shall immediately appoint conferees on the part of the House without intervening motion.

The House agreed to the resolution and the Speaker appointed conferees.

Parliamentarian's Note: The adoption of such a resolution (or motion) directing the Speaker to appoint conferees without intervening motion precludes a motion to instruct these conferees prior to their appointment.

§ 7. Power and Discretion of Conferees

The authority of the managers at a conference is limited by several restrictions.[12] Their report is subject to a point of order if they agree to a provision that is beyond any of the limits of their authority.[13] First, conferees may consider only matters in disagreement between the two Houses.[14] This restriction now applies in situations where one House has stricken all after the enacting or resolving clause of a bill or resolution of the other and inserted in its place an entirely new bill (a substitute).[15]

The Legislative Reorganization Act of 1970[16] amended Rule XXVIII clause 3, to restrict the discretion of the conferees by prohibiting them from introducing in a conference substitute any additional topic, question, issue, or proposition, not committed to conference by either House, and by proscribing any modification in a conference substitute which would be beyond the scope of such specific topic, question, issue, or proposition as so committed to the conference committee by either or both Houses.[17] This represents a departure from the traditional custom of the House whereby conferees had extremely wide latitude when considering a bill or resolution and a substitute therefor. In the past in such cases conferees were free to discard language which occurred in both the original legislation and the substi-

12. See generally § 19, infra.
13. See § 19.1, infra.
14. See §§ 7.1–7.7, 19.5, 19.6, infra; and *House Rules and Manual* § 546 (1997).
15. Rule XXVIII clause 3, *House Rules and Manual* § 913(a) (1997). See § 7.2, infra.
16. 84 Stat. 1140, Pub. L. No. 91–510, § 125(b)(3) (Oct. 26, 1970), which was adopted as part of the rules of the House pursuant to H. Res. 5, 117 CONG. REC. 114, 92d Cong. 1st Sess., Jan. 22, 1971.
17. See §§ 19.5, 19.6, infra.

tute,[18] could report out any germane amendment,[19] and could even report from conference an entirely new bill germane to the subject matter before them.[20]

Second, since the beginning of the 92d Congress, conferees have been required to take cognizance of the rule on germaneness.[1] Prior to this time, there was no procedure whereby the House could address itself specifically to the issue of nongermane Senate material contained either in conference reports or in amendments between the Houses.[2] The Legislative Reorganization Act of 1970[3] added a provision to the rules of the House which required conferees to obtain specific prior authority from the House before they could agree to any Senate amendment which would be held nongermane if offered in the House.[4] The rules were amended again late in the 92d Congress[5] to delete this requirement of specific prior authority and to provide a method whereby separate votes could be taken during consideration of a conference report on nongermane matter contained therein. The rejection of any such Senate amendment results in the rejection of the entire conference report.[6]

Third, conferees may not agree to any Senate amendment to a general appropriation bill which

18. See 86 CONG. REC. 10146, 10174–77, 76th Cong. 3d Sess., Aug. 12, 1940; and 8 Cannon's Precedents § 3266.
19. See 8 Cannon's Precedents §§ 3248, 3263, 3265.
20. See 93 CONG. REC. 6361–82, 80th Cong. 1st Sess., June 4, 1947; 91 CONG. REC. 2838–40, 79th Cong. 1st Sess., Mar. 27, 1945; 8 Cannon's Precedents §§ 3248, 3263; and 5 Hinds' Precedents §§ 6421, 6423, 6424.
1. Rule XVI clause 7, *House Rules and Manual* §§ 794–800 (1997). See generally Ch. 28, supra.
2. See 113 CONG. REC. 34032–34, 90th Cong. 1st Sess., Nov. 28, 1967, especially the remarks of Messrs. Comer, Jones, and Celler regarding the Senate practice of adding nongermane amendments to House proposals.
3. 84 Stat. 1140, Pub. L. No. 91–510, § 126(b) (Oct. 26, 1970), which was adopted as part of the rules of the House pursuant to H. Res. 5, 117 CONG. REC. 114, 92d Cong. 1st Sess., Jan. 22, 1971.
4. See annotation to Rule XX clause 2, *House Rules and Manual* § 829 (1997).
5. H. Res. 1153, the provisions of which took effect immediately prior to the beginning of the 93d Congress.
6. Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).

provides for an expenditure not previously authorized by law, and which would therefore violate Rule XXI clause 2,[7] or any Senate amendment providing for an appropriation on any bill other than a general appropriation bill, unless prior specific authority to do so is granted by the House by a separate vote on each such amendment.[8] This general restriction on the authority of the managers does not apply when they consider a House amendment to a Senate bill.[9] Several additional specific exceptions to this restriction regarding consideration of Senate amendments should be noted. When a legislative item remains in an appropriation bill as passed by the House and a Senate amendment increases the amount of money being authorized, the conferees may agree to this without prior authority from the House.[10] Also when an appropriation bill is considered and passed in the House under a special rule which waives points of order against items therein unauthorized by law, the conferees may agree to these provisions although they remain unauthorized.[11] On one occasion conferees presented a conference report on a general appropriation bill which allocated to several projects specific funds which had not been authorized, and the Speaker overruled a point of order noting that these specifically allocated appropriations were contained within a lump-sum appropriation which was limited by the language of the bill to projects authorized by law.[12] Conferees need not obtain authority from the House to eliminate an appropriation contained in a Senate amendment to a legislative bill.[13]

On occasion, the conferees may recommend in their report that the House agree to an amendment in the third degree.[14] Although the report is subject to a point of order on that ground, the infraction may be ignored or waived.[15]

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7. *House Rules and Manual* § 834 (1997).

8. Rule XX clause 2, *House Rules and Manual* § 829 (1997). See §§ 7.19–7.22, 19.15, 19.16, infra.

9. § 7.30, infra.

10. § 7.27, infra.

11. §§ 7.28, 7.29, infra.

12. § 19.22, infra.

13. § 19.21, infra.

