Amendments and the Germaneness Rule

C. HOUSE-SENATE RELATIONS

§ 25. Rule of Germaneness in the Senate

No comprehensive analysis is intended here of the Senate's requirements of germaneness of amendments.[1] There is no general Senate rule prohibiting nongermane amendments, except after cloture has been invoked on a measure under Senate Rule XXII. Under unanimous-consent agreements, the Senate sometimes prohibits any nongermane amendments to particular bills,[2] or may prohibit a certain class of nongermane amendments to a bill.[3]

Under Senate procedures, no point of order based on a question of germaneness in the above circumstances can be raised until after conclusion of debate on the amendment in question, unless time is yielded for such a point of order.[4]

A Senate rule[5] also prohibits nongermane amendments on general appropriation bills; under the rule, questions of germaneness are submitted to the whole Senate for disposition without debate, the Chair not ruling on the ques-

1. See, generally, *Senate Procedure,* Riddick, S. Doc. 97–1 (1981). A new Senate Procedure manual is being prepared as these volumes are being published.
2. See, for example, the parliamentary inquiry and point of order by Senator Forrest C. Donnell (Mo.) at 96 CONG. REC. 4774, 81st Cong. 2d Sess., Apr. 5, 1950.
3. See, for example, 96 CONG. REC. 16461, 81st Cong. 2d Sess., Dec. 12, 1950.

   The fact that an amendment has been considered by the Senate does not necessarily, of course, make an amendment of a similar nature germane when offered in the House. See Sec. 13.11, supra.
4. See the proceedings at 98 CONG. REC. 6910, 82d Cong. 2d Sess., June 10, 1952. See also 98 CONG. REC. 6918.
5. Senate Rule XVI clause 4.

tion;[6] but such procedure has not uniformly been followed.[7]

On Dec. 14, 1970, points of order were pending against an amendment to a general appropriation bill,[8] on grounds both that the amendment constituted legislation, and that it was not germane.[9] The presiding officer[10] summarized the procedures to be followed in such a case, as follows:[11]

> The hour of 2:23 p.m. having arrived, the question is on the issue of germaneness. A point of order was raised by the Senator from Delaware (Mr. Williams) against the language on page 20, line 12, beginning with the word "provided" down through line 22, as being legislation on an appropriation bill.
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> The manager of the bill, the Senator from West Virginia [Mr. Byrd] has raised the question of germaneness of this language to the House-passed language. Under rule XVI, paragraph 4, and the precedents and practices of the Senate, if a point of order is made against a pending amendment to a general appropriation bill on the ground that it is legislation, and the question of germaneness to the House provisions of the bill is raised, the question of germaneness is submitted to the Senate for decision and takes precedence over the point of order which is not ruled on, and the point of order falls or the question is settled if the Senate decides that the amendment is germane to the provisions of the bill to which it is offered.

In addition to the above, another rule[12] prohibits nongermane amendments to bills after cloture has been invoked.

The Senate on occasion has considered adopting a rule as to germaneness similar to that of the House. For example, in 1965[13] and in 1967[14] unsuccessful attempts were made to require germaneness of amendments gen-

6. See 128 CONG. REC. 6166, 6167, 6169, 97th Cong. 2d Sess., Mar. 31, 1982, wherein, during consideration of H.J. Res. 409, continuing appropriations for 1982, an amendment to a general appropriation bill repealing a provision in the Internal Revenue Code that provided a tax deduction to Members of Congress was considered by the Senate to be germane, but was ruled out as legislation in violation of Senate Rule XVI, clause 4, the ruling of the Presiding Officer being sustained on appeal.

7. See, for example, 51 CONG. REC. 10712, 10717, 63d Cong. 2d Sess., June 19, 1914.

8. H.R. 19928 (Committee on Appropriations), supplemental appropriations for fiscal 1971.

9. See the proceedings at 116 CONG. REC. 41339, 41340, 91st Cong. 2d Sess., Dec. 14, 1970.

10. Senator J. Caleb Boggs (Del.).

11. 116 CONG. REC. 41340, 91st Cong. 2d Sess., Dec. 14, 1970.

12. Senate Rule XXII clause 2.

13. See 111 CONG. REC. 19051, 19052, 89th Cong. 1st Sess., Aug. 2, 1965.

14. See 113 CONG. REC. 5271, 5272, 90th Cong. 1st Sess., Mar. 2, 1967.

erally, as in the House. The following remarks were made by Senator Joseph S. Clark, of Pennsylvania, on Aug. 2, 1965:[15]

> . . . I believe that we should exercise the kind of judgment which has motivated other legislative bodies, both here and abroad, and impose on ourselves a measure of self-discipline by adopting a rule to require germaneness of amendments, realizing full well that there may occasionally be an abuse of such a rule.
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> However, I challenge the Senator from Louisiana to name one abuse under the rule which I propose which would be half as bad as the practice of permitting a nongermane amendment, or a constitutional amendment, to be added to a foreign aid authorization bill or to a simple joint resolution dealing with the question of American Legion baseball. . . .

Senator Clark further made the point, which he stated again on Mar. 2, 1967,[16] that desirable bills are sometimes impeded in their passage when amended by controversial nongermane proposals.

Some useful guidelines for the application of the rule of germaneness in the Senate were provided by the Presiding Officer in the Senate on April 22, 1982,[17] during consideration of S. 1630, the Criminal Code Reform Act. The Presiding Officer stated the following general principles: (1) an amendment adding new language is germane if restricting but not broadening the effect of the section to which offered; (2) an amendment adding a new section is germane if restricting authorities otherwise available; (3) an amendment adding to a list of exemptions from authorities is a restriction and therefore germane, while an amendment adding to a list of penalties is broadening and nongermane; (4) an amendment merely striking out language is germane regardless of effect on the scope of the bill; (5) an amendment striking out a figure and inserting another figure is germane; (6) the general test of germaneness is not a subject matter test but a technical test as indicated in 1 through 5 above, and broadening amendments, though related to the subject matter, are nongermane; but where an ambiguity exists in the effect of the amendment as broadening or restrictive, the Chair does not interpret law and submits the question to the Senate.

15. 111 CONG. REC. 19052, 89th Cong. 1st Sess.

16. 113 CONG. REC. 5271, 90th Cong. 1st Sess.

17. 128 CONG. REC. 7449–53, 97th Cong. 2d Sess.