terms of certain issues that were

19. 118 CONG. REC. 23364, 92d Cong. 2d Sess., June 29, 1972 [under consideration was H.R. 15690].

20. See § 52, supra.