ROBERT T. STAFFORD,
JOHN H. CHAFEE . . .
*Managers on the Part of the Senate.*

For consideration of the entire House bill and Senate amendment (including sections 1 and 2 of the House bill and section 1 of the Senate amendment).

From the Committee on the Budget:
JAMES R. JONES,
NORMAN Y. MINETA,
STEPHEN J. SOLARZ,
LEON E. PANETTA,
RICHARD A. GEPHARDT,
LES ASPIN,
DELBERT L. LATTA,
RALPH REGULA,
BUD SHUSTER,
BOBBI FIEDLER,
*Managers on the Part of the House.*

From the Committee on the Budget:
PETE V. DOMENICI,
RUDY BOSCHWITZ,
ERNEST F. HOLLINGS,
LAWTON CHILES,
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3982) entitled, "An Act to Provide for Reconciliation Pursuant to Section 301 of the First Concurrent Resolution on the Budget for Fiscal Year 1982," submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment.

The joint statement of managers which follows was prepared by the Committees on Jurisdiction, but is arranged by title of the conference agreement. A brief overview by the Committees on the Budget appears at the beginning.

STATEMENT OF BUDGET COMMITTEE MANAGERS

By approving the First Budget Resolution for Fiscal Year 1982, which included reconciliation instructions, Congress continued and expanded its efforts to maintain control over Federal expenditures. Those reconciliation instructions directed fourteen Senate and fifteen House committees to report legislation achieving unprecedented reductions which impact on Federal spending during fiscal years 1981, 1982, 1983 and 1984.

The provisions of the Omnibus Budget Reconciliation Act of 1981 are the culmination of the work of the committees in complying with the reconciliation directives. Real savings have been achieved which compare favorably with the reconciliation bills as passed by the House and Senate.

The managers for the Committees on the Budget wish to acknowledge the extraordinary efforts of the conference participants, particularly the chairmen and ranking Members of the House and Senate committees, in achieving these savings.

What follows in this statement of managers is a title by title explanation of the conference agreement. This explanation has been prepared

by the committees which determined the provisions of the conference agreement which are in their separate jurisdictions.

## § 19. Limitations on Scope of Report

### *Inclusion of Provision Exceeding Managers' Authority*

**§ 19.1 A point of order will lie against a conference report on the ground that the conferees had agreed to a provision which was beyond the limits of their authority.**

On Dec. 11, 1967,[20] after Mr. Thaddeus J. Dulski, of New York, called up the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967, Mr. H. R. Gross, of Iowa, raised a point of order.

MR. GROSS: Mr. Speaker, I make a point of order against the conference report on the grounds that the House managers exceeded their authority and did not confine themselves to the differences committed to them, in violation of the rules and precedents of the House of Representatives.

The House bill, in section 107(a) provided a minimum charge of 3.8 cents for bulk third-class mail effective January 7, 1968. Section 107(a) of the Senate amendment provided a two-step minimum charge—the first of 3.6 cents effective January 7, 1968, and a second 4-cent rate effective January 1, 1969.

The differences committed to the conferees with respect to this postage rate and the effective dates for this rate were: A rate range between 3.6 cents and 4 cents; a January 7, 1968, effective date for a one-rate charge with no further rate provided; and January 7, 1968, and January 1, 1969, effective dates for any two-rate charges.

The conference report contains a two-rate charge—the first, 3.6 cents, effective January 7, 1968; the second, 4 cents, effective July 1, 1969.

The July 1, 1969, effective date for a second rate goes beyond the disagreements confided to the conferees. By agreeing to any effective date for a second rate beyond January 1, 1969, the House managers have clearly exceeded their authority. . . .

Rule 28 clause 3 of the Rules of the House[1] reads:

> Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, *but their report shall not include matter not committed to the conference committee by either House.*

The Senate bill was an amendment—in the nature of a substitute for the House bill. The conference report is an

20. 113 CONG. REC. 35811, 90th Cong. 1st Sess.

1. See *House Rules and Manual* § 913(a) (1997).

additional substitute on the same subject. However, the conference report distinctly includes matter not committed to the conferees by either House, and I make the point of order on that basis. . . .

THE SPEAKER:[2] Does the gentleman from New York desire to be heard on the point of order?

MR. DULSKI: Mr. Speaker, I concede the point of order.

THE SPEAKER: The Chair sustains the point of order.

### *Determining Whether Issue Is Within Scope of Conference*

**§ 19.2 In determining whether a provision included in a conference report is within the scope of the managers' authority, the Chair examines the text of the bill and amendment sent to conference; and where one House is silent on the matter in question the state of the current law may be considered the position of that House.**

On Dec. 18, 1974,[3] when the conference report on the Federal Aid Highway Amendments of 1974 (S. 3954) was before the House, a point of order was directed at a provision, having its origins in the Senate bill, dealing with truck weight limits. The House amendment had included no such provision and the Chair examined the existing law on the matter in determining the House position on the issue.

A portion of the conference statement, the point of order and argument thereon, are carried here to illustrate the type of examination required by the Chair in ruling on a question raised under Rule XXVIII clause 3.

[Partial text of the statement of the managers accompanying the conference report follows.[4]]

VEHICLE SIZES AND WEIGHTS

*Senate bill*

Section 106 of the Senate bill amends section 127 of title 23, United States Code, by striking out "eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds," and inserting in lieu thereof the following: "twenty thousand pounds carried on any one axle, including all enforcement tolerances; ten thousand pounds on the steering axle of any truck tractor, including all enforcement tolerances; or with a tandem axle weight in excess of

2. John W. McCormack (Mass.).
3. 120 CONG. REC. 40905, 40906, 93d Cong. 2d Sess.
4. The report and statement were carried in the Record on Dec. 17, 1974, at 120 CONG. REC. 40575, 93d Cong. 2d Sess.

thirty-four thousand pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula: . . .

*House amendment*

No comparable provision.

*Conference substitute*

The conference substitute is identical to the Senate bill except as follows:

(1) The phrase "10,000 pounds on the steering axle of any truck tractor, including all enforcement tolerances;" is deleted.

(2) Because of inclusion in the Senate passed bill of a new and additional weight limitation on any group of two or more consecutive axles of vehicles operating on the Interstate System, clarifying language was added by the Conference Committee to express the intent of the Senate as stated by the floor manager when this provision was debated on the Senate floor. The added language makes it clear that any vehicle or combination of vehicles that could lawfully operate in a State on the date of enactment of the Federal-Aid Highway Amendments of 1974 may be permitted to continue to operate on the Interstate System in such State even though the overall gross weight of any group of consecutive axles may exceed that permitted by the formula in this section.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3934) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

POINT OF ORDER

MR. [EDWARD J.] KOCH [of New York]: Mr. Speaker, I wish to raise a point of order.

THE SPEAKER:[5] The gentleman will state it.

MR. KOCH: Mr. Speaker, I raise a point of order, pursuant to rule XXVIII, clause 3, of the House Rules, that the conference report on S. 3934 is not in order because section 106(b) contains an additional proposition not committed to the conference committee by either House and which is, therefore, nongermane.

This provision adds a major exception to the safety provision relating to allowable vehicle weights. The provision would allow States with higher weights on roads other than interstate highways at the time of enactment to permit the heavier weights on interstate highways and to be exempted from the bridge facility formula in section 106(a).

That provision was neither in the House bill nor the Senate bill.

MR. WRIGHT: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER: The gentleman from Texas will be heard.

MR. WRIGHT: . . . The language added by the conference committee is well and fully within the scope of the conference. The House, as will be recalled, had no provision whatever concerning size and weights, while the Senate bill did contain such provision. The Senate bill in

5. Carl Albert (Okla.).

effect, provided for certain increases in allowable sizes and weights on the interstate system and at the same time included certain new weight restrictions that could have been interpreted to preclude operation of vehicles that now lawfully can be operated in a State.

Floor debate in the Senate while this provision was under consideration indicates very clearly that it was not the intention of the Senate to prohibit the operation of vehicles that now can be lawfully operated and, therefore, the conference committee had language to make this clear.

Assuming for the sake of argument that the statement of intent on the floor of the Senate is not conclusive, nevertheless the additional language is well within the scope of the conference. The Senate placed limitations that would have made it illegal for certain vehicles to operate. The House did not have any such limitation. Consequently it was within the purview of the conference to reduce or ease the limitation. And that is exactly what the language in question does—no more. The Senate language declared that no vehicles which do not meet all the new qualifications may operate. The House was silent on the matter. The new language merely declares that a few vehicles that otherwise did not qualify may operate. This had the effect of compromising between the "all" in the Senate language and the silence of the House language to arrive at some compromise in the report.

And so, in sum, Mr. Speaker, whether one accepts the floor statements concerning the intent of the Senate or one does not, the language added by the conference report is well within the scope of the matters referred to the conference.

MR. KOCH: Mr. Speaker, will the Chair hear me further on this?

THE SPEAKER: The Chair will hear the gentleman.

MR. KOCH: Mr. Speaker, the language in the bill related to a maximum of 80,000 pounds. The conference report provides for grandfathering in those States that have weights in excess of that. For example, there is one State that allows 125,000 pounds on other than State roadways in that State. This conference report allows 15 such States with weights in excess of 80,000 pounds to operate on the interstate highways.

That was not, I submit, Mr. Speaker, either in the Senate or in the House bill. It is nongermane and I believe, Mr. Speaker, it is subject to a point of order.

THE SPEAKER: The Chair has examined both the existing law and the conference report. The Chair does not see any question of germaneness involved, since the issue was raised in the Senate bill, but the Chair does find that existing law, found in section 127, title 23, highways, United States Code, grandfathered into, or excepted from, the law vehicles allowed by States that had weights different from those contemplated by the remainder of the Federal statute. As the Chair reads the language of the conference report that is exactly what it does here. The Chair has reviewed the language and does not believe that there was any intention on the part of the House or the House conferees in agreeing to this to outlaw or to eliminate the grandfa-

thering provisions in the law. That in itself, it seems to the Chair, does give validity to the argument of the gentleman from Texas that the language contained in the conference report is within the scope of the provisions contained in both versions, since the House amendment in the nature of a substitute, by remaining silent on the subject, had in effect taken the position of existing law which exempted vehicles lawfully operated under State law from the weight and width restrictions in title 23, section 127.

### *Determining Whether Matter Is Committed to Conference Where One House Is Silent on Issue*

**§ 19.3 While the scope of differences committed to conference, where one House has explicitly amended existing law and the other is silent, by implication taking the position of existing law, may be measured between those extremes, the inclusion of new matter, not contained in the amending version and not demonstrably repetitive of existing law, may be ruled out as a matter not committed to conference under Rule XXVIII clause 3.**

The conference report on the bill H.R. 620, to establish an additional Assistant Secretary of Interior for Indian Affairs, was called up in the House shortly before the *sine die* adjournment of the second session of the 93d Congress.

A portion of the statement of the managers, the point of order that the managers had exceeded their authority, and the Chair's ruling excerpted from the Record of Dec. 20, 1974,[6] are carried below.

ESTABLISHING WITHIN THE DEPARTMENT OF THE INTERIOR AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The explanation of the conference section which was the focus of the point of order was as follows:

CONFERENCE REPORT (H. REPT. NO. 93–1620)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for

6. 120 CONG. REC. 41849, 41850, 93d Cong. 2d Sess.

other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate with an amendment as follows:

That there shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 5. The Alaska Native Claims Settlement Act (85 Stat. 688) is hereby further amended by inserting at the end thereof a new section 28 as follows:

"(e) Any stock issued by a corporation under subsection (g) of section 7 of this Act to any Native who is enrolled in the thirteenth region pursuant to this section shall, upon enrollment of that Native, be canceled by the issuing corporation without liability to it or the Native whose stock is so canceled.

The Clerk read the title of the bill.

THE SPEAKER:[7] Is there objection to the request of the gentleman from Washington?

POINT OF ORDER

MR. [DON] YOUNG of Alaska: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. YOUNG of Alaska: Mr. Speaker, I make a point of order that section 5(e) of the conference report introduces language presenting a specific topic or question that was not committed to the conference committee by either House and is not a germane modification of the matters in disagreement. The insertion of section 5(e) is a violation of clause 3 of rule XXVIII of the rules of the House.

THE SPEAKER: Does the gentleman from Washington wish to be heard on the point of order?

MR. MEEDS: I do, Mr. Speaker.

Mr. Speaker, both the conference report and the Senate bill give authority for the distribution of certain funds and provides that the 13th region, which would be created or provided by the conference bill, would be payable to these people as though the 13th region had been created in December of 1973.

Now, while the Senate bill did not mention the question of stock, that if the Senate bill had been passed it would have been necessary to do precisely what we have done in the conference report.

Therefore, the intended power of the Senate bill is covered in the language of the conference report and the conference reported bill. It is clearly within the scope, because it would absolutely be necessary to do this to carry out the Senate bill as it was enacted and it was in conference.

THE SPEAKER: The Chair is prepared to rule.

The Chair has examined the Senate amendment and finds that there was absolutely no reference in the Senate

7. Carl Albert (Okla.).

amendment that the Chair finds to a cancellation of stock previously issued by Native corporations to Natives who are enrolled in the 13th region. Therefore the conference report is in violation of clause 3, rule XXVIII.

The Chair, therefore, sustains the point of order.

MR. MEEDS: Mr. Speaker, could I be heard?