14. See Ch. 32, §§ 6.3, 6.4, supra.

15. See the proceedings concerning Senate amendment No. 47 to H.R. 5389, 77 CONG. REC. 5975–6015, 6098–130, 6145–54, 6165, 6166, 73d Cong. 1st Sess., June 14 and 15,

Matters in Disagreement Between the Houses

§ 7.1 Where a Senate housing bill authorized a sum of money for education grants, and the House struck out this provision, the conferees remained within the scope of conference by retaining the provision but reducing the amount of the authorization.

On June 23, 1959,[16] the House was considering the conference report on S. 57, the Housing Act of 1959. Mr. Graham A. Barden, of North Carolina, rose with a point of order:

> Mr. Speaker, I make a point of order against the provisions of the conference report, and I do so realizing that I probably will be overruled on account of the fact that the rule seems to refer to amendments of the Senate. However, I think it is of sufficient importance at this time that a point of order should be discussed because in section 812 of the conference report it is stated:
>
> > There is hereby authorized to be appropriated not to exceed $300,000 for a 3-year period commencing on July 1, 1959, to be used by the Housing and Home Finance Administrator for the purpose of providing scholarships and fellowships in public and private nonprofit institutions of higher education for the graduate training of professional city planning and housing technicians and specialists. Persons shall be selected for such scholarships and fellowships solely on the basis of ability.
>
> Certainly that would have been subject to a point of order had this matter been brought to the House in a bill pending on the floor of the House. . . .
>
> THE SPEAKER:[17] The Chair is ready to rule. The only question before the Chair is whether or not this provision was within the scope of the conferees. The Senate adopted this provision in toto, and it provided $500,000 for 3 years.[18] The conferees agreed upon $300,000 for 3 years. The Chair cannot see how we can stretch it to the point where this matter would be subject to a point of order and states again that he believes it was definitely within the scope of the conferees and therefore overrules the point of order.

Scope of Discretion Between Dates

§ 7.2 Where one House strikes all after the enacting clause of a bill of the other, and inserts a new text, the conferees have a wide range of discretion in writing new language; but they continue to

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1933; and H. Jour. 431, 432, 73d Cong. 1st Sess. (1933).

16. 105 CONG. REC. 11599, 11600, 11615, 86th Cong. 1st Sess.

17. Sam Rayburn (Tex.).

18. *Parliamentarian's Note:* The House had totally eliminated this scholarship provision when it passed S. 57.

be bound by the differences submitted to them, and where dates are concerned, they cannot go beyond the latter or within the shorter.

On Dec. 11, 1967,[19] Thaddeus J. Dulski, of New York, the Chairman of the Committee on Post Office and Civil Service, called up the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967. Mr. H. R. Gross, of Iowa, rose with a point of order:

> 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.
>
> Mr. Speaker, the precedents of the House, Cannon's Precedents, volume VIII, section 3264, have established that where two Houses fix different periods of time the conferees have latitude only between the two, but may not go beyond the longer nor within the shorter. . . .
>
> Rule 28 clause 3 of the Rules of the House [as it existed in the 90th Congress] 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 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. . . .

19. 113 CONG. REC. 35811, 90th Cong. 1st Sess.

THE SPEAKER:[20] 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.

§ 7.3 *Parliamentarian's Note:* The report of the managers must not include matter not committed to the conference committee by either House, nor may 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 thereof as so committed to the conference committee.[1]

Multiple Points of Order Against Conference Report

§ 7.4 Instance where the Speaker entertained multiple points of order against a conference report and then overruled them all, finding that the conferees had stayed within the scope of the matters committed to them, even though they had—in some instances—added words and phrases not in either the Senate bill or the House amendment in the nature of a substitute.

A rather protracted parliamentary battle over consideration of the Outer Continental Shelf Amendments of 1976 was concluded on Sept. 28, 1976,[2] when actual debate on the conference report began. The Speaker first disposed of seven arguments that the conferees had gone beyond the confines set by Rule XXVIII clause 3, in reaching their compromise.

Both Mr. Hamilton Fish, Jr., of New York, who pressed the various points of order, and Mr. John M. Murphy, of New York, who argued in defense of the conference agreement, made extensive arguments.

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20. John W. McCormack (Mass.).

1. The Legislative Reorganization Act of 1970 modified the rules of the House to place this restriction on the authority of the conferees when considering a bill and its substitute in conference. 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(3), (Oct. 26, 1970). Rule XXVIII clause 3, *House Rules and Manual* § 913(a) (1997); and *Deschler's Procedure* (93d Cong.), Ch. 33 § 6.2, supra.

2. 122 CONG. REC. 33020, 33021, 33023, 94th Cong. 2d Sess.

MR. FISH: Mr. Speaker, prior to 1971, managers considering a bill and an amendment in the nature of a substitute were free to exercise wide discretion in discarding language appearing in both versions and in making germane amendments, even beyond the scope of the various issues in disagreement. All this was changed by the Legislative Reorganization Act of 1970. Section 125(B) of that act revised clause 3 of rule 28, so that each specific topic, question, issue, or proposition must now be looked at individually, as if linear amendments had been made by one House to the bill of the other. Under this rule the conferees cannot report new matter not committed by either House. Also, where the two Houses propose different language on a particular issue, the two versions set the boundaries for conference consideration of that issue. Amendments outside those boundaries may not be reported, even if germane. Where one House is silent on an issue proposed by the other, the silent House is deemed to be incorporating current law, if any, on the subject into its version. If both versions contain matter on a given issue, that issue must be reported by the conference, in disagreement if necessary. Finally, since the substitute is being handled as if it were several linear amendments, it is not in order for the managers to modify or fail to report language which is identical in both versions.

Mr. Speaker, the most glaring violation of rule 28, clause 3, is found at the bottom of page 27 of the printed version of the conference report in proposed subsection 22(e). In both the Senate bill and the House amendment a positive duty is put on designated officials to consider allegations of safety violations. Specifically, the Senate lists the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating. The House lists the same two officials and adds the Secretary of Labor as well. With respect to this particular issue, therefore, the only matter in disagreement is whether or not to include the Secretary of Labor on the list. . . .