THE SPEAKER: The gentleman may be heard, but will the gentleman indicate that there is new language in the conference report not contained in the Senate amendment.

MR. MEEDS: Mr. Speaker, I agree there is not language in the Senate bill which does this, but if the Senate bill were carried out after it were passed, what is set forth in the conference report would have to be done. It is a mechanical thing that would necessarily follow.

When the 13th region was not created, certain stock was issued to individuals who would have been members of that 13th region in other corporations. When the 13th region is created, as it is by the Senate bill and by conference, it would then be necessary to redistribute and refund that fund, so it is a necessary concomitant of either bill that this procedure be carried out, and it is simply set out in the conference reported bill.

THE SPEAKER: The Chair will read clause 3, rule XXVIII:

> Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement.

If what the gentleman says is true, the addition of this language in the conference report would have been redundant. To have put it in the conference report would have been unnecessary; the Chair must conclude that a new issue has been injected which was not contained in the Senate amendment.

The Chair, much as he dislikes to do so, must sustain the point of order.

### *Senate Standard Where Conferees Include "New Matter"*

**§ 19.4 The Senate, in determining whether a conference report is subject to a point of order because it includes "new matter," applies the following standard: If the matter is entirely irrelevant to the subject matter (of the bill and amendment) it is not in order.**

On Aug. 19, 1982,[8] a point of order was raised against the conference report on the Tax Equity and Fiscal Responsibility Act of

8. 128 CONG. REC. 22398, 22400, 97th Cong. 2d Sess.

1982, on the ground that the report contained a provision (new matter) not in either version submitted to the conference. The Chair ruled that since the managers went to conference on a complete substitute, they had maximum flexibility and had not violated the Senate rule. The Chair's decision was sustained on appeal.

MR. [JOHN P.] EAST [of North Carolina]: Mr. President, I would like to make a point of order regarding the conference report.

THE PRESIDING OFFICER:[9] Will the Senator turn on his speaker?

MR. EAST: I have it on. I think it had gotten turned off up there. I do not know.

If I may state my point of order:

Mr. President, I make the point of order that under the provisions of rule XXVIII, paragraphs 2 and 3, the conference report is out of order in that it contains material which is not a germane modification of subjects in disagreement, to wit: That the report contains a provision requiring a new set of information reporting requirements for certain businesses, and a tip allocation requirement.

I state in explanation of the point of order that the Senate struck out a similar provision from the Senate committee amendment to H.R. 4961, and that no such provision was contained in either the Senate-passed or original House-passed versions of the bill. Although the Senate-passed bill contained a provision dealing with the deductibility of business expenses incurred for meals and beverages, that provision dealt only with the issue of deductibility of business expenses. The provision included by the committee on conference deals with the allocation and reporting of income which in no way can be considered a modification of a provision dealing with deductions.

I further state in explanation of the point of order that the provision relating to the deductibility of business expenses appears under the heading, "Reduction in Certain Deductions and Credits," in the Senate-passed version of H.R. 4961. The provision on tip reporting and tip allocation contained in the report of the Committee on Finance on H.R. 4961 appeared under the heading, "Provision Designed To Improve Taxpayer Compliance." Likewise, these matters appeared in separate titles. The tip provision appeared in the Senate committee amendment in title III. It is thus clear that the committee on conference did not confine itself to modifying a matter in disagreement. Rather, it inserted new matter that had been approved at no time by either the Senate or the House.

I accordingly state that under the provisions of rule XXVIII, paragraph 2, the conference report is out of order and must be rejected in its entirety, since the House of Representatives has already acted thereon.

MR. [ROBERT J.] DOLE [of Kansas]: Mr. President.

THE PRESIDING OFFICER: The conferees went to conference with a complete substitute, which gives them the maximum latitude allowable to conferees. The standard is that matter en-

**9.** Rudy Boschwitz (Minn.).

tirely irrelevant to the subject matter is not in order. That standard has not been breached. The point of order is not well taken.

The Senator from Kansas.

MR. EAST: Mr. President.

THE PRESIDING OFFICER: The Senator from Kansas has the floor.

MR. DOLE: I am happy to yield.

MR. EAST: I would like to appeal from the ruling of the Chair and I ask for the yeas and nays. . . .

THE PRESIDING OFFICER: Shall the decision of the Chair stand as the judgment of the Senate?

MR. [HOWARD H.] BAKER [Jr., of Tennessee]: A parliamentary inquiry. An "aye" vote sustains the ruling of the Chair. Is that correct?

THE PRESIDING OFFICER: The Senator is correct. . . .

Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 27. . . .

So the ruling of the Chair was sustained as the judgment of the Senate.

MR. DOLE: Mr. President, I move to reconsider the vote by which the ruling of the Chair was sustained.

MR. BAKER: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

*Parliamentarian's Note:* Section 801 of the Commerce, Justice, State, and the Judiciary Appropriations Act for fiscal year 2001 (as enacted by reference to H.R. 5548 in Pub. L. No. 106–553) provided that at the beginning of the 107th Congress the Presiding Officer of the Senate would (in a manner of speaking) turn back the clock and apply all precedents under Senate Rule XXVIII (relating to the scope of conference) as in effect at the end of the 103d Congress—notably including the above ruling of Aug. 19, 1982, to the effect that any matter "not entirely irrelevant" would be considered within scope—notwithstanding the intervening decision by the Senate on appeal from a ruling of its Presiding Officer on Oct. 3, 1996 (142 CONG. REC. S11228–30 (daily ed.), 104th Cong. 2d Sess.). On that occasion, the Senate overturned a ruling of the Chair that the inclusion in a conference report of a special labor-law provision not contained in either the House bill or the Senate amendment exceeded the scope of conference, and interpreted that result on appeal as tantamount to a change in its rules, vitiating its scope rule entirely. There the matter stood for nearly two subsequent Congresses. Before any documentation in this volume of the events in the Senate on Oct. 3, 1996, they were overtaken by the enactment of section 801 and its reinstatement of the earlier state

of Senate practice exemplified by the above ruling of Aug. 19, 1982.

### *Conference as Limited to Matters in Disagreement; Inclusion of New Criteria for Waiver of Restrictions in Conference Language*

**§ 19.5 Conferees must confine themselves to the differences committed to them and may not include subjects not within the disagreements between the two Houses.**

On Aug. 19, 1937,[10] the following occurred in the House:

> MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Speaker, I call up the conference report on the bill H.R. 7646, an act to amend an act entitled "An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936, and ask unanimous consent that the statement may be read in lieu of the conference report. . . .
>
> MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the report on the ground it exceeds the range of the conference. The first amendment attempts to deal with an act of June 15, 1936, while the matters in difference between the two Houses were entirely confined to the act of June 22, 1936. . . .
>
> THE SPEAKER:[11] The Chair is prepared to rule.
>
> The gentleman from New York [Mr. Taber] makes the point of order that the conferees have exceeded their authority in agreeing to Senate amendment No. 1, which is in the following language:
>
> > *Provided further,* That if after investigation the President finds that any city or town is by reason of its financial condition unable to comply with the requirements of section 3 as to local cooperation he is hereby authorized to waive such requirements in whole or in part.
>
> This was the original Senate amendment placed in the House bill. In lieu of the Senate amendment, the conferees have agreed to the following provision:
>
> > *Provided further,* That if after investigation the President finds that States, political subdivisions thereof, or other responsible local agencies are unable by reason of their financial condition to comply with the requirements as to local cooperation with respect to providing lands, easements, and rights-of-way for any projects authorized by the Flood Control Act of June 15, 1936 (Public Act No. 678, 74th Cong.), the Flood Control Act of June 22, 1936 (Public Act No. 738, 74th Cong.), and by this amending act, he is authorized to waive such requirement on any individual project not to exceed 50 percent of the estimated costs of the lands, easements, and rights-of-way.
>
> In other words, the conferees by agreeing to the language last read by the Chair, have very largely increased the power that was not covered by the

10. 81 CONG. REC. 9376–79, 75th Cong. 1st Sess.

11. William B. Bankhead (Ala.).

House provision and was not covered by the original Senate amendment to the House bill.

There is a long and consistent line of decisions and precedents holding that such powers are clearly beyond the authority of conferees and the Chair regretfully feels compelled to sustain the point of order.[12]

### *Modifying Text Not in Disagreement*

**§ 19.6 Where the Senate adopted 30 amendments to a concurrent resolution, but left much of the resolution unchanged, a conference report proposing action on all of the resolution following the resolving clause, thus including matter not in disagreement, was held not in order.**

On June 10, 1953,[13] Mr. Louis E. Graham, of Pennsylvania, called up the conference report on House Concurrent Resolution 29, favoring the granting of permanent resident status to certain aliens. After the Clerk read the report, Mr. Francis E. Walter, of Pennsylvania, raised a point of order.

MR. WALTER: Mr. Speaker, I make the point of order against the conference report that the report contains names that were not in disagreement and deletes some of the names that were in agreement, so that there was nothing before the conference to change in these instances.

MR. GRAHAM: I concede the point of order, Mr. Speaker.

THE SPEAKER:[14] The Chair notes that the Senate adopted 30 amendments to this House concurrent resolution, but a large part of the resolution, as the gentleman from Pennsylvania [Mr. Walter] states, has not been amended. The conference report proposes action on all of the concurrent resolution following the resolving clause, thus including portions which are not in disagreement. The conferees obviously have exceeded their jurisdiction, and the point of order is sustained.

### *Broadening Coverage of Provision Beyond Language in Disagreement*

**§ 19.7 Where one House strikes out of a bill of the other House all after the enacting clause and inserts a new text, House conferees, under Rule XXVIII clause 3, may not include in their report a modification of a proposition which is beyond the scope of**

12. See also 99 CONG. REC. 6354–57, 83d Cong. 1st Sess., June 10, 1953.
13. 99 CONG. REC. 6354–57, 83d Cong. 1st Sess.
14. Joseph W. Martin, Jr. (Mass.).

**that proposition as committed to conference.**

On Dec. 14, 1971,[15] Mr. Wright Patman, of Texas, called up the conference report on S. 2891, to amend and extend the Economic Stabilization Act of 1970. Mr. H. R. Gross, of Iowa, raised a point of order against the conference report.

MR. GROSS: Mr. Speaker, I make a point of order against the conference report on S. 2891 on the basis that the House managers exceeded their authority, did not confine themselves to the differences committed to them and on the basis that the managers' report contains matter clearly not germane to the matter in disagreement, all in flagrant violation of clause 3, rule XXVIII[16] and the precedents of the House of Representatives.

The Senate-passed bill contained a section 3 which in effect waives the provisions of the Federal Pay Comparability Act of 1970—Public Law 91–656—and directs the President to put into effect January 1, 1972, pay adjustments for the three statutory salary systems—General Service, Foreign Service, and Veterans' Administration Medicine and Surgery—in an amount not to exceed the pay guidelines under the Economic Stabilization Act or not greater than the actual comparability adjustments.

The House-passed bill contained no such section 3.

The conference report, as agreed to by the conferees, contains section 3 with two significant changes that are clearly not germane to the section 3 as passed by the Senate.

First, section 3 in the conference report contains an additional provision which raises the maximum pay limitation applicable to employees of the Senate and House of Representatives from level 5 to level 4 of the Executive Salary Schedule. This is a proposition which was clearly not committed to the Conference Committee.

Second, the conference report in section 3 eliminated the Senate-passed provision which provided that no pay adjustment under the Federal Statutory Pay System could exceed comparability based on the 1971 Bureau of Labor Statistics Survey.

In essence, Mr. Speaker, the conferees not only eliminated a restriction on the amount of pay adjustment for the three statutory salary systems but they also increased rates of pay for groups of employees—those employees of the House and the Senate—who were not specifically cited in either the Senate- or House-passed bills.

Clause 3 of rule XXVIII of rules of the House reads in part as follows:

> Moreover, their report shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modi-

15. 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess.

16. *House Rules and Manual* § 913(a) (1997).

fication is beyond the scope of that specific topic, question, issue, or proposition as so committed to the Conference committee.

The rule was actually strengthened and tightened up in the Legislative Reorganization Act of last year in order to make it abundantly clear that no specific topic, question, issue, or proposition could be agreed to by the conferees unless committed to the Conference Committee by either or both Houses. . . .

THE SPEAKER:[17] The Chair is ready to rule.

The gentleman from Iowa (Mr. Gross) makes a point of order against the conference report on the bill S. 2391 on the ground that the conferees on the part of the House have exceeded their authority as defined in clause 3 of rule XXVIII by including matter not submitted to conference by either House.

Specifically, the gentleman from Iowa asserts that the conferees have broadened that provision of the Senate bill which authorizes comparability adjustments in the rates of pay of each Federal statutory pay system covered by the Federal Pay Comparability Act of 1970 at a rate not in excess of 5.5 percent, effective after January 1, 1972.

The House amendment contained no comparable provision. As stated in the joint statement of the managers on page 22, the conferees have adopted the Senate provision with a "clarifying amendment" to assure that the comparability adjustments be made not only in the "statutory pay systems" as that term is defined in 5 U.S.C. 5301(c), but also in "all other Federal pay systems" covered by the Federal Pay Comparability Act of 1970; namely, those under which rates of pay are fixed by administrative action under 5 U.S.C. 5307. This would include employees in the executive, legislative, and judicial branches and employees of the District of Columbia whose pay is disbursed by administrative action. It would also include employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House.

The Chair is compelled to hold that the conferees, by deleting the word "statutory" in the Senate bill, have broadened the coverage of the comparability adjustments beyond the scope of the Senate bill or the House amendment. The Chair therefore sustains the point of order.

*Parliamentarian's Note:* As stated in argument on the point of order, the conference report also included a provision which raised the maximum pay limitation applicable to congressional employees. This provision was not in the Senate bill or in the House amendment, and provided further grounds for sustaining the point of order.

### *Point of Order on Scope; Clarifying Language in Disagreement*

17. Carl Albert (Okla.).

**§ 19.8 House conferees may not under Rule XXVIII clause 3,[18] include in a conference report a new topic or issue not committed to conference by either House, yet it is in order to include language clarifying and limiting the duties imposed on an executive official by one House's version where that modification does not expand the authority conferred in that version or contained in existing law, which may be considered the implicit position of the other House.**

The point of order raised on July 29, 1975,[19] against the conference report on the bill H.R. 3130, amending the National Environmental Policy Act to clarify the federal and state roles in the preparation of certain environmental analyses of certain federal programs, illustrates the complexity of determining questions about the "scope of conference."

Where differences in language are committed to conference, the Chair must sometimes explore not only the text of the House bill and the Senate amendment but provisions of existing law on the subject to determine whether conference language is a "germane modification" of the matter in disagreement or whether it crosses the boundary and introduces matter not committed to conference by either House or is "beyond the scope" of the proposition before the conferees.

The rather detailed argument on this conference report illustrates the analysis sometimes required by the Chair to reach a decision in these matters.

> MRS. [LEONOR K.] SULLIVAN [of Missouri]: Mr. Speaker, I call up the conference report on the bill (H.R. 3130) to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, and ask unanimous consent that the statement of the managers be read in lieu of the report.
>
> The Clerk read the title of the bill.
>
> THE SPEAKER:[20] Is there objection to the request of the gentlewoman from Missouri?
>
> POINT OF ORDER
>
> MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Speaker, I make a point of order against the conference report.

18. *House Rules and Manual* § 913a (1997).

19. 121 CONG. REC. 25515–17, 94th Cong. 1st Sess.

20. Carl Albert (Okla.).

THE SPEAKER: The gentleman from New Jersey will state his point of order.

MR. HOWARD: Mr. Speaker, I raise a point of order against the conference report because it contains material outside the scope of the conference.

Specifically, the language that is objectionable is that requiring the responsible Federal official to provide early notification to and solicitation to the view of any other State or Federal land management entity of any action or alternative thereto which may have significant impacts upon such State or affected Federal land management entity and to assess these impacts if there is disagreement upon them. Neither the House nor Senate versions of this bill require the Federal official to take these actions. While the amendment is not clear as to what the Federal official is required to give notification of, it is clearly not within the text of the House bill or Senate amendment.

Consequently, it is outside the scope of the conference which deals only with the responsibilities of the State agency or official to prepare an impact statement and requires the responsible Federal official to furnish guidance and participation in the preparation of such statement and its independent evaluation. Any search of the Senate amendment and the House bill or the two taken together demonstrates no requirement for notification to States or Federal land management entities or the solicitation of their views. Moreover, the requirement is imposed upon the Federal official to determine if there are disagreements and to assess the impacts if there are such disagreements. Such concepts are not contained within the House bill or State amendment.

This is further emphasized by the date which limits this new requirement to after January 1, 1976. From the period of the effective date to January 1, 1976, the requirements that are delineated by the House bill and the Senate amendment would be in effect after January 1, 1976, a completely new and additional requirement would go into effect. This limitation of data is a clear demonstration that there are two different requirements imposed by the amendment before the conference report. One that was within the framework of the earlier consideration of the Houses and another requirement that was not conceived of in either House before the conference. Consequently, it is clear that the conference report is subject to a point of order.

MRS. SULLIVAN: Mr. Speaker, I yield to the gentleman from California, the distinguished chairman of the subcommittee (Mr. Leggett) to speak on the point of order.

MR. [ROBERT L.] LEGGETT [of California]: Mr. Speaker, I rise in opposition to the point of order. Under Deschler's procedures the appropriate sections, and especially section 15 in chapter 33, obviously the conference report has to be within the scope of the disagreement between the House and the Senate. We have attempted to do that and we have done it. We have had that precisely in mind at all times. We have had the Public Works Committee jointly participating in our conference and at all times our effort has been to narrow the scope of this rather subjective language.

It was originally conceived that the proviso that is complained of that allegedly imposes these new duties might require a complete new environmental impact statement prepared by the Federal agency. We limited that. No longer are they required to submit a new Federal impact statement. They are required to make views and the views then are incorporated in the regular House version of an environmental impact statement.

The implication was that this would be too troublesome for the Federal authorities and, therefore, they would be required to make a report every time under the Senate bill; so we eliminated that and we said they only have to report at those times when they have a disagreement.

There was some confusion as to what was of major interstate significance and what was required and who is required to be notified. There was some implication we would have to notify the Sierra Club and various conservation agencies. So we said no, let us limit that to just the Federal entities that are involved, the Federal entities like the Federal Land Management Agency and the Park Service that have an interest in the conflict.

Under the provision of the Senate bill, notice would be required and reports would be required; so to spell it out, that is all we want is notification and to have them submit their views and it is well within the framework of the language the Senate had.

We did change the date, but we changed the date to make it less onerous, rather than to require a date which was some time ago.

The Senate bill actually had the June 1 change date.

To be sure, this bill is different from the House bill, but that was the purpose of the conference, to reconcile the differences between the House and the Senate. The bill we have brought here is not as broad and confusing as the Senate bill. We have some provisos that specifically limit the Senate language. We well admit that our agreement has to be within the scope. This is well within that reasonable connotation of the scope.

Mr. Speaker, I submit the point of order ought to be overruled.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the point of order is without merit. The provisions of H.R. 3130, as introduced in the House and I cite now the first words:

> To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to environmental impact statements.

That, Mr. Speaker, is extremely broad language and in and of itself I would submit to the Chair is quite sufficient to cover the language of the conference report in full, including the language of the conference report complained about by the gentleman from New Jersey.

The Senate language with regard to the title says as follows:

> To amend the National Environmental Policy Act of 1969 in order to clarify procedures therein with respect to the preparation of environmental impact statements.

Now, the gentleman from New Jersey, as I understand it, complains about small IV, wherein it is set out, I believe this is the language to which the gentleman addresses the complaint:

> (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

Mr. Speaker, if we will refer now to the language of the Senate bill, we will find at line 21 on page 2 of the Senate-passed amendment the following words:

> *Provided*, That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance:

The action of the conferees constricts in (iv) this undertaking which is imposed upon the Federal official involved and it requires instead that he notifies the effective State or Federal officials of actions of this character.

Coming further on down, one will see that imposed under the Senate bill is, "Provided further, the procedures set forth in this paragraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or any of the responsibilities under the act."

So, we are maintaining under the Senate bill, maintaining the responsibilities of the responsible Federal official and clearly within the responsibility of the Federal official responsible is the preparation of the impact statement, is the duty to receive the advice of effective State and Federal agencies. That is clearly contained within the provisions of section 102 of the National Environmental Policy Act.

Again, Mr. Speaker, I would point out that the action of the conferees restricts somewhat that responsibility and enumerates a specific responsibility which is imposed upon him to do specific things which are more broadly set out elsewhere in the National Environmental Policy Act, so again the action of the conferees here is clearly within the responsibilities of the conferees in meeting and in resolving differences within the periphery of the differences between the House and the Senate bills. So, for that reason, Mr. Speaker, I would point out that the point of order is not only lacking in merit, but appears to me to be clearly frivolous.

THE SPEAKER: The Chair is bothered over one point here and would like clarification if it can be given by either the proponents or those opposed to the point of order. That is, whether under the existing law or authority Federal officials have the authority or are required to consult with State officials and pertinent Federal agencies; something that the Chair does not find in either the Senate amendment or the House bill.

MR. LEGGETT: Mr. Speaker, one has to understand what the law is, and the law is made up really of the law which

we have in the appropriate sections enacted by the Congress and in the guidelines which are promulgated by the Council for Environmental Quality and in the regulations which are promulgated by the highway agency. Whenever we prepare an environmental impact statement, we have to send out notification to a large number of people and we have to solicit views, and then we have to digest those views and make up a report.

Now, what we intended to do with this language of early notification was to limit the requirements of what the existing law and regulations require in the preparation of a normal environmental EIS, or environmental impact statement. While we spell it out in the language here, which was different than what the Senate had, this is the only possible way that we could kind of split hairs and limit the activity and recognize what was going on at the present time but not require that they go as far as what would be required in the preparation of the syllabus.

THE SPEAKER: Is it the gentleman's statement that the Federal Government is either authorized by law or otherwise does have legal authority to consult with State and Federal agencies?

The Chair would like the answer of the gentleman from Michigan (Mr. Ruppe).

MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Speaker, I would like to take this opportunity of quoting existing law:

> Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or such expertise with respect to any environmental impact involved. Copies of such statement and the comments and the views of the appropriate Federal, State and local agencies which are authorized to develop and enforce environmental standards shall be made available to the President, the Council on Environmental Quality and to the public.

I believe that this information is required and notification given.

THE SPEAKER: The Chair recognizes the gentleman from New Jersey.

MR. HOWARD: Mr. Speaker, the answer to the Speaker's inquiry is no.

THE SPEAKER: How does the gentleman apply that answer to the legislation cited by the gentleman from Michigan.

MR. HOWARD: I understood the Speaker to ask whether there was any Federal law requiring this, and I said no, there is no Federal law requiring this; it is in the regulations.

THE SPEAKER: The Chair said "lawful authority." It did not say "statutory law."

MR. LEGGETT: Mr. Speaker, may I be heard on one authority?

MR. RUPPE: Mr. Speaker, I was quoting a moment ago from Section 102 of the National Environmental Policy Act of 1969. That is the law. That is the act.

THE SPEAKER: The Chair seems to think that the statute that the gentleman from Michigan has read answered the question which the Chair asked.

MR. [E. G.] SHUSTER [of Pennsylvania]: Mr. Speaker, I would ask the Speaker's indulgence to listen to that again. I believe it does not say "other states," but rather it says "Copies of such statement and the comments and

views of the appropriate Federal, State, and local agencies."

Nowhere here does it refer to "other states," which makes a significant difference, the difference being the appropriate State is the State involved, not some adjacent State, for example.

MR. LEGGETT: Mr. Speaker, if I could be heard on one more item, the gentleman has ignored the Intergovernmental Cooperation Act, particularly OMB Regulation A95, that requires that whenever an application for a Federal grant affects a multiplicity of jurisdictions, that all jurisdictions have to receive notification.

MR. DINGELL: Mr. Speaker, there is another section of the Environmental Policy Act, and that is section 102(F), under which the responsible Federal official is found under the duty to "make available to States, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment."

THE SPEAKER: The Chair will hear from the gentleman from New Jersey, and then the Chair will be prepared to rule.

MR. HOWARD: Mr. Speaker, in reference to what the gentleman from Michigan said, I would only say "make available," as he stated, is not "consult."

THE SPEAKER: The Chair is prepared to rule.

The Senate amendment contained a proviso "That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance."

As explained on pages 4 and 5 of the joint statement, the conferees interpreted this provision in the Senate amendment to impose a broad range of new responsibilities on the appropriate Federal official to make informed determinations of actions which have a major interstate significance.

In arriving at such determinations, it would appear that the Senate language would reasonably require the Federal official to consider the views of each affected State or Federal agency and therefore to notify the States and their appropriate agencies and to solicit their views in order to determine major interstate significance.

As indicated on page 5 of the joint statement, the conferees have sought to eliminate the possibility of too broad an interpretation of the impacts referred to in the Senate proviso, and have thus added language which replaces the term "major interstate significance" with provisions which, though stated differently, appear to restrict or limit the meaning of the Senate language and which do not at the same time add new requirements for consultation not already authorized by law.

The Chair feels that such a clarification is within the permissible limits of clause 3, rule XXVIII, so long as it can be shown to be a restrictive clarification and limitation of, and not an expansion upon, the authorities conferred in either the House or Senate version thereof.

The Chair has listened to the arguments on the point of order and the responses to his inquiries and believes that the language placed in the confer-

ence report meets this test. The Chair therefore overrules the point of order.

### *Points of Order Relating to the Scope of the Matter Committed to Conference*

**§ 19.9 Where one House has passed a bill of the other with an amendment in the nature of a substitute, the House rule prohibits the inclusion in a conference report of additional topics not committed to conference, or a provision "beyond the scope" of the differences between the two versions; and precedents predating the 1971 amendment to Rule XXVIII clause 3, may not be applicable when analyzing a point of order raised under the new rule.**

When the conference report on H.R. 12168, the Natural Gas Pipeline Safety Act Amendments of 1976, was called up for consideration, a point of order was raised by one of the House managers against the report. The basis of the point of order was that while the Senate amendment authorized certain civil suits to enforce provisions of the law, and the House bill contained no provision (relying on the existing law which did not permit such civil actions), the addition in the conference version of new authority for state officials to preempt such actions was ruled to be an "additional topic" not committed to conference.

The proceedings and a portion of the argument on the point of order are included here:[1]

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 12168) to amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I make a point of order against the conference report on H.R. 12168 on the grounds that it violates clause 3 of rule 28 of the House of Representatives in that it contains a modification beyond the scope of issues committed to the conference committee. . . .

THE SPEAKER PRO TEMPORE:[2] Will the gentleman from Ohio (Mr. Brown) advise the Chair specifically as to what language in the conference report he objects to. The Chair has the conference report before it.

1. 122 CONG. REC. 32719, 32720, 94th Cong. 2d Sess., Sept. 27, 1976.
2. John J. McFall (Calif.).

MR. BROWN of Ohio: Yes, Mr. Speaker. It is in the conference report on page 4, approximately the seventh line. The language to which I object says, "(or to the applicable State agency in the case of a State which has been certified under section 5(a) . . ."

MR. [JOHN D.] DINGELL [Jr., of Michigan]: Mr. Speaker, if the gentleman will yield, will the gentleman restate that, please. I am looking for it, and I do not find it.

MR. BROWN of Ohio: It is under subparagraph (b), in paragraph (1) on page 4, about the seventh line; it says as follows:

> Prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 5(a).

Then, Mr. Speaker, parenthetical matter has been added in subsection (b)(2), beneath that, which says as follows:

> If the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) . . .

Mr. Speaker, none of those parentheticals were in the Senate bill. They were added in the language at the conference; and therefore, I suggest they are beyond the scope of the conference and do add to the State consideration matters which were neither in the Senate bill nor in the House bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from Michigan (Mr. Dingell) wish to be heard on the point of order?

MR. DINGELL: Yes, Mr. Speaker. I rise in opposition to the point of order.

I first cite several sections of Cannon's Procedures, most specifically section 3265, section 3266 and section 3267.

Mr. Speaker, section 3265 states:

> Where all of a bill after the enacting clause is stricken out, the conference report may include any germane provision.

Section 3266 says:

> Where an entire bill has been stricken out and a new text inserted, the conferees exercise broad authority and may discard language appearing both in the bill and the substitute. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The Chair has listened to the arguments and read the statement of the managers and would state that the precedents cited by the gentleman from Michigan (Mr. Dingell) have since 1970 been somewhat outmoded by the new rule which the Chair will cite.

The last portion of the language cited by the gentleman from Ohio in parentheses is in the opinion of the Chair new language which conceptually was in neither the House bill nor the Senate amendment, is not within the scope of the conference, and is a violation of rule XXVIII, clause 3, which states:

> . . . nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.

While the Chair agrees with the gentleman from Michigan that notification to the relevant State agency is contemplated by existing law and is within the scope of conference, that provision added by the conferees which would prohibit citizens' suits if a State attorney general has commenced judicial proceedings appears to the Chair to inject a new exception from the citizens civil action authority which was not contemplated in the Senate version or in existing law.

The Chair on that one basis sustains the point of order.

### *Scope Where Conferees Report an Amendment in the Nature of a Substitute*

**§ 19.10 In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees it is in order for the conferees to report a substitute on the same subject matter, but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of the subjects in disagreement.**

On Oct. 5, 1951,[3] Mr. James P. Richards, of South Carolina, called up the conference report on H.R. 5113, the Mutual Security Act of 1951. Mr. Brent Spence, of Kentucky, made a point of order against the report, arguing that

It amends the Export-Import Bank Act, and provides that the Director for Mutual Security shall be a member of the Board of Directors of the Export-Import Bank. Therefore, Mr. Speaker, I ask that the point of order be sustained. The conferees went beyond the scope of their authority in placing this provision in the conference report, a provision which had not been considered by either the House or the other body, and which provision amends an act which was not under consideration. . . .

THE SPEAKER:[4] Does the gentleman from South Carolina desire to be heard?

MR. RICHARDS: Mr. Speaker, may I be heard briefly on the point of order?

When this bill went to conference, the situation confronting the conferees was this: The Senate in its consideration of the bill as an amendment struck out all after the enacting clause and inserted a new bill. According to some of the old precedents, and to a rule in force at one time, it was my understanding that this type of parliamentary situation would open the bill wide with the sky as the limit. It will be re-

3. 97 CONG. REC. 12693, 12702–04, 82d Cong. 1st Sess.
4. Sam Rayburn (Tex.).

membered that under the Reorganization Act of 1946, the rule was changed to provide that any conference report must be confined to the subject matter committed to the conference or to germane modifications of it. In this particular case we had in practical effect two bills before the conferees. . . .

THE SPEAKER: The Chair is ready to rule. . . .

The jurisdiction of conferees with reference to amendments in the nature of a substitute, as we have before us, is covered by section 135(a) of part 3 of the Legislative Reorganization Act of 1946. This provision, which appears as section 947 of the House Rules and Manual,[5] does not change the precedents, but merely codifies the longstanding practice of the House.

The provision is as follows:

> Sec. 135. (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of the subjects in disagreement.
>
> (b) In any case in which the conferees violate subsection (a), the conference report shall be subject to a point of order.

While the rule authorizes conferees to report a substitute on the same subject matter, it also restricts them to matter committed to them by one of the Houses. In the case before us neither House committed to the conferees a provision for making the Mutual Security Director a member of the board of the Export-Import Bank. And while the rule permits germane modifications of the matter in disagreement, such alteration of the board of directors of the Export-Import Bank is an expansion and not a modification of the matter in disagreement.

The Chair thinks the point of order is good and, therefore, sustains the point of order.[6]

### *Reconciling Divergent Treatments of Subject*

**§ 19.11 Where a House amendment in the nature of a substitute authorized endowment and operating payments for specific institutions of higher education, and the Senate substitute therefor: (a) conferred land-grant college status on those institutions; (b) changed the form of the authorizations to**

5. This reference is, of course, to the 1951 edition of the *House Rules and Manual.* The provision referred to was made part of the standing rules of the House in the following Congress, appearing in this form for the first time as Rule XXVIII clause 3, *House Rules and Manual* § 913a (1997).

6. See also 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess., Dec. 14, 1971.

**include a direct appropriation; and (c) included conforming amendments to other legislation related to land-grant status, House conferees remained within the scope of the differences between the two versions as required by Rule XXVIII clause 3, by including in their report the Senate provision conferring land-grant status and a reduced House figure for the endowment payment.**

On June 8, 1972,[7] Mr. Joe D. Waggonner, Jr., of Louisiana, raised a point of order against the conference report on S. 659, the Higher Education Amendments of 1972. The bill had been considered in the House as H.R. 7248 under a rule[8] which authorized points of order against provisions therein that were properly under the jurisdiction of committees other than the Committee on Education and Labor. A point of order was raised pursuant to this rule and sustained against a provision which conferred land-grant college status on institutions on Guam and the Virgin Islands. After passing H.R. 7248 the House substituted this bill for the language of S. 659. The Senate concurred in this House amendment in the nature of a substitute with a substitute of its own which contained the provision stricken from H.R. 7248 on the point of order noted above. Mr. Waggonner continued,

> The conferees have agreed to most of the Senate amendment.
>
> The statement of the managers is as follows:
>
> > The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.
>
> Thus, it is clear, Mr. Speaker, that what the conferees did was to agree in conference to matter which had earlier been subject to a valid point of order in the House of Representatives.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, responded to the point of order.

> MR. PERKINS: ... The House amendment authorized a lump sum appropriation of $3 million for each institution, plus an annual appropriation of $450,000 for each for general

7. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.
8. H. Res. 661, 117 CONG. REC. 37765, 92d Cong. 1st Sess., Oct. 27, 1971.

operating expenses in lieu of land-grant status for the institution.

The Senate amendment provided for endowments and payment of operating expenses, but in slightly different form. Land-grant status was conferred on the two institutions, with a cash endowment in lieu of the receipts from the sale of land scrip, plus conforming amendments to other related legislation which is related to land-grant status.

The issue before the conferees, therefore, was not whether aid should be extended to the College of the Virgin Islands and the University of Guam, but only the form such aid should take.

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of $3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees. That rule to which the distinguished gentleman from Louisiana referred applied only to the consideration of the bill during the House debate.

Mr. Speaker, the point of order should not be sustained.

The Speaker, Carl Albert, of Oklahoma, gave the following ruling:

> . . . Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. Obviously where, as here, the House amendment in the nature of a substitute and a Senate substitute therefor are both extensive and comprehensive legislative proposals, the task of writing a conference compromise is a difficult and painstaking task. . . .
>
> . . . The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

### *Point of Order That Conferees Have Exceeded Scope; Exceeding Benefits in Either Version*

**§ 19.12 Where portions of a conference report on veterans' benefits contained higher entitlements for vocational rehabilitation assistance per month than those contained in either the House bill or the Senate amendment, the Speaker**

**held that the conferees had exceeded the scope permitted them by Rule XXVIII clause 3 and sustained a point of order against the report.**

On Aug. 22, 1974,[9] when the conference report on the Vietnam-Era Veterans' Readjustment Act was called up for consideration, a point of order was lodged against the report on the ground that the conferees had exceeded the scope of differences committed to them. After argument by the Member pressing the point of order, Mr. H. R. Gross, of Iowa, and the rebuttal by the chairman of the Committee on Veterans' Affairs, Mr. William Jennings Bryan Dorn, of South Carolina, the Chair sustained the point of order.

CONFERENCE REPORT ON H.R. 12628, VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974

MR. DORN: Mr. Speaker, I call up the conference report on the bill (H.R. 12628) to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and other persons; to make improvements in the educational assistance programs; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:[10] Is there objection to the request of the gentleman from South Carolina?

POINT OF ORDER

MR. GROSS: Mr. Speaker, I ask to be recognized at the proper time to make a point of order against the conference report.

THE SPEAKER: The gentleman can be recognized prior to the reading of the statement of the managers on the conference report.

Is there objection to the request of the gentleman from South Carolina?

There was no objection.

THE SPEAKER: The gentleman from Iowa is recognized.

MR. GROSS: Mr. Speaker, I raise a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Amendments of 1974. The conference report violates clause 3 of rule XXVIII in that the conferees exceeded the scope of the conference.

Clause 3 of rule XXVIII states, in part, that the report of conferees:

> Shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses *if that modification is beyond the scope of that specific topic, question, issue, or proposition as so com-*

9. 120 CONG. REC. 30050–52, 93d Cong. 2d Sess.

10. Carl Albert (Okla.).

*mitted to the conference committee.* (emphasis added)

H.R. 12628, as approved by this House on February 19, authorized a 13.6 percent increase in monthly subsistence allowances for veterans participating in vocational rehabilitation training and veterans educational programs. The Senate, on June 19, adopted an amendment in the nature of a substitute that authorized an 18.2-percent increase in monthly payments under this legislation. The House subsequently disagreed with the Senate amendment and a conference was held.

Sections 2 and 5 of the House-passed bill provided for an increase in benefits of 13.6 percent for specific categories of eligible veterans and dependents. The corresponding provisions passed by the Senate, sections 101 and 213, authorize an increase of 18.2 percent in those benefits. The conference report, in sections 101 and 104, clearly authorize an increase of 22.7 percent in monthly allowances for those same categories of trainees. This modification is beyond the scope of the specific disagreement committed to the conference committee and is a clear violation of clause 3 of rule XXVIII. . . .

Mr. Speaker, sections 101 and 104 of the conference report exceed the scope of the conference. And I ask that the point of order be sustained.

THE SPEAKER: Does the gentleman from South Carolina desire to be heard on the point of order?

MR. DORN: I do, Mr. Speaker.

Mr. Speaker, I welcome the opportunity to explain the background of the particular provisions of the conference-reported bill which appear to be the basis for the gentleman's raising of a point of order.

To simplify my explanation, may I take the example of a single veteran who is attending full-time college training. Under the existing law he receives an educational allowance of $220 per month. This allowance is paid to him directly to assist in bearing his tuition, subsistence, and other educational expenses. As passed by the House, H.R. 12628 proposed to increase this allowance to $250, representing an increase of 13.6 percent over the current rate. Following extended hearings and deliberations on the part of the Senate in which there was considerable support for an added or supplemental partial tuition allowance, which would also be payable directly to the veteran, the Senate returned our bill with an amendment in the nature of a complete substitute. Probably the most significant aspect of the Senate substitute was to provide a new rate "package" consisting of an 18-percent increase in the basic monthly allowance to $260 for a single veteran, coupled with an additional "partial tuition assistance allowance" under a formula which would result, in the typical case, a maximum of $720 per school year. Accordingly the total assistance package proposed by the Senate potentially available for a single veteran, including the partial tuition assistance allowance, would approximate $290 per month. . . .

I think it is also significant to point out that the net fiscal effect of adoption of the conferees' recommendations will result in an annual savings to the Government of almost a half billion dollars per year over the Senate version.

In conclusion, Mr. Speaker, considered in the context of the overall rate structure package which was considered by the conferees, it is our strong conviction that the agreement on the single educational allowance rate contained in the conference bill does not violate either the letter or the spirit of rule XXVIII of the House of Representatives.

MR. GROSS: Mr. Speaker, may I be heard very briefly further?

THE SPEAKER: The gentleman from Iowa is recognized on his point of order.

MR. GROSS: Mr. Speaker, I respectfully submit that the gentleman has offered his resistance to the point of order based upon section 102 of the bill. My point of order goes to sections 101 and 104 of the conference report.

THE SPEAKER: The gentleman is correct.

Does the gentleman from South Carolina desire to be heard on the specific point of order made by the gentleman from Iowa? As the Chair understood it, the gentleman's argument related primarily to a point of order that might have been made on a different section.

MR. DORN: Mr. Speaker, I would like to comment further to the distinguished gentleman from Iowa.

The decision of the conferees to drop the partial tuition assistance and establish a single basic allowance of $270 for chapter 34 trainees encompassed 98 percent of all trainees involved. Since both the House and Senate bills set the same percentage increase for trainees under Chapter 34, which may be 98 percent of all trainees, and disabled veterans training under chapter 31 to make up 2 percent of the trainees, the conferees decided to remain consistent to the positions of both the House and Senate, and therefore extended the 23 percent increase to all classes of veterans.

THE SPEAKER: Is the gentleman arguing correctly to the point of order, or is the gentleman, in effect, conceding?

The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Act Amendments of 1974, on the ground that the conferees have exceeded the scope of their authority.

Specifically, it is alleged that the conference report provides a greater amount of vocational rehabilitation assistance per month and a greater apprenticeship or on-the-job training assistance, per month than either the House or Senate versions.

The Chair has examined section 101 of the conference report, which amends a table in title 38, United States Code, section 1504(b) to provide $209 a month in vocational assistance for a veteran with no dependents enrolled full time at an educational institution. Section 2 of the House bill amends the payment figure to provide $193 a month. Section 101 of the Senate amendment in the nature of a substitute amends the same figure to provide only $201 a month.

The conference amendment clearly exceeds the dollar amount of either the House or Senate version.

Similarly, section 104 of the conference report amends a table in title 38, United States Code, section 1787(b) to provide $196 a month assistance during the first 6 months for an individual

with no dependents, for apprenticeship or on-the-job training.

The House bill provides, in section 5, $182 for that purpose, and the Senate amendment provides, in section 213, $189 for that purpose.

The conference report exceeds the dollar amount contained in both the House bill and the Senate amendment in the nature of a substitute.

As the conferees have exceeded their authority under clause 3, rule XXVIII, the Chair therefore sustains the point of order against the conference report.

MOTION OFFERED BY MR. DORN

MR. DORN: Mr. Speaker, I move that the House recede from its disagreement to the Senate amendment to the text of the bill and agree to the same with the following amendment.

The Clerk read as follows:

> Mr. Dorn moves that the House recede from its disagreement to the Senate amendment to the text of the bill and agree to the same with the following amendment: In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:
>
> That this Act may be cited as the "Vietnam-Era Veterans' Readjustment Assistance Act of 1974".

### *Inclusion of Provision Deleted on Point of Order During Consideration of Bill*

**§ 19.13 A special rule permitting points of order to be raised against provisions in a House bill on jurisdictional grounds does not thereafter serve as a restriction on the authority of House conferees to incorporate similar provisions, which had been in a Senate substitute, as part of the conference report.**

On June 8, 1972,[11] Mr. Joe D. Waggonner, Jr., of Louisiana, rose with a point of order against the conference report on S. 659, the Higher Education Amendments of 1972.

MR. WAGGONNER: Mr. Speaker, I make the point of order that the conference report on S. 659 does not comply with the rules and precedents of the House. House Resolution 661, the rule which governed the debate on H.R. 7248 provided in part that a point of order would lie against provisions in that bill that were properly under the jurisdiction of other committees.

Pursuant to this rule a point of order was made by the gentleman from Pennsylvania (Mr. Goodling) against the language in title XII relative to the creation of land-grant colleges on Guam and the Virgin Islands. The Chair on that occasion sustained the point of order and title XII was stricken. It was later amended with proper language.

On November 4, 1971, the House passed H.R. 7248 and then in the usual manner substituted the language of the House bill for the language of S. 659.

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11. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.

On March 1, 1972, the Senate amended S. 659 with an amendment in the nature of a substitute for the House amendment in the nature of a substitute. Included in the text of this Senate amendment was language designating land-grant colleges on Guam and the Virgin Islands, language, Mr. Speaker, which had been earlier ruled out of order by you in the House.

The conferees have agreed to most of the Senate amendment.

The statement of the managers is as follows:

> The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land-grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.

Thus, it is clear, Mr. Speaker, that what the conferees did was to agree in conference to matter which had earlier been subject to a valid point of order in the House of Representatives. . . .

Certainly, Mr. Speaker, to permit the House conferees to agree in conference to a Senate amendment, the language of which has or has been subject to a point of order, does violence to the orderly procedure in the House and I, therefore, make a point of order against section 506 of the conference report on the grounds that it includes specific language against which a point of order by the Chair and acting under the authority of House Resolution [6]61, the rule governing the original House debate on this legislation. . . .

THE SPEAKER:[12] Does the gentleman from Kentucky (Mr. Perkins) desire to be heard on the point of order?

MR. [CARL D.] PERKINS: Yes, I do, Mr. Speaker.

THE SPEAKER: The gentleman is recognized.

MR. PERKINS: Mr. Speaker, the precedent to which the distinguished gentleman from Louisiana referred was with reference to a peculiar situation. If the bill to which he had referred had been brought to the floor of the House under an ordinary rule, the point of order would not have been well taken. But it was brought to the House under a unique rule at that time. . . .

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of $3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees. That rule to which the distinguished gentleman from Louisiana referred applied only to the consideration of the bill during the House debate.

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**12.** Carl Albert (Okla.).

Mr. Speaker, the point of order should not be sustained.

It was a special and unique rule governing that debate only. It cannot be relied upon now. . . .

THE SPEAKER: Does the gentleman from Minnesota desire to be heard?

MR. [ALBERT H.] QUIE [of Minnesota]: Yes, Mr. Speaker, I would like to speak in opposition to the point of order.

Mr. Speaker, adding to what the gentleman from Kentucky has said—and I think the gentleman from Kentucky summed up the opposition to the point of order in a very excellent manner—I should like to read that portion of the rule that applied when the point of order was made on November 4, 1971. That part of the rule is as follows:

> And further, all titles, parts, or sections of the said substitute, the subject matter of which is properly within the jurisdiction of any other standing committee of the House of Representatives, shall be subject to a point of order for such reason if such point of order is properly raised during the consideration of H.R. 7248.

We have gone by that position. We have S. 659 before us, which has been agreed to in the conference report. We had in the bill H.R. 7248, when we sent it to the other body, the $3 million for the institutions of higher education, but we did not make them land-grant colleges. Since they were already set up in that way, the House accepted that portion of the Senate language which is within our jurisdiction, and under the rules, it seems to me, we have only the question of germaneness and cannot raise the rule under which we operated when H.R. 7248 was considered in the House.

MR. WAGGONNER: Mr. Speaker, the gentleman from Minnesota says that the point of order should have been made during the consideration, and properly stated, of H.R. 7248. The point I make is exactly this: A point of order was made and was sustained during the consideration of H.R. 7248. The question is not whether or not there is an appropriation. The question still is whether or not this committee, having already been ruled against on a point of order during consideration of H.R. 7248, can now, by another device, bring back in this conference report legislation which designates these two institutions in Guam and the Virgin Islands as land-grant institutions. . . .

THE SPEAKER: The Chair is ready to rule. The gentleman from Louisiana makes a point of order that the conference report violates the rules and precedents of the House. Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. . . .

Several of the managers on the part of the House conferred with the Chair during the conference deliberations and stressed to the Chair that at every stage of their negotiations particular attention was being given to the rules governing conference procedure and the authority of the conferees.

Whenever a possible compromise infringed or even raised a question of the infringement of the rules of the House, the Chair was informed that the man-

agers on the part of the House resolved that matter so there was no conflict with the provisions of rules XX or XXVIII.

The matter to which the gentleman from Louisiana referred was contained in title XI of the House amendment to the Senate bill. The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

### *Funds Authorized by One House for One Year and by the Other House for the Subsequent Year*

**§ 19.14 Where one House authorizes certain funds for a fiscal year and the other House authorizes a lesser amount for that year as well as additional funds for the subsequent fiscal year, and neither version contains an overall total amount, House conferees do not exceed the scope of their authority by including in their report the amount authorized by one House for the first year and the amount authorized by the other House for the subsequent year, even though the total authorization reflected in the report is greater than that computed in either version.**

On June 8, 1972,[13] Mr. Joe D. Waggonner, Jr., of Louisiana, raised a point of order against the conference report on S. 659, the Higher Education Amendments of 1972.

MR. WAGGONNER: . . . I respectfully make the point of order, Mr. Speaker, that the conference committee has exceeded its authority. Section 1803(a) of the House-passed bill dealing with appropriations for emergency school aid authorized $1,500,000,000 for the next 2 fiscal years. In the Senate bill, in section 704(a) the Senate proposed the same amount of money, $1,500,000,000 for the first 2 fiscal years for emergency school aid.

Now, Mr. Speaker, as we know, section 3263, volume 8, of Cannon's Precedents of the House of Representatives states:

> Conferees may not go beyond the limits of the disagreements confided to them, and where the differences involve numbers, conferees are limited to the range between the highest figure proposed by one House and the lowest proposed by the other.

Each House, Mr. Speaker, dealing with this very specific subject, came to a very clear dollar figure for this authorization, $1,500,000,000. It is apparent, Mr. Speaker, that the conferees disregarded this. The conferees

13. 118 CONG. REC. 20281, 92d Cong. 2d Sess.

proposed an authorization for the first 2 years for emergency school aid of $2 billion, a half-billion dollars higher than proposed by either House of the Congress.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, spoke in defense of the conference report.

MR. PERKINS: ... The House amendment authorized the appropriations for the emergency school aid provisions of $500 million for fiscal year 1972, and $1 billion for the fiscal year 1973.

In contrast, the Senate amendment authorized $500 million for fiscal year 1973, and $1 billion for the fiscal year 1974.

The conference report authorizes the House amount for the fiscal year 1973, and the Senate amount for the fiscal year 1974.

The Precedents of the House are clear. The test is the total authorized amount in any single year, not the cumulative total. Therefore, the conference report does not violate the House Rules, and the point of order should be overruled.

MR. WAGGONNER: Mr. Speaker, I desire to speak further to the point of order....

Mr. Speaker, the Precedents of the House do not speak to the fiscal year allocations. The Precedents of the House and the Rules of the House speak to the limitations and to the range between the highest and the lowest figure proposed by one House or the other. I submit the conferees have violated the Rules of the House, because they have not limited their actions to the range.

They have considered in their actions fiscal year appropriations and not limitations of the respective bills which went to the conference.

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

The Chair will point out that neither the House nor the Senate provisions dealing with emergency school aid set an overall limit on authorizations. Both dealt with specific fiscal years. The conference in this situation had the authority to consider the differences between the two Houses with respect to each of the fiscal years 1972, 1973, and 1974, and to compromise their differences on a year-by-year basis. This they have done.

The Chair holds that the conferees have not exceeded their authority, and overrules the point of order.

### *Appropriation on Legislative Bill*

**§ 19.15 A conference report is subject to a point of order in the House if the managers on the part of the House on a legislative bill agree to a Senate amendment appropriating money.**

On May 22, 1936,[15] Mr. James M. Mead, of New York, called up the conference report on H.R.

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14. Carl Albert (Okla.).
15. 80 CONG. REC. 7790–92, 74th Cong. 2d Sess.

9496, to protect the United States against loss in delivery through the mails of Veterans' Administration benefit checks. Mr. James P. Buchanan, of Texas, raised a point of order.

THE SPEAKER:[16] The gentleman from New York [Mr. Mead], chairman of the Committee on the Post Office and Post Roads, presents a conference report signed by the conferees on the part of the Senate and the House. The gentleman from Texas [Mr. Buchanan] makes the point of order that the conference report is out of order because the conferees on the part of the House in conference agreed to an amendment of the Senate providing an appropriation contrary to the rules of the House.

Senate amendment No. 1 contains the following language:

> The Secretary of the Treasury is authorized to advance, from time to time, to the Postmaster General, from the appropriation contained in the Supplemental Appropriation Act, fiscal year 1936, approved February 11, 1936, for "administrative expenses, adjusted-compensation payment act, 1936, Treasury Department, 1936 and 1937", such sums as are certified by the Postmaster General to be required for the expenses of the Post Office Department in connection with the handling of the bonds issued hereunder. Such bonds—

This amendment also contains the following language:

> The Secretary of the Treasury shall reimburse the Postmaster General, from the aforesaid appropriation contained in said supplemental appropriation act, for such postage and registry fees as may be required in connection with such transmittal.

Rule XX, clause 2, of the rules of the House of Representatives,[17] reads as follows:

> No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of rule XXI, if said amendment had originated in the House, nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.

It is clear to the Chair that the managers on the part of the House in agreeing in conference to Senate amendment No. 1 violated the provisions of rule XX, inasmuch as the amendment provides an appropriation.

The Chair therefore sustains the point of order.

### § 19.16 A conference report on a legislative bill in which the conferees had agreed to an amendment appropriating funds was ruled out as in violation of Rule XX clause 2.

On Oct. 4, 1962,[18] the following occurred in the House:

16. Joseph W. Byrns (Tenn.).

17. *House Rules and Manual* § 829 (1997).

MR. [THOMAS J.] MURRAY [of Tennessee]: Mr. Speaker, I call up the conference report on the bill (H.R. 7927) to adjust postal rates, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

THE SPEAKER PRO TEMPORE:[19] Is there objection to the request of the gentleman from Tennessee?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, and I do so in order to make a parliamentary inquiry, I desire to make a point of order against consideration of the conference report. . . .

THE SPEAKER PRO TEMPORE: When the Clerk reports the title of the bill, the gentleman may be recognized.

The Clerk will report the title of the bill.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa makes a point of order. The gentleman will state the point of order.

MR. GROSS: Mr. Speaker, I make the point of order against the conference report on the ground that it violates clause 2 of rule XX of the House rules.[20] . . .

Mr. Speaker, H.R. 7927 as passed with the amendment of the Senate provides in section 1104, page 110, the following:

> Sec. 1104. Notwithstanding any other provision of law, the benefits made payable under the Civil Service Retirement Act by reason of the enactment of this part shall be paid from the civil service retirement and disability fund.

The words "shall be paid from the civil service retirement and disability fund" constitute an appropriation within the meaning of clause 2 of rule XX. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from Tennessee [Mr. Murray] desire to be heard on the point of order?

MR. MURRAY: I do not, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] makes a point of order that the language contained on page 110, section 104, line 12, "shall be paid from the civil service retirement and disability fund" is in violation of clause 2, rule XX.

The Chair sustains the point of order.

### *Restriction on Managers Authority — Appropriations in Senate Amendment; Effect of Waiver in House*

**§ 19.17 A point of order against a conference report on a legislative bill will only lie under Rule XX clause 2, if the provision alleged to be an appropriation were originally contained in a Senate amendment and if House managers at the conference**

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**18.** 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.

**19.** Carl Albert (Okla.).

**20.** *House Rules and Manual* § 829 (1997).

**were without specific authority to agree to that amendment, and will not lie against a provision permitted by the House to remain in its text.**

The conference report on the Vietnam Humanitarian Assistance Act of 1975 (H.R. 6096) was called up in the House on May 1, 1975.[1] Ms. Elizabeth Holtzman, of New York, then raised a point of order against the report, arguing that it contained a provision making an appropriation on a legislative bill in violation of Rule XX clause 2.[2] The provision complained of was in the House bill and permitted the use of previously appropriated funds of the Department of Defense to be used for evacuation programs. The House language had been protected from a point of order by a special order adopted prior to the consideration of the measure.[3] The point of order and the decision of Speaker Carl Albert, of Oklahoma, overruling the point of order are carried herein.[4]

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of U.S. Armed Forces in Indochina, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER: Is there objection to the request of the gentleman from Pennsylvania?

POINT OF ORDER

MS. HOLTZMAN: Mr. Speaker, I would like to make a point of order against the conference report.

THE SPEAKER: The gentlewoman will state it.

MS. HOLTZMAN: Mr. Speaker, section 7 of the conference report in the last sentence refers to evacuation programs authorized by this act. It permits a waiver of a series of laws for the purpose of allowing those evacuation programs to take place.

In the House bill (H.R. 6096), section 3 dealt with evacuation programs referred to in section 2 of the bill and waived the same series of laws with respect thereto. In order for section 3 to be considered, it required a rule from the Rules Committee. And a rule was

1. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess.
2. *House Rules and Manual* § 829 (1997).
3. See H. Res. 409, which waived points of order against this provision, 121 CONG. REC. 11262–70, 94th Cong. 1st Sess., Apr. 22, 1975.
4. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess., May 1, 1975.

granted waiving points of order against section 3 of the bill. But section 7 of the conference report, in speaking of evacuation programs authorized by the entire act and not just by one section, exceeds the scope of section 3 of the bill and exceeds the waiver that was permitted under the rule. It therefore violates rule XXI, clause 5, and violates rule XX, clause 2, which prohibits House conferees from accepting a Senate amendment providing for an appropriation on a nonappropriation bill in excess of the rules of the House.

Mr. Speaker, last week the Committee of the Whole deliberated on an amendment that exceeded the limitations of the rule granted by the Rules Committee. That was the Eckhardt amendment, and it was ruled out of order by the Chairman. The language in section 7 of the conference report in essence has the same flaw as the Eckhardt amendment.

The last sentence of section 7 of the conference report would waive various provisions of law with respect to $327 million, whereas the last sentence of section 3 of the House bill waived these laws only with respect to $150 million. Section 7 of the conference report, therefore, is broader than section 3 of the House bill.

Had the language of section 7 been offered as an amendment to the House bill, it would have been subject to a point of order. Since the authority of the House conferees is no broader than the waiver originally granted to the bill by the Rules Committee, section 7 of the conference report should be ruled out of order.

THE SPEAKER: Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. MORGAN: Yes, Mr. Speaker.

The point of order has no standing. Section 3 of the House bill and section 7 of the conference report referred to use of funds of the Armed Forces of the United States for the protection and evacuation of certain persons from South Vietnam. The language of the conference report does not increase funds available for that purpose. Both the House bill and the conference report simply removed limitations on the use of funds from the DOD budget. These limitations were not applicable to the funds authorized in H.R. 6096. The scope of the waiver is the same in the conference report and the House bill.

Mr. Speaker, the changes in language are merely conforming changes. Section 2 of the House bill was a section which authorized the evacuation programs in the House bill. The conference version contains the evacuation programs authority in several sections plus reference to the entire act rather than to one specific section.

Mr. Speaker, the point of order has no standing and I hope it is overruled. . . .

THE SPEAKER: The Chair is ready to rule.

The gentlewoman from New York makes the point of order that section 7 of the conference report constitutes an appropriation on a legislative bill in violation of clause 5, rule XXI, to which the House conferees were not authorized to agree pursuant to clause 2, rule XX.

The Chair would first point out that the provisions of clause 2, rule XX, preclude House conferees from agreeing to a Senate amendment containing an appropriation on a legislative bill, and do not restrict their authority to consider an appropriation which might have been contained in the House-passed version. In this instance, the conferees have recommended language which is virtually identical to section 3 of the House bill, and they have not agreed to a Senate amendment containing an appropriation. Therefore, clause 2, rule XX, is not applicable to the present conference report.

While clause 5, rule XXI, permits a point of order to be raised against an appropriation in a legislative bill "at any time" consistent with the orderly consideration of the bill to which applied—Cannon's VII, sections 2138–39—the Chair must point out that H.R. 6096 was considered in the House under the terms of House Resolution 409 which waived points of order against section 3 of the House bill as constituting an appropriation of available funds for a new purpose.

The Chair feels that an analogous situation may be found in Deschler's Procedure, chapter 25, section 23.11. There, points of order had been waived against portions of a general appropriation bill which were unauthorized by law, and the bill passed the House containing those provisions and was sent to conference; the conferees were permitted to report their agreement as to those provisions, since the waiver carried over to the consideration of the same provision when the conference report was before the House.

The gentlewoman from New York also has in effect made the point of order that section 7 of the conference report goes beyond the issues in difference between the two Houses committed to conference in violation of clause 3, rule XXVIII.

In the House-passed bill, section 3 contained waivers of certain provisions of law in order to make available funds already appropriated to the Department of Defense to be used for the Armed Forces in "evacuation programs referred to in section 2 of the act." The conferees have recommended that the same waivers of law shall apply to "evacuation programs authorized by this act."

In the opinion of the Chair, a conforming change in phraseology in a conference report from language contained in the House or Senate version to achieve consistency in the language thereof, absent proof that the effect of that change is to broaden the scope of the language beyond that contained in either version, does not necessarily render the conference report subject to a point of order. In this instance, it appears to the Chair that the only effect of the language in the conference report was to accomplish the same result that would have been reached by section 3 of the House bill, namely to remove certain limitations on the use of funds in the Defense budget for military evacuation programs under this bill.

The Chair therefore holds that the conferees have not exceeded their authority and overrules the point of order.

Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of April 28, 1975.)

### *Application of Rule XX Clause 2 Restriction to Senate Legislative Bills*

**§ 19.18 Rule XX clause 2, which precludes House managers from agreeing to Senate amendments providing for appropriations on a legislative bill, absent a grant of specific House authority to do so, applies only to Senate amendments sent to conference and not to appropriations contained in Senate legislative bills.**

**Where a conference report on a Senate bill is before the House and contains a recommendation that the Senate concur in a House amendment with an amendment, the report is a recommendation for Senate action and at that moment in time there is no Senate amendment before the House for action.**

On June 30, 1976,[5] a conference report on S. 3295, the housing amendments of 1976, was before the House. The report proposed that the Senate recede from its disagreement with a House amendment in the nature of a substitute and concur therein with a further substitute. The proposed amendment would have included the original Senate provision which was, under the precedents of the House, an "appropriation" within the meaning of Rule XX clause 2.[6] When a point of order was made against the conference report, the following arguments and ruling ensued:

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3295) to extend the authorization for annual contributions under the U.S. Housing Act of 1937, to extend certain housing programs under the National Housing Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

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5. 122 CONG. REC. 21632–34, 94th Cong. 2d Sess.
6. *House Rules and Manual* § 829 (1997).

THE SPEAKER:[7] Is there objection to the request of the gentleman from Wisconsin?

POINT OF ORDER

MR. [GARRY E.] BROWN of Michigan: Reserving the right to object, Mr. Speaker, I raise a point of order against the conference report.

THE SPEAKER: The gentleman will state his point of order.

MR. BROWN of Michigan: Mr. Speaker, I make a point of order against the conference report on S. 3295 on the basis that the House managers exceeded their authority by agreeing to two matters not in the original House amendment to the Senate bill and which violates clause 2, rule XX, of the House Rules and Precedents of the House. Clause 2, rule XX, reads in part as follows:

> Nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall first be given by the House by a separate vote on every such amendment.

The Senate-passed bill contains section 9(a)(2) and 9(b) which in effect provide for expenditures to be made from the various FHA insurance funds to honor claims made eligible for payment by the provisions of section 9 generally. These amendments are to section 518(b) of the National Housing Act and relate to sections 203 and 221 housing programs for which the authority of the Secretary of HUD to pay claims related to certain structural defects has expired if the claims were not filed by March 1976.

Both sections 9(a)(2) and 9(b) include identical language which states as follows:

> Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate.

The words "Expenditures pursuant to this subsection shall be made from the insurance fund" constitute an appropriation within the meaning of clause 2, rule XX. Based on precedents under clause 5, rule XXI, it is clear that payments out of funds such as the FHA insurance fund are within the meaning of the term "appropriation" and that the action taken by the House managers is violative of clause 2, rule XX.

In support of this point of order, I cite the ruling of the Chair on a point of order raised by H. R. Gross on October 1, 1962, to the conference report on H.R. 7927. A Senate provision agreed to in that report provided that—

> The benefits made payable . . . by reason of enactment of this part shall be paid from the civil service retirement and disability fund.

Inasmuch as when the House agreed to go to conference, it did not give specific authority to agree to such an amendment. I therefore submit that it is not in order for such language to be included in the conference report.

The FHA insurance funds are designed to provide the reserves for payments on defaulted mortgages and for the operation of HUD related to the

7. Carl Albert (Okla.).

various insurance programs and any diversion of the use of such funds such as for payment for defects in the structure would violate clause 5 of rule XXI. In further support of this point of order, and specifically on the point that the provisions constitute a diversion of funds for a separate purpose not within the intention of the legislation establishing the fund, I cite the ruling of the Chair on October 5, 1972, which holds that an amendment allowing for the use of highway trust fund moneys to purchase buses,

> would seem to violate clause 4 of rule XXI in that it would divert or actually reappropriate for a new purpose funds which have been appropriated and allocated and are in the pipeline for purposes specified by the law under the original 1956 act.

I say, Mr. Speaker, I make a point of order against the conference report on this basis.

I would note, Mr. Speaker, that the gentleman from Oklahoma is the one who sustained the point of order raised by Mr. Gross in the case which I have referred to.

Mr. Speaker, I am inclined to anticipate a ruling against my point of order, but if that should be the case, Mr. Speaker, I suggest we are making a mockery of the rules of the House.

Since some of my comrades may not be aware of it, the rules of the House in clause 5, rule XXI, provide:

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendments thereto may be raised at any time.

Mr. Speaker, that is a rule of the House. Now, since the House in its rules cannot have extraterritorial effect or extra body effect, in order to protect the House from having its rules violated by the Senate, we adopted clause 2 of rule XX which related to action that the Senate might take that would be violative of the House rules. But the very fact that this is not a Senate amendment on a House bill is insignificant if the rules of the House are going to have any real meaning because what we are saying is any time we want to violate the House rules, we can have the rule provide that after consideration of the bill it shall be in order for the such-and-such Senate bill to be taken from the Speaker's desk and everything after the enacting clause stricken and apply the House language, or we can, when the bill is under consideration before the House get consent to strike everything after the enacting clause of the Senate bill and substitute the House language. In either of those cases that for all intents and purposes precludes a Member of this House from saying that the rules of this House are violated with respect to action by the Senate.

I respectfully suggest, Mr. Speaker, at this point in time when we are having some questions raised about the integrity of the House rules and House administration, this is not the time to render a decision on a point of order that gives in effect further credence to

the fact that we do not intend to maintain integrity in this House with respect to the rules of the House if the procedure is carried out in a circuitous way.

THE SPEAKER: Does the gentleman from Ohio care to be heard on the point of order?

MR. [THOMAS L.] ASHLEY [of Ohio]: Very briefly, Mr. Speaker.

Mr. Speaker, clause 2 of rule XX of the rules of the House makes out of order any provision in a Senate amendment which provides for an appropriation. However, the rule does not address itself to provisions in Senate bills. The conferees accepted the provision in question, without change, from a Senate bill and not from a Senate amendment. Therefore, no violation of the House rules is involved even if the provision is considered to be an appropriation.

THE SPEAKER: The Chair is ready to rule.

The gentleman from Michigan has made a point of order against the conference report, referring to the language of rule XX, clause 2, which places certain restrictions on the managers on the part of the House in a conference with the Senate.

The Chair has ruled on this matter before.

On January 25, 1972, the Chair ruled in connection with a point of order made by the gentleman from Iowa (Mr. Gross) against the conference report on a foreign military assistance authorization bill (S. 2819) on the ground that the House conferees had exceeded their authority by including in the conference report an appropriation entirely in conflict with clause 2, rule XX. That rule provides, in relevant part, that "no amendment of the Senate"—that is the important language—no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

The Chair would point out that it was a Senate bill which was sent to conference with a House amendment thereto. The rule is restricted in its application to Senate amendments and, thus, is not applicable in the present situation.

The Chair, therefore, overrules the point of order.

MR. BROWN of Michigan: Mr. Speaker, in view of the ruling of the Chair, I just would like to point out that in the conference report the paragraph appears:

> That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment.

In other words, with a Senate amendment.

Now, I respectfully suggest that for all intents and purposes, by using the circuitous route of taking up the Senate bill and including the House language, we nullify totally the basic directive of the House rules that this House shall not concur in any appropriation in a legislation bill not a general appropriations act, and for the Chair to rule that we will accept a circuitous violation of the House rules, that we will not accept a direct violation, I think is not in the best interests of the House.

THE SPEAKER: The Chair just thinks there are other rules that govern and

that can protect the House in situations of this type.[8] The gentleman has referred to the language of the conference agreement; and the Chair would point out that the managers have proposed that the Senate recede and concur in the House amendment with an amendment. There is no Senate amendment before the House at this time.

Is there objection to the request of the gentleman from Wisconsin that the statement be read in lieu of the report?

There was no objection.

### *Appropriation Language in Legislative Bill, Restriction on Managers Authority*

**§ 19.19 A provision in a legislative bill authorizing the use, without a subsequent appropriation, of funds previously appropriated by law for a particular purpose, for a new purpose, constitutes an appropriation in a legislative bill (in contravention of Rule XXI clause 5(a)) and violates the restriction placed on the managers by Rule XX clause 2. A conference report may be ruled out on a point of order if the managers exceed their authority.**

The point of order against the conference report on H.R. 5612, the Small Business Assistance Act, together with the Chair's response, as recorded in the proceedings of Oct. 1, 1980,[9] are set out below:

THE SPEAKER PRO TEMPORE:[10] The gentleman from California is now recognized on his point of order.

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I rise and make a point of order against the conference report on the bill, H.R. 5612, on the grounds that the conferees have agreed to a provision in the Senate amendment which constitutes an appropriation on a legislative bill, in violation of

8. The procedural safeguards mentioned by the Speaker against the inclusion of appropriations in Senate bills include: (1) possible points of order under § 401 of the Congressional Budget Act—if the Senate provision can be construed as new spending authority not subject to amounts specified in advance in appropriations acts where budget authority has not been provided in advance (in this case, the money had already been appropriated and was in a revolving fund—so § 401 was not applicable); and (2) returning Senate bills which contain appropriations to the Senate by asserting the constitutional prerogative of the House to originate "revenue" measures—construed under the precedents to include at least "general appropriation bills".

9. 126 CONG. REC. 28638, 96th Cong. 2d Sess.

10. William H. Natcher (Ky.).

clause 2 of rule XX of the rules of the House of Representatives. The conferees have included, as an amendment to the bill, a title II, which provides for the award of attorneys' fees and other expenses to the prevailing party other than the United States, in certain actions or administrative proceedings in which the judgment or adjudication has been adverse to the United States, unless the court or adjudicative officer of the agency finds that the position of the United States was substantially justified or that special circumstances make the award unjust.

I will specify the place in the report if anyone so desires.

THE SPEAKER PRO TEMPORE: Does the gentleman from Iowa desire to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I think nothing I could say would add or subtract anything. The Speaker has all the information.

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

The gentleman from California (Mr. Danielson) makes the point of order that the conference report on the bill H.R. 5612 contains provisions of the Senate amendment constituting appropriations on a legislative bill in violation of clause 2, rule XX, which prohibits House conferees from agreeing to such provisions without prior authority of the House.

The provisions in title II question authorize appropriations to pay court costs and fees levied against the United States, but also provide that if payment is not made out of such authorized and appropriated funds, payment will be made in the same manner as the payment of final judgments under sections 2414 and 2517 of title 28, United States Code. Judgments under those sections of existing law are paid directly from the Treasury pursuant to section 724a of title 31 of the United States Code, which states that there are appropriated out of the Treasury such sums as may be necessary for the payment of judgments, awards, and settlements under sections 2414 and 2517 of title 28. Thus the provision in the Senate amendment contained in the conference report extends the purposes to which an existing permanent appropriation may be put and allows the withdrawal directly from the Treasury, without approval in advance by appropriation acts, of funds to carry out the provisions of title II of the Senate amendment.

For the reasons stated, the Chair sustains the point of order against the conference report.

### *Applicability of Rule XXI Clause 5(a) to a Motion To Concur in a Senate Amendment to a House Legislative Bill*

**§ 19.20 In a case of first impression, the Speaker entertained a point of order under Rule XXI clause 5(a), (which prohibits the inclusion in a legislative bill or an amendment thereto of an item of appropriation) where an amendment in disagreement was pending and a motion was offered to recede and**

**concur in a Senate amendment to a House legislative bill.**

The conference report on H.R. 5612, the Small Business Assistance Act, 1980, was ruled out on a point of order since the managers had agreed to a Senate amendment carrying an appropriation, a provision to which the managers on the part of the House could not agree under the restrictions imposed on their authority under Rule XX clause 2.[11]

A motion was then made by the manager of the bill, Mr. Neal Smith, of Iowa, to recede from disagreement and concur in the Senate amendment to the House bill with a further amendment which was essentially the text of the conference agreement but modified by a new section making expenditures in order only to the extent and in such amounts as are provided in advance in appropriation acts.

Two points of order were made against this motion, one under Rule XXI clause 5(a)[12] on the ground that the motion still contemplated a reappropriation of funds; the other under Rule XXVIII clause 5[13] on the ground that the language in the motion would not have been germane to the original House bill.

The Chair entertained the Rule XXI point of order first, since, if sustained, it would invalidate the entire motion. That point of order was overruled since the Chair discerned no appropriation in the language of the motion. The germaneness point of order was then pressed, and the Chair sustained that argument, thus setting the stage for a motion to reject the portion of the motion which would not have been considered germane.

The proceedings of Oct. 1, 1980,[14] involving the latter two points of order are carried here. The proceedings involving the conference report itself are covered in § 25.13, infra.

MOTION OFFERED BY MR. SMITH OF IOWA

MR. SMITH of Iowa: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Smith of Iowa moves that the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 5612) to amend section 8(a) of the Small Business Act and

11. See *House Rules and Manual* § 829 (1997).

12. *Id.* at § 846a.

13. *Id.* at § 913c.

14. 126 CONG. REC. 28638–42, 96th Cong. 2d Sess.

concur therein with the following amendment:

In lieu of the matter proposed to be inserted by the Senate, insert the following:

"PART A. SMALL BUSINESS ADMINISTRATION MINORITY BUSINESS DEVELOPMENT PROGRAM AMENDMENTS . . ."

TITLE II—EQUAL ACCESS TO JUSTICE ACT

SEC. 201. This title may be cited as the "Equal Access to Justice Act". . . .

AWARD OF FEES AND OTHER EXPENSES IN CERTAIN AGENCY ACTIONS

SEC. 203. (a)(1) Subchapter I of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 504. Costs and fees of parties . . ."

"(d)(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code. . . ."

LIMITATION

SEC. 207. The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act is effective only to the extent and in such amounts as are provided in advance in appropriations Acts. . . .

MR. SMITH of Iowa: Mr. Speaker, this amendment retains all of the language agreed to by the conferees, but it specifically provides that the provisions for the payment of judgments, attorney's fees and other expenses are effective only to the extent and in the amounts approved in advance in appropriations acts. This modifies those provisions which have been ruled to be an appropriation on an authorization bill. It makes no other changes in the language. It retains verbatim all other provisions which are so essential to small business. If the House adopts the amendment, this bill would be sent back to the Senate with the House amendment and, hopefully, it would pass.

POINT OF ORDER

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I will again raise a point of order of an appropriation in a legislative bill, for the reason that this amendment, if adopted, would require an affirmative action at any time against, for example, the Comptroller General before he could issue a voucher authorizing the payment of funds from the Treasury as to whether or not the award of attorneys' fees and costs pursuant to this proposed bill was something heretofore authorized and for which funds had theretofore been appropriated.

This would be an added burden and an added activity on the part of the Comptroller General and would constitute, I respectfully submit, an appropriation on a legislative bill.

For that reason, I again raise the point of order. . . .

MR. SMITH of Iowa: Mr. Speaker, I think it is very clear the way it is worded that it is just an authorization for an appropriation. There has to be a

specific appropriation, the same procedure we use in almost all laws around here.

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE:[15] The Chair will be glad to hear the gentleman.

MR. MCDADE: Mr. Speaker, the language says only to the extent and in such amounts as are provided in advance in appropriations acts.

My friend and I have been on the Appropriations Committee together, I guess, for about 36 years. This is boilerplate language. The point of order ought not to lie.

FURTHER POINT OF ORDER

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I further make a point of order.

THE SPEAKER PRO TEMPORE: The Chair will be glad to hear the gentleman.

MR. ROSTENKOWSKI: Mr. Speaker, the amendment, as I understand it, further allows for attorneys' fees to be paid in excess of what was prescribed for in the legislation out of the Small Business Committee. The general application of the bill is far in excess. I still think that the germaneness of the amendment of the gentleman is in question.

MR. SMITH of Iowa: Mr. Speaker, I have nothing further.

THE SPEAKER PRO TEMPORE: The Chair will dispose of the appropriation point of order first.

Then the Chair will take up the matter of germaneness.

On page 22 of the motion the following limitation under section 207 is included:

> The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this act is effective only to the extent and in such amounts as are provided in advance in appropriation acts.

Therefore, the point of order is overruled under clause 5, rule XXI.

The Chair would like to inquire of the gentleman from Illinois (Mr. Rostenkowski) if he desires to make a point of order as to the germaneness of a portion of the motion offered by the gentleman from Iowa.

MR. ROSTENKOWSKI: In my opinion, Mr. Speaker, the attorney's fees is not germane to the narrow small business bill. . . .

THE SPEAKER PRO TEMPORE: The Chair is now ready to rule. While the motion is germane to the Senate amendment which contains the provision concerning attorneys' fees, the Chair would rule that the language is not germane to the original House bill which narrowly amended the Small Business Act in an unrelated way. That is under clause 5 of rule XXVIII, the Chair would sustain a point of order as to title II of the motion.

Does the gentleman from Illinois have a motion to reject that portion?

MOTION OFFERED BY MR. ROSTENKOWSKI

MR. ROSTENKOWSKI: Mr. Speaker, I offer a motion.

The Clerk read as follows:

15. William H. Natcher (Ky.).

Mr. Rostenkowski moves to strike title II of the motion offered by the gentleman from Iowa, Mr. Smith.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Rostenkowski) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. Smith) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Illinois (Mr. Rostenkowski).

### *Conference Compromise Eliminating Appropriation on Legislative Bill*

**§ 19.21 Although Rule XX clause 2 prohibits House conferees from agreeing to a Senate amendment containing an appropriation to a legislative bill absent specific authority from the House, the conferees may include in their report a modification of such an amendment which eliminates the appropriation.**

On June 8, 1972,[16] the House was considering the conference report on S. 659, the Higher Education Amendments of 1972. Mr. Joe D. Waggonner, Jr., of Louisiana, raised a point of order against the conference report. Among the alleged defects of the conference report was the agreement of the House managers to a Senate provision which conferred land-grant status on colleges on Guam and the Virgin Islands and changed the form of an authorization for their endowments and operating expenses to include a direct appropriation. Mr. Waggonner quoted from the statement of the managers:

> The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land-grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.

Mr. Waggonner continued,

> . . . [T]he Managers on the part of the House may not agree in conference to amendments in violation of clause 2 of rule XXI or to Senate amendments to legislative bills carrying appropriations unless authorized by a vote of the House.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, responded to the point of order.

> MR. PERKINS: . . . The House amendment authorized a lump sum appropriation of $3 million for each institution, plus an annual appropriation of $450,000 for each for general

16. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.

operating expenses in lieu of land-grant status for the institution.

The Senate amendment provided for endowments and payment of operating expenses, but in slightly different form. Land-grant status was conferred on the two institutions, with a cash endowment in lieu of the receipts from the sale of land scrip, plus conforming amendments to other related legislation which is related to land-grant status.

The issue before the conferees, therefore, was not whether aid should be extended to the College of the Virgin Islands and the University of Guam, but only the form such aid should take.

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of $3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees.

Speaker Carl Albert, of Oklahoma, then stated:

The Chair is ready to rule. The gentleman from Louisiana makes a point of order that the conference report violates the rules and precedents of the House. Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. Obviously where, as here, the House amendment in the nature of a substitute and a Senate substitute therefor are both extensive and comprehensive legislative proposals, the task of writing a conference compromise is a difficult and painstaking task.

Several of the managers on the part of the House conferred with the Chair during the conference deliberations and stressed to the Chair that at every stage of their negotiations particular attention was being given to the rules governing conference procedure and the authority of the conferees.

Whenever a possible compromise infringed or even raised a question of the infringement of the rules of the House, the Chair was informed that the managers on the part of the House resolved that matter so there was no conflict with the provisions of rules XX or XXVIII.

. . . The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

### *Unauthorized Designated Allocations Within Range of Disagreement on Lump-sum Appropriation*

**§ 19.22 When language in an appropriation bill specifically limits use of a lump-sum appropriation "to projects authorized by law," and the conferees agree to a sum between the differences of the two Houses, a conference report is not subject to a point of order upon the ground that the lump-sum appropriation embraces funds which would exceed the amount authorized by law if apportioned to two of the projects in accordance with the Senate report.**

On Aug. 13, 1957,[17] Mr. Clarence Cannon, of Missouri, called up the conference report on H.R. 8090, public works appropriations, fiscal 1958.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the conference report on the ground that it carries appropriations not authorized by law. In support of the point of order, Mr. Speaker, I call attention to the conference report and the statement in connection therewith. On page 4, the Success Reservoir is carried at $5 million and the Terminus Reservoir at $2,500,000. The two together are more or less in the same project. They had only $500,000 available at the time the bill was in the House, and there has been no authorization bill passed since that time. At the time the bill was in the House, the committee said:

> Success and Terminus Reservoirs, Calif.: The current basin monetary authorization would be exceeded by $6,882,000 if the budget estimates of $7,500,000 were allowed for these two projects. The committee has allowed $618,000, the balance remaining in the present monetary authorization. Of this amount $518,000 is for Success Reservoir and $100,000 is for Terminus Reservoir. The Corps of Engineers is directed to proceed with these two projects up to the limit of the budget estimates, using available unobligated funds, should legislation be enacted increasing the monetary limitation to an amount equal to or in excess of the total of the budget estimates. . . .

THE SPEAKER:[18] Does the gentleman from Missouri [Mr. Cannon] desire to be heard on the point of order?

MR. CANNON: . . . Senate amendment No. 4, on page 5, to which the gentleman refers, is not an appropriation but precludes use of funds for items in the appropriation unless or until authorized.

Accordingly, the point of order that it is not authorized does not lie. . . .

THE SPEAKER: The gentleman from New York [Mr. Taber] makes a point of order on two items set forth in the statement of the managers on the part of the House. It appears to the Chair that the report of the conference committee stays within the amount of the two Houses. The language on page 3

17. 103 CONG. REC. 14571–76, 85th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

specifies that the appropriation can only be used for projects authorized by law. Therefore, the Chair must overrule the point of order. . . .

The gentleman from Missouri is recognized on the conference report.

*Parliamentarian's Note:* At the time H.R. 8090 was being considered by the House Subcommittee on Public Works Appropriations, it was conceded that only $618,000 remained of the funds previously authorized for the Success and Terminus Reservoirs. It was contemplated at that time that the omnibus rivers and harbors and flood control authorization bill, S. 497, would subsequently authorize $6,882,000, the difference between the $7,500,000 estimated for these reservoir projects by the Bureau of the Budget and requested by the Army Corps of Engineers, and the $618,000 of unspent authorizations then available to be appropriated.[19] The House report on H.R. 8090 allocated this $618,000 ($500,000 to Success and $118,000 to Terminus)[20] as part of a lump-sum appropriation of $442,186,800 for general construction for rivers and harbors and flood control.[1] The Senate report on H.R. 8090 alluded to S. 497,[2] which had passed the Senate and was then pending before the House Committee on Public Works. In reliance on these anticipated increased authorizations the Senate report allocated the full $7,500,000 for these two projects,[3] and appropriated a lump sum for general construction for rivers and harbors and flood control of $470,040,500.[4] But S. 497 was not law at the time the conferees met on H.R. 8090. (Nor was it ever enacted into law. After the House adopted it during the second session of the 85th Congress, the President vetoed it.)[5]

The conferees agreed to a lump sum, $449,398,500, between the House and Senate figures. Since the bill limited the use of the lump sum to projects authorized by law, funds in excess of that authorized, which were allocated to Success and Terminus Reservoirs in the

19. See hearings on H.R. 8090 before House Subcommittee on Public Works of the Committee on Appropriations, 85th Cong. 1st Sess., at pp. 418, 419 (1957).
20. H. Rept. No. 85–552, p. 4, 85th Cong. 1st Sess. (1957).

1. *Id.* at pp. 3, 8.
2. S. Rept. No. 85–609, 85th Cong. 1st Sess., pp. 19, 20 (1957).
3. *Id.* at p. 9.
4. *Id.* at pp. 6, 18.
5. See 104 CONG. REC. 6389, 85th Cong. 2d Sess., Apr. 15, 1958.

Senate report, could not be used for that purpose.

### *Senate Practice; Constitutional Point of Order*

**§ 19.23 Senate practice admits a point of order that a portion of a conference report is out of order under the Constitution, but such a point is not decided by the Presiding Officer but is submitted to the Senate: "Is the point of order well taken?"**

During consideration in the Senate of the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act, 1994, a constitutional point of order was raised by Senator John S. McCain III, of Arizona. The disposition of the point of order is carried here.[6]

MR. MCCAIN: Madam President, I make a constitutional point of order that the retroactive tax increases in the conference report which predate April 8, 1993, are in violation of the due process clause of the fifth amendment of the Constitution.

THE PRESIDING OFFICER:[7] Under the precedents and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The Chair, therefore, under the precedents of the Senate, submits the question to the Senate, Is the point of order well taken?

Debate on this question is limited to 1 hour equally divided and controlled in the usual form pursuant to section 305(c)(2) of the Congressional Budget Act.

The Senator from Arizona controls 30 minutes, the Senator from Tennessee controls 30 minutes.

Who yields time? . . .

Mr. McCain addressed the Chair.

THE VICE PRESIDENT:[8] The question before the Senate is, Is the point of order well taken? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 44, nays 56. . . .

THE VICE PRESIDENT: On this vote, the yeas are 44, the nays are 56. The point of order is not sustained.

MR. [DANIEL P.] MOYNIHAN [of New York]: Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

### *Senate Decision Interpreting "Byrd Rule"*

**§ 19.24 In the Senate, under the so-called "Byrd rule" (section 13 of the Budget Act), a provision which produces no measurable**

6. See 139 CONG. REC. 19750, 19759, 19760, 103d Cong. 1st Sess., Aug. 6, 1993.
7. Patty Murray (Wash.).
8. Albert A. Gore, Jr. (Tenn.).

**changes in outlays or revenues is not necessarily extraneous.**

The provision in the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, which was targeted by a point of order by Senator John C. Danforth, of Missouri, related to a program to provide pediatric immunizations under the Medicaid program. The point of order, the Chair's response, and the vote taken on the motion to sustain the Chair's ruling are carried here.(9)

MR. DANFORTH: Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair.

First, is a provision of the budget reconciliation bill extraneous under section 313(b)(1)(A) of the Budget Act, the Byrd rule, if it produces no changes in outlays or revenues that can be estimated?

THE PRESIDING OFFICER:(10) Such a provision would not necessarily be out of order.

MR. DANFORTH: Would not necessarily be out of order.

The second question is: If the impact on outlays or revenues cannot be estimated, are they merely incidental to a nonbudgetary component under section 313(b)(1)(D) of the Byrd rule?

THE PRESIDING OFFICER: Once again, that would not necessarily be the case.

MR. DANFORTH: Mr. President, I now wish to raise a point of order, and do raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

THE PRESIDING OFFICER: The point of order is not well taken.

MR. DANFORTH: Mr. President, I appeal the ruling of the Chair.

THE PRESIDING OFFICER: Under the previous order, there is a half-hour equally divided on the appeal.

MR. DANFORTH: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is this a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

MR. [JAMES R.] SASSER [of Tennessee]: Mr. President, I yield myself such time as I may consume, and I will be very brief.

Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try

9. 139 CONG. REC. 19763, 19764, 19767, 103d Cong. 1st Sess., Aug. 6, 1993.

10. Herbert H. Kohl (Wis.).

to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report. . . .

THE PRESIDING OFFICER: All time has been yielded back.

The question is, is the appeal of the Senator from Missouri well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required for the appeal to be well taken.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 43, nays 57. . . .

### *Senate Practice; Point of Order Under "Byrd Rule"*

**§ 19.25 Although a point of order under section 313 of the Budget Act is not debatable in the Senate, under section 904(d) of the Budget Act an appeal of a ruling thereon is debatable for one hour, equally divided between and controlled by the moving party and the bill manager.**

On Aug. 6, 1993, during the debate on the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, a point of order was directed to a provision imposing domestic content requirements on U.S. cigarette manufacturers. The Presiding Officer held the provision not to be "extraneous" and therefore not subject to such point of order under the Byrd rule, as expressed in section 313 of the Budget Act.

While under section 313 a point of order is not subject to debate, an appeal from the decision of the Presiding Officer under section 904 is subject to one hour of debate.

To overturn the Chair's decision, a vote of three-fifths of the Members duly chosen and sworn is required.

A relevant portion of the proceedings is carried herein.[11]

MR. [HANK] BROWN [of Colorado]: . . . Mr. President, I raise a point of order that section 1106(a) is extraneous and violates section 313(b)(1)(D) of the Congressional Budget Act of 1974.

11. 139 CONG. REC. 19780–83, 103d Cong. 1st Sess., Aug. 6, 1993.

It violates it because it produces changes in the revenues that are clearly only incidental to the nonbudgetary components of the provision. The reality is this imposes the first domestic content provision that applies to exports. It is a tiny fraction of revenue—actually not even reducing the deficit—but only one-fourth of 1 percent of the tobacco——

THE PRESIDING OFFICER:[12] If the Senator will withhold, the Chair wishes to advise the Senator the point of order is not debatable. So if the Senator is setting a predicate for offering a point of order, that is acceptable. If he is debating a point of order already offered, it is not.

MR. BROWN: I do raise that point of order and ask the Chair to rule on section 1106(a).

THE PRESIDING OFFICER: The Chair will not sustain the point of order. The point of order is not sustainable.

MR. BROWN: Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The vote will be taken by the yeas and nays.

MR. [WENDELL H.] FORD [of Kentucky]: Mr. President, as I understand it we have 30 minutes? Was that the gentleman's agreement? Or what is the time agreement?

THE PRESIDING OFFICER: The Chair advises the Senate the time available for debate will be 1 hour unless changed by unanimous consent. . . .

MR. [PAUL S.] SARBANES [of Maryland]: Mr. President, we ask unanimous consent the time on the appeal be limited to 10 minutes equally divided, 5 to a side.

THE PRESIDING OFFICER: Hearing no objection, that will be the order. . . .

MR. FORD: Mr. President, the Byrd rule under which my colleague from Colorado has made his appeal is very important. The individual's name who is carried on this Byrd rule does it because it is important to this institution.

Mr. President, let me explain to my colleagues, while I believe the Parliamentarian after careful review—and I underscore careful—has advised the Chair that this provision does not violate that Byrd rule.

This provision raises some $29 million over a 5-year period for deficit reduction.

The CBO estimate for this provision analyzed each part of the provision and concluded that each had a budgetary impact on the $29 million in savings achieved by this provision. That is the Byrd rule question, not the underlying argument. . . .

I urge my colleagues to uphold the ruling of the Chair. . . .

THE PRESIDING OFFICER:[13] All time has expired. The question is, Is the appeal of the Senator from Colorado well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required to overturn the decision of the Chair.

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**12.** Joseph I. Lieberman (Conn.).

**13.** Charles S. Robb (Va.).

MR. BROWN: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The clerk will call the roll. . . .

If there are no other Senators desiring to vote, on this vote the yeas are 43, the nays are 57. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the appeal is rejected.

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I move to reconsider the vote by which the appeal was rejected.

MR. [PATRICK J.] LEAHY [of Vermont]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## § 20. Statements Accompanying Report

*Parliamentarian's Note:* A report of a conference committee must be printed as a report of the House, and must be accompanied by the explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement must be sufficiently detailed and explicit to inform the House as to the effect which the amendments or proposition contained in such report will have upon the measure to which those amendments or propositions relate.(14)

Sufficiency of the joint statement is a matter for the House to determine in its vote on the conference report, and not for the Speaker to determine on a point of order.

### *Proposed Action on Amendments in Disagreement*

**§ 20.1 Although the rules do not require the managers of a conference to set out in their explanatory statement proposed action on amendments in disagreement, they may do so if they desire.**

On June 19, 1941,(15) Speaker Sam Rayburn, of Texas, recognized Mr. John J. Cochran, of Missouri, who made the following remarks in regard to H.R. 4590:

MR. COCHRAN: Mr. Speaker, in order to advance my thought, I am referring specifically to the Department of the Interior appropriation bill, which will undoubtedly be considered today.

14. Rule XXVIII clause 1(d), *House Rules and Manual,* § 911 (1997).

15. 87 CONG. REC. 5352, 77th Cong. 1st Sess.