Finally, proposed section 20(b)(1)(A) of the Senate bill and section 21(c)(1) of the House amendment required Federal officials to, and I quote identical language from both versions, "promulgate a complete set of safety regulations." The conference report gratuitously added the word "new" in the middle of the quoted language. Since both versions were identical, this should have been handled in the statement of the managers. It is not in order to consider such a modification of identical language, pursuant to rule 28, clause 3, and the conference report should be ruled out of order. I thank the Chair.

MR. MURPHY of New York: Mr. Speaker, before reviewing as the specific points of order, I must review the rules and procedures of the House. Rule 28, paragraph three, indicates whenever a disagreement to a bill through an amendment in the nature of a substitute has been committed to a conference committee, the conference may report a total substitute so long as no additional topic, question, issue, or proposition is included and so long as any modification suggested by the conference is not beyond the scope of the

topics, questions, issues, or propositions sent to such conference.

After hearing all of the argument, the Speaker ruled.

THE SPEAKER:[3] The Chair is prepared to rule.

The gentleman from New York (Mr. Fish) argues in his first point of order under clause 3, rule XXVIII, that the conferees have exceeded the scope of the matter committed to conference by removing from the Secretary of the Department in which the Coast Guard is operating concurrent responsibility for considering allegations of violations of safety regulations. It is the Chair's opinion that the portions of the conference report dealing with safety regulations and enforcement must be read as a whole. The House and Senate versions had differing provisions on the various aspects of that subject and gave regulatory and enforcement responsibility to differing officials. The conference report compromise gives the authority to the Interior and Labor Departments and makes the conforming change in the provision dealing with consideration of allegations of violations. For the reasons stated by the gentleman from New York (Mr. Murphy) the Chair overrules the point of order.

The gentleman's second point of order on scope deals with the findings at the beginning of the conference report, wherein the conferees agreed to language finding adverse impacts on the various States. It appears to the Chair that the language is between the Senate language, addressing the coastal zones of the various States, and the House language, addressing the various coastal States and other States. The conference language is no broader than the House language and the Chair overrules the point of order.

In his third point of order on scope, the gentleman from New York only points to language in the statement of managers and argues that a statement of intent by the conferees exceeds the scope of conference. Such a point of order must lie against language in the conference report itself and not in the joint statement and the Chair overrules the point of order.

The gentleman's fourth point of order on scope deals with the section of the conference report relating to judicial review of the Secretary of the Interior's determination whether to override State and regional recommendations as to development on the shelf. It appears to the Chair that the gentleman singles out one provision which must be read in conjunction with the other provisions in both bills on judicial review. Both bills provide for judicial review of shelf activities in other sections than the one pointed out. The conference language clarifies the fact that the limitation on judicial review of the Secretary's determination does not inhibit seeking judicial review of the underlying activities on the Outer Continental Shelf and does not exceed the scope of the matter committed to conference.

The gentleman makes several additional points of order on scope. The conference report exempted from the requirement of submission of development plans two regions, the Gulf of Mexico and Santa Barbara. The House

3. Carl Albert (Okla.).

version had exempted areas where there had been development prior to January 1, 1975. The intent of the conferees, as expressed in the joint statement, was to name the areas on which there had been such development, rather than retain the broader and categorical language of the House amendment.

The gentleman also argues that the conferees have modified the requirement as to production rate by eliminating the word "efficient." As the manager of the conference report has pointed out, the word efficient appeared in differing phrases in the House and Senate bill. The Senate bill and the House amendment did not have identical tests and did not have identical purposes, as the Senate bill required submission of a plan and the House amendment required regulations. The modification of the language is clearly within the scope.

The last argument of the gentleman from New York is that the conferees have added the word "new" in a provision that did not contain that word in either the Senate bill or the House amendment. A careful reading of the Senate bill demonstrates that the two provisions were not identical, as the Senate bill contained the word "repromulgate," not contained in the House amendment. Therefore, the issue whether the regulations were to be new regulations or could be existing regulations was a matter before the conferees.

For the reasons stated, the Chair overrules all the points of order.

Conference Provision Not Authorized by Law

§ 7.5 Where the House provision in an appropriation bill provided $454.5 million for military assistance, including $54.6 million for the Republic of China and $50 million for Korea, and the Senate reduced the overall figure to $350 million and struck out the funds and the earmarking language for China, the conferees did not exceed their authority when they agreed to an overall figure of $404.5 million and included specific allocations for both countries carried in the House bill.

On Dec. 20, 1969,[4] Mr. Otto E. Passman, of Louisiana, called up the conference report on H.R. 15149, the foreign assistance appropriations bill for fiscal 1970. The House had passed H.R. 15149 under a special rule waiving points of order, and by so doing was able to send to the Senate a bill which appropriated $454.5 million for military assistance with $54.5 million earmarked for the Republic of China, despite the fact that

4. 115 CONG. REC. 40447, 40448, 91st Cong. 1st Sess.

the foreign assistance authorization bill, H.R. 14580, carried no earmarking language and authorized only $350 million for all military assistance. Mr. Sidney R. Yates, of Illinois, raised a point of order against the conference report, contending that in restoring the earmarked $54.5 million for the Republic of China, the conferees agreed to a provision that was not authorized by law. Speaker John W. McCormack, of Massachusetts, responded:

> The gentleman from Illinois has raised a point of order against the conference report on the bill H.R. 15149.
>
> ...As pointed out in the debate on this point of order, the conference report now before the House does carry an amount for military assistance that is $54,500,000 above the figure which would be authorized by H.R. 14580, the Foreign Assistance Act of 1969.
>
> However, the Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of $454,500,000. The Senate reduced this figure to $350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.
>
> The Chair holds that the conferees have not exceeded their authority and overrules the point of order.

Conferees' Discretion Between a Named Sum and a Formula

§ 7.6 Where a Senate bill authorized appropriations for the federal payment to the District of Columbia in an amount equal to 40 percent of revenues estimated under existing revenue-raising authority to be available for each fiscal year, and a House amendment in the nature of a substitute provided an annual authorization of $250 million for each fiscal year, House conferees did not exceed their authority under Rule XXVIII clause 3 by recommending amounts which, though higher than those contained in the House amendment, were lower than the revenue estimates for those years and were based upon the revenue-raising authority conferred upon the District under existing law.

On Dec. 17, 1973,[5] the House was considering the conference report on S. 1435, the District of Columbia home rule bill. Mr. Earl F. Landgrebe, of Indiana, raised a point of order:

5. 119 Cong. Rec. 42035, 42036, 93d Cong. 1st Sess.

I raise a point of order against the conference report in reporting section 502—Authorization of Appropriations.

The conferees have clearly exceeded any authority in projecting a Federal payment of $300 million for fiscal year 1978.

The original Senate version of the bill called for a percentage of general fund revenues as the Federal payment. That percentage was 40 percent by fiscal year 1978.

The House version called for a lump-sum payment not to exceed $250 million.

The limits of disagreement are either a lump sum of $250 million or a percentage—40 percent—of whatever the general fund revenues are, not will be, in 1978. The conferees could have chosen either method. Instead, they chose to mix apples and oranges and come up with an authorization which not only exceeds the amounts stated in either version of the bill, but is an amount which greatly exceeds any figure, any statistic or any information presented for either committee's consideration.

Charles C. Diggs, Jr., of Michigan, Chairman of the Committee on the District of Columbia, responded to the point of order:

MR. DIGGS: . . . Mr. Speaker, the amounts in the conference report reflect the compromise between the House bill, as authorized and the amounts that would have been generated under the Senate provisions as estimated by the Executive Office of the Budget, and these amounts are not based on any subsequent authority which the Mayor and Council might need to raise revenue, but rather are firmly grounded in the basic revenue authority which is in the report. . . .

For that reason, Mr. Speaker, I think that the point of order raised by the gentleman from Indiana (Mr. Landgrebe) should not be sustained.

THE SPEAKER:[6] The Chair is ready to rule.

The gentleman from Indiana makes the point of order that the conferees have exceeded their authority under clause 3, rule XXVIII by including in section 502 of the conference report an authorization above the amounts contained in either the Senate bill or in the House amendment in the nature of a substitute. The Senate bill in section 201, provided that the authorization for the Federal payment for fiscal 1975 and each year thereafter shall be an amount equal to 40 per centum of such fees, charges, receipts, and revenues so estimated for such fiscal year. The House amendment, in section 502, provided for an annual authorization of $250,000,000 for fiscal 1975 and each year thereafter. During their deliberations, the conferees were provided by the District of Columbia government an estimate of general fund revenues for fiscal years 1975 through 1978. . . . Based upon calculations of 40 percent of those estimated revenues the conferees have recommended authorization figures for fiscal years 1975 through 1978 which though higher than the authorizations for fiscal 1976, 1977, and 1978 in the House amendment are lower than the 40 percent of estimated revenue figures for those years submit-

6. Carl Albert (Okla.).

ted by the District of Columbia government to the conferees during their deliberations.

In the opinion of the Chair, the House conferees have remained within their scope of authority under clause 3, rule XXVIII and the point of order is overruled.

Increasing Entitlement Beyond Figure in Either Bill

§ 7.7 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,[7] 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:[8] 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.

7. 120 CONG. REC. 30050–52, 93d Cong. 2d Sess.

8. Carl Albert (Okla.).

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 committed 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".

Application of the Scope of Conference Rule; Compromise Between No Discretion and Broad Discretion

§ 7.8 Where a bill of one House permits an unlimited delegation of authority from a federal official to the states, and the version of the other House precludes any such delegation, the conferees may recommend a curtailed delegation without introducing a "new topic" and violating the "scope" rule.

When the conference report on the U.S. Grain Standards Act of 1976 was laid before the House as unfinished business on Oct. 1, 1976,[9] a point of order was raised as shown herein.

THE SPEAKER:[10] The unfinished business is the further consideration of the conference report on the bill (H.R. 12572) to amend the U.S. Grain Standards Act to improve the grain inspec-

9. 122 CONG. REC. 35102, 35103, 94th Cong. 2d Sess.
10. Carl Albert (Okla.).

tion and weighing system, and for other purposes, which the Clerk will report by title.

The Clerk read the title of the bill.

THE SPEAKER: Pursuant to the order of the House on Thursday, September 30, 1976, the conference report is considered as having been read.

(For conference report and statement see proceedings of the House of September 29, 1976.)

POINT OF ORDER

MR. [W. HENSON] MOORE [of Louisiana]: Mr. Speaker, I renew the point of order I reserved at the conclusion of business on this conference report last evening.

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

MR. MOORE: Mr. Speaker, the point of order I make is that the conference report on page 5, section 8, subsection (5)(2) violates clause 3 of rule XXVIII of the Rules of the House. Clause 3 of rule XXVIII says, and I quote:

> 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. 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 modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.

Mr. Speaker, I point out that in the House-passed bill, H.R. 12572, section 7(e) there is the proposal that the Secretary of Agriculture can determine a State agency that is qualified to perform official inspections, and can so designate it or delegate it under this section of the House bill.

Mr. Speaker, I point out that this section, section 7(e) of the House bill says that any State agency, past, present, or one that may come into being in the future, could be designated or could be delegated the authority to do inspections and weighing by the Secretary, if found to be qualified. . . .

So what we have in the Senate bill is that no State agency or private agency is able to do any inspections. What we have under the House section is that any State agency existing now, in the past, or possibly in the future, could be delegated the authority to do inspections.

Then the conference report comes back, Mr. Speaker, and herein lies the point of order. The conference report comes back. Page 5, section 8, subsection (5)(1) amends (e)(2) of the existing act and says:

> If the Administrator determines pursuant to paragraph (3) of this subsection that a State agency which was performing official inspection at an export port location under this Act on July 1, 1976, is qualified to perform official inspection and meets the criteria in subsection . . .

And then goes on through.

The point I am trying to make, Mr. Speaker, is that under clause 3 of rule XXVIII the insertion of this date sets up a new question, a new topic, a new issue, a new proposition for determining who is going to do inspections that was not in either the Senate bill which called for all Federal, or in the House bill which called for the availability of all States being able to do it.

I would point out, Mr. Speaker, that in the committee report from the House committee on this bill there are 17 States—17 States, Mr. Speaker—which have export ports: Alabama, California, Illinois, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Pennsylvania, Ohio, Oregon, South Carolina, Texas, Virginia, Washington, and Wisconsin.

Under the Senate bill none of these 17 export States could have had a State grain inspection agency. Under the House bill any or all of these could be, depending upon the discretion of the qualifications by the Secretary of Agriculture.

But under the conference report, Mr. Speaker, nine States can by law, eight States cannot by law by the insertion of this new issue, this new topic of a grandfathering clause of July 1, 1976. . . .

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

MR. [THOMAS S.] FOLEY [of Washington]: Yes, Mr. Speaker.

Mr. Speaker, the question has been raised on the point of order by the gentleman from Louisiana whether the provision in the conference report that authorizes the Secretary to designate certain agencies for inspection, if they were performing inspections on July 1, 1976, is beyond the scope of the conference, or not germane to the conference.

Mr. Speaker, the Senate bill, as the gentleman from Louisiana points out, requires exclusive Federal inspections at all export ports. The House bill authorized the Secretary at his discretion to delegate to State agencies that opportunity to perform inspections. The whole focus of the House debate in permitting State agencies to be delegated was to preserve the rights of those States who were carrying on inspections at the time that the particular bill was passed by the House and carried it on properly.

The discretion given to the Secretary was to determine whether they were carrying it on properly.

The conference determined that they would fix a time where States that were carrying on inspections properly would be eligible for further export inspection at the said Secretary's discretion.

The decision, I think, is germane to both the Senate bill and the House bill, but particularly to the House bill, that had focused on the opportunity for States that were carrying on inspections to do so.

Accordingly, Mr. Speaker, I believe the point of order should be overruled. . . .

MR. MOORE: Mr. Speaker, will the gentleman yield?

MR. FOLEY: I yield for debate only. . . .

THE SPEAKER: The gentleman from Louisiana is not speaking to the point of order. The gentleman is speaking to the merits and the gentlemen cannot

yield to each other on the point of order, the Chair controls argument on the point of order.

The Chair is prepared to rule.

From the joint statement, the Chair finds on pages 32 and 33, a discussion of who is to perform official inspection of export locations. The House bill and the Senate amendment amend section 7 of the act and provide that all grain required or authorized to be inspected under the act, at export port locations and export elevators in the case of the Senate amendment, and of U.S. grain in Canadian ports, be performed by authorized Federal employees.

The House bill, however, gives the [Secretary] the power to delegate his authority to a State inspection agency if he determines the State agency to be qualified, although the responsibility for such official inspection shall remain his; and he may revoke the delegation at any time without a hearing.

The Chair feels that the language clearly indicates that a broad authority to delegate to the States is given by the House to the Secretary, and that there is a limitation of that authority in the conference report. Therefore, the conference report represents a compromise between the total Federal inspection authority in the Senate amendment and the unlimited discretionary delegation of authority to the States in the House bill, which does not introduce a new topic which goes beyond the scope of the two versions.

The Chair, therefore, overrules the point of order.

Determining Questions of Scope; Changing Permissive to Mandatory Authority

§ 7.9 Where a Senate bill amended existing law to require that certain funds be utilized for the continuation of a research project, and not toward its cancellation, and House language authorized a sum for continuation, the conferees were held to have exceeded their authority by agreeing to a provision specifying a site for the project conditioned on considerations of health and safety, thus exceeding the "scope of differences" in conference; a point of order was sustained because of the inclusion of new matter not included in either version.

On Oct. 14, 1977,[11] a point of order was raised against a conference report on the Energy Research and Development Administration Act of 1978 (S. 1811). The point of order was targeted at conference language contained in section 106(d)(3) of the agreement on the ground that the conference language specified a site of a proj-

11. 123 CONG. REC. 33770–72, 95th Cong. 1st Sess.

ect which was funded in different manners by the Senate bill and House amendment. A portion of the disputed section of the conference report, the point of order and the arguments that followed are carried below.

CONFERENCE REPORT ON S. 1811, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AUTHORIZATION ACT OF 1978

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I call up the conference report on the Senate bill (S. 1811) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, 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:[12] Is there objection to the request of the gentleman from Texas?

There was no objection. . . .

PARLIAMENTARY INQUIRY

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. UDALL: Mr. Speaker, I desire to make a point of order against the conference report. Is this the appropriate time?

THE SPEAKER: It is.

POINT OF ORDER

MR. UDALL: Mr. Speaker, I make a point of order against the conference report. . . .

Mr. Speaker, I make a point of order. Section 106(d)(3), adopted by the conference committee on the bill now before the House, exceeds the authority of the conference committee in that it inserts new substantive provisions in the legislation which were not included in the bill, either as passed by the House or passed by the Senate.

I would like to be heard briefly on the point of order.

The portion of the conference text targeted by Mr. Udall was as follows:

> "(d) The Congress declares that any funds appropriated pursuant to an authorization to design, construct, and operate a specified project or conduct a specified program are intended to be used only for the design, construction, and operation of that project or the conduct of that program, in accordance with such authorization. Accordingly— . . .
>
> "(3) such Project (notwithstanding any other provision of law or the structure, pace, and timing of the liquid metal fast breeder reactor program) shall be located at the existing Clinch Riversite, unless that site is determined to be unsuitable from the standpoint of radiological health and safety, and to the maximum extent possible shall be designed, constructed, and operated in accordance with the existing project arrangements, objectives, and schedules: *Provided,* That site preparation and

12. Thomas P. O'Neill, Jr. (Mass.).

also those construction activities for which a construction permit is required shall not commence during the fiscal year ending September 30, 1978, but the foregoing limitation on commencement of site preparation activities shall not be deemed to prohibit or in any way limit the grant of a limited work authorization for those activities during any fiscal year: *Provided further*, That the Secretary and all other appropriate Federal agencies are directed to undertake all such efforts as are necessary to assure that the earliest possible decisions on a limited work authorization and a construction permit are obtained: *And provided further*, That nothing in this Act shall be deemed to authorize, approve, or constitute a commitment to commercialization of LMFBR technology; and . . .

Debate continued on Mr. Udall's point of order:

MR. UDALL: The point of order, Mr. Speaker, is based on the conference report violation of rule 28, which requires that the report shall not include matter not committed to the conference committee by either House. The offending provision of the conference report is section 106. It amends section 103 of Public Law 91–273 as amended, and impose new requirements on the Clinch River breeder project.

Specifically, section 106 would require that the project be located at the existing Clinch River site unless that site is determined to be unsuitable from the standpoint of radiological health and safety; that the "maximum extent possible" the project shall be designed, constructed and operated in accordance with existing arrangements, objectives and schedules; and the Secretary and "all other appropriate Federal agencies" (assumably the Nuclear Regulatory Commission) are directed "to undertake all such efforts as are necessary to assure the earliest possible decisions on a limited work authorization and a construction permit." . . .

Mr. Speaker it cannot be argued that anything in the Senate bill or House amendment justifies this conference report's treatment of licensing issues. That both the House and the Senate conferees may have concluded that the project be built at Clinch River has nothing to do with the fact that under existing law the project must be licensed by the Commission at that site or another location. Under section 182(a) of the Atomic Energy Act "the place of the use" of the facility must "be in accord with the common defense and security" of the United States. By excluding the defense and security consideration, the conference report directly modifies licensing requirements and nothing in either the House or Senate version addresses this issue.

The other provisions I mentioned are also modifications of existing licensing law and like the siting provisions, these modifications have no relation to the authorizations of the House and Senate bills. . . .

The point of order should be sustained. . . .

THE SPEAKER: The gentleman from Texas (Mr. Teague) is recognized.

MR. TEAGUE: Mr. Speaker, this report has been adopted by the other body. During the debate on the floor, Senator Hart of Colorado asked Senator Church, the chairman of the subcommittee in the other body, about the same point the gentleman from Arizona

raises here. I would like to read Senator Church's answer because I think it is the best way to be stated.

Senator Hart said to Senator Church:

> *** I am concerned with one provision of the conference report which deals with the Clinch River breeder reactor project, and that language is contained in section 106(d)(3). *** I want to make sure that the record is absolutely clear that this section does not modify in any way the licensing and regulatory authority of the discretion of the Nuclear Regulatory Commission under the Atomic Energy Act. *** I would greatly appreciate it if the Senator from Idaho would give me his assurances to that effect.
>
> Senator CHURCH. *** The provision in the report to which he refers in no way limits the authority of the Nuclear Regulatory Commission to protect public health and safety or the common defense and security.
>
> The Nuclear Regulatory Commission's authority to protect the environment of the Clinch River site is not limited. ***
>
> There are no alternative sites before the Commission. The language of the report in no way interferes with the discretionary authority or the power of the Commission to proceed as it normally would to a conclusion of this proceeding.

THE SPEAKER: Do any other Members desire to speak on the point of order? . . .

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, I think it would be in order very briefly to review the facts of the matter.

First of all, the House passed the 1978 authorization bill for the project in the amount of $150 million, which contemplated construction at the site. The project was first authorized in Public Law 91–273.

The Senate-passed bill contains language which incorporates a heading entitled "The Clinch River Breeder Reactor Project."

Furthermore, the Senate incorporates by reference a letter from Dr. Robert Fri, Acting Administrator of ERDA, and a letter from the Comptroller General, Mr. Elmer Staats, both of which talk about the Clinch River breeder reactor project at the site, Clinch River.

We have not in the conference report done anything except specify the site. What has not been done is anything that would affect the licensing for the facility. . . .

The conference committee has tried to bring together a fair compromise of the House and Senate positions. Both contemplate construction at the Clinch River, Tenn., site. That is what we are talking about, the Cinch River site.

What we tried to do in the conference report is to clearly focus our attention on that point so the issue is drawn.

Mr. Speaker, that is all we are trying to do, and I do not think that the point of order should be sustained. . . .

THE SPEAKER: Do any other Members desire to be heard on the point of order?

MR. [JAMES M.] JEFFORDS [of Vermont]: I do, Mr. Speaker. I desire to be heard on the point of order.

THE SPEAKER: The Chair recognizes the gentleman from Vermont (Mr. Jeffords) on the point of order.

MR. JEFFORDS: Mr. Speaker, it seems to me that the critical question here is simply this: If neither the House nor the other body, in their provisions, amended a provision of the law, in this

case section 106 of Public Law 91–273, can the mere fact that one of the bodies, in their action, references a document—in this case it is, I believe, the Comptroller General's report—which mentions the law, they broaden the scope as they then did in conference so as to amend the law? . . .

THE SPEAKER: Do any other Members desire to be heard on the point of order.

If not, the Chair is ready to rule on the point of order.

The gentleman from Arizona makes a point of order against the conference report on S. 1811 on the ground that the conferees have included in their report new matter not committed to conference, in violation of clause 3 of rule XXVIII.

Section 106 of the conference report amends existing law to require that the Clinch River breeder reactor project be located at a certain site, unless determined unsuitable from the standpoint of radiological health and safety, to prohibit certain construction activities on such project in fiscal year 1978, and to assure expedited decisions on work authorizations and construction permits. Section 101 of the House amendment authorized a sum for the liquid metal fast breeder reactor project, and earmarked a certain portion of that sum for certain development and testing. Section 103 of the Senate bill S. 1811 amended existing law to require that funds appropriated for the Clinch River breeder reactor project, pursuant to the authorization in existing law, be applied towards the continuation of that project, and not towards its cancellation or termination.

Section 103 of the Senate bill S. 1811 amended existing law to state the intent of Congress and to require that funds appropriated for the Clinch River breeder reactor project, pursuant to the authorization in existing law, be applied towards that project, and not towards its cancellation or termination; the Senate bill also endorsed an opinion of the Comptroller General relating to the continuation of the project. Insofar as section 106 of the conference report requires that funds shall not be used to terminate the Clinch River project and requires that funds appropriated pursuant to an authorization for a specific project shall only be used to proceed with that project, the report constitutes a proper modification of the issues which were contained in section 103 of the Senate bill.

But the mandate of the new subsection 106(d)(3) added to Public Law 91–273 as amended, by section 106 of the conference report, which requires that the project be located as a certain physical location, was not included in the Senate bill. Although the Senate bill did endorse on behalf of Congress an opinion of the Comptroller General which discusses the necessity of constructing the project at a certain site, the Senate bill did not absolutely require that result as does the conference report. Moreover, the report would allow altering that designated site in the case of unsuitability from the radiological health and safety standpoint. While it may be desirable as a matter of policy to include that exception, neither the House amendment nor the Senate bill addresses that policy. The remainder of subsection (d)(3) added by the report specifies a certain construction

schedule as a matter of law, which the gentlemen from Texas and Washington have characterized as a compromise between the full level of funding adopted by the House and the lesser authorization adopted by the Senate.

The Chair appreciates the difficulty of the conferees in fashioning a recommendation incorporating the concerns of the House and Senate in this complex area. It appears to the Chair, however, that the Senate bill and the House amendment, as well as the hearings, reports and debates in both Houses addressed a variety of conceptual issues but did not commit to conference language which allowed the conferees to enact those issues into affirmative and mandatory provisions of law.

The Chair feels that a precedent relevant to the present situation occurred on December 20, 1974, as cited in Deschler's Precedents, chapter 33, section 6.9.[13] On that instance, Speaker Albert ruled that the inclusion of a new provision in a conference report, relating to the Alaska Native Claims Settlement Act, was in violation of clause 3 of rule XXVIII, since that specific topic had not been addressed in either the House bill or the Senate amendment thereto. The argument was made on that occasion that the Senate amendment if enacted would have required, under existing law, the result mandated by the new provision in the conference report. The Chair ruled as follows in response to that argument: "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."

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

MOTION OFFERED BY MR. TEAGUE

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

The Clerk read as follows:

> Mr. Teague moves that the House insist on its amendment to the Senate bill S. 1811 and request a further conference with the Senate thereon.

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Teague).

The motion was agreed to.

Determining Scope of Conference Where One House Silent on Issue

§ 7.10 While the scope of differences committed to conference, where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject, may properly be measured between those issues presented in the amending language and comparable provisions of existing law, the inclusion in a conference report of new

13. See § 7.10, infra.

matter not specifically contained in the amending version and not demonstrably repetitive of existing law may be ruled out as an additional issue not committed to conference in violation of Rule XXVIII clause 3.

On Dec. 17, 1974, House conferees exceeded their authority by filing a report which included a matter not in either the Senate amendment or existing law. The Senate amendment to the House bill had amended the Alaska Native Claims Settlement Act to establish a thirteenth region for Natives not residents of Alaska and to create a Thirteenth Regional Corporation to receive and distribute benefits under the Act to new enrollees. The original House bill contained no comparable provision, so the House position was the existing law. By including in their report a provision for cancellation of stock previously issued by Native Corporations to Natives who enroll in the thirteenth region, a matter not contained either in the Senate amendment or specifically provided in existing law,[14] the House conferees exceeded their authority under Rule XXVIII clause 3.[15]

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 Clerk read the title of the bill.

THE SPEAKER:[16] Is there objection to the request of the gentleman from Washington?

POINT OF ORDER

MR. [DONALD E.] 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.

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14. Alaska Native Claims Settlement Act, 85 Stat. 692, 693.

15. *House Rules and Manual* § 913a (1997). See ruling at 120 CONG. REC. 41849, 41850, 93d Cong. 2d Sess., Dec. 20, 1974.

16. Carl Albert (Okla.).

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 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.

The provision in the conference report toward which the point of order was directed was as follows:[17]

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 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.

§ 7.11 In determining whether a provision in a conference report goes beyond the bounds set by the differences committed to conference, where one House is silent on the subject, the Speaker must: (1) analyze the Senate language; (2) determine the boundaries set by existing law (the position of the silent House); (3) weigh the arguments for and against the point of order; and (4) finally make a determination as to the propriety of the conference provision.

On occasion, the duty of the Chair to make a decision on whether an item is within the scope of conference is made difficult by the ambiguity of the language against which the point of order is directed. On Feb. 28,

17. 120 CONG. REC. 40541, 40542, 93d Cong. 2d Sess., Dec. 17, 1974.

1978,[18] when the conference report on the Federal Trade Commission Amendments of 1978[19] was before the House, the Chair had to determine whether 25 employees of the FTC, in positions established in the Senate amendment, were or were not civil service employees or were, to the contrary, personnel paid at civil service rates but independent of the reach of all the protections afforded in the underlying civil service law.

The conference provision, the arguments by the Member making the point of order, the response of the manager of the conference, and the Speaker's ruling are carried here.

CONFERENCE REPORT ON H.R. 3816, FEDERAL TRADE COMMISSION AMENDMENTS OF 1978

Mr. [Bob] Eckhardt [of Texas]: Mr. Speaker, I call up the conference report on the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legislative, budgetary, and personnel matters; and for other purposes.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I raise a point of order against the conference report.

THE SPEAKER:[20] The gentleman will state it.

MR. DERWINSKI: Mr. Speaker, I raise a point of order against the conference report on H.R. 3816 on the ground that the conferees exceeded the bounds of conference in violation of House Rule XXVIII, clause 3.

Mr. Speaker, the Senate-approved bill, in section 107, contained language authorizing the appointment of 25 super-grade (GS–16, –17, and –18) positions for attorneys, economists, special experts, and outside counsels. Further, in that same section, the Senate bill provided that "Any appointment or removal of an employee of the Commission to or from any position in the categories GS–16, –17, and –18 may be made by the Commission without regard to any provision of title 5, United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service ***"

Section 3324 of title 5, United States Code, requires that an appointment to a position in GS–16, –17, or –18, may be made only on approval of the qualifications of the proposed appointee by the Civil Service Commission. There are only four exceptions to that requirement in section 3324 of title 5,

18. 124 CONG. REC. 5009, 5010, 95th Cong. 2d Sess.

19. Conf. Rept. on H.R. 3816, 95th Cong. 2d Sess.

20. Thomas P. O'Neill, Jr. (Mass.).

none of which apply to the positions described in section 107 of H.R. 3816.

The House bill, being silent on the appointment of additional supergrade positions, contained no exception to section 3324 of supergrade positions in the FTC, and therefore continued the application of this section.

Mr. Speaker, therefore both the House and Senate bills would apply section 3324 of title 5, United States Code, to the 25 newly created supergrade positions.

The conference report in section 2(b) authorizes the appointment of 25 supergrade positions without regard to the provisions of title 5, United States Code, thereby exempting these positions from the provisions of section 3324 of title 5.

Mr. Speaker, my point is that the Senate bill explicitly and the House bill implicitly provided for the application of section 3324 of title 5, United States Code, to supergrade positions in the FTC. Therefore, an exemption from the application of this provision of law was not in conference, and by providing an exemption, the conferees exceeded the scope of conference.

Mr. Speaker, as precedent, I cite Deschler's Procedure, chapter 33, section 15.4:

> 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 clause 3 of Rule XXVIII, may not include in their report a modification of a proposition which is beyond the scope of that proposition as committed to conference. 117 Cong. Rec. 46596–602, 46779, 92d Cong. 1st Sess., Dec. 13, 14, 1971 [conference report on S. 2891], holding that where a Senate bill included a provision authorizing a 5.5% pay comparability adjustment for federal employees compensated under "statutory" pay systems, and the House amendment contained no comparable provision, House conferees exceeded their authority by including in their report language which broadened the scope of the Senate provision, by deleting the term "statutory", so as to include federal employees covered under other pay systems.

Therefore, Mr. Speaker, having cited this precedent, I make my point of order.

Mr. Speaker, I insist upon my point of order.

THE SPEAKER: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard upon the point of order?

MR. ECKHARDT: I do, Mr. Speaker.

THE SPEAKER: The gentleman from Texas is recognized.

MR. ECKHARDT: Mr. Speaker, it seems to me that the gentleman is reading from a document referring to H.R. 3816 and an amendment of the Senate of the United States, on page 16, where there is indeed reference to section 3324. We did not take that section. The section that was taken by the House and became a part of the conference is found on page 16, and it is under (c) and contains no reference to that title. The persons involved are not supergrades. They are not GS–16's but they were called upon to be paid at that rate. Therefore there is nothing that was done in the conference that was not within the scope of the provisions of the Senate originally. Essentially we did what is always done in a conference, we arrived at a compromise agreement between the positions of the

Senate and the House within the scope of the two bills.

THE SPEAKER: Does the Chair understand that these 25 employees in the conference report and in the Senate amendment are not civil service classified employees?

MR. ECKHARDT: That is right.

MR. DERWINSKI: Mr. Speaker, may I be heard further?

THE SPEAKER: The gentleman from Illinois is recognized.

MR. DERWINSKI: Mr. Speaker, with reference to the provision of the original Senate bill that the gentleman from Texas (Mr. Eckhardt) has just referred to, I call the attention of the Chair to paragraph (c) which authorizes the Commission to assign the duties and to fix the compensation for not more than 25 attorneys. But then I call the attention of the Speaker to the following paragraph, paragraph (d), in which it states that:

> Any appointment or removal of an employee of the Commission to or from any position . . . may be made by the Commission without regard to any provision of title 5, United States Code. . . .

Paragraph (d) as I read it supersedes the language of the Senate in paragraph (c), and therefore the conferees went beyond the scope of the conference.

MR. ECKHARDT: Mr. Speaker, may I be heard further?

THE SPEAKER: The gentleman from Texas is recognized.

MR. ECKHARDT: Mr. Speaker, I would add that paragraph (d) does not relate to the same employees as paragraph (c) does.

(c) refers to persons who are not supergrades and who are not GS–16's.

(d) says:

> Any appointment or removal of an employee of the Commission to or from any position in categories GS–16, GS–17, and GS–18, may be made by the Commission without regard to any provision of title 5, ***

But these persons are not from any positions in categories GS–16, GS–17, and GS–18. The persons covered by paragraph (c) are no more than 25 attorneys, economists, or specialists, who are treated at a rate at the level of GS–16 but they are not and never have been GS–16's nor are they supergrades.

THE SPEAKER: The Chair is ready to rule.

The question is whether the 25 professionals referred to in the Senate amendment are considered FTC employees in the positions of categories GS–16, –17, or –18, or whether they are merely paid at those rates without being in these positions. In other words, whether the employees referred to (c) on page 16 and (d) on page 16 of the Senate amendment are the same employees or are different employees.

In the opinion of the Chair the conferees have stayed within the scope of the differences committed to conference with respect to the 25 professionals dealt with in section 2(b) of the conference report.

The Senate amendment and the conference report treat those 25 professionals in an identical way as employees of the FTC who are paid at rates of pay not in excess of rates applicable to GS–18, but who are not FTC employees in any classified position in categories GS–16, –17, or –18, to whom section

3324 of title V would certainly apply under both House and Senate versions.

In the opinion of the Chair, the point of order is not well taken.

Where Dates Are in Issue

§ 7.12 Where the Senate has amended a House-passed bill to change the effective date therein, the authority of the conferees on the bill is limited to the difference between the dates in each version, and where the dates contained in both bills have since passed, the conferees must report the Senate amendment back in technical disagreement so that the effective date can be considered separately.

On Mar. 11, 1970,[1] Speaker John W. McCormack, of Massachusetts, recognized Mr. Harley O. Staggers, of West Virginia, to submit the conference report on H.R. 6543, the Public Health Cigarette-Smoking Act, with amendment No. 13, still in disagreement. The report stated in part:

Amendment numbered 13

This amendment is reported in technical disagreement. The amendment struck out the effective date in the House bill which was July 1, 1969, and inserted in lieu thereof an effective date (with respect to all but section 5 of the Act) of January 1, 1970. Both dates have, of course, passed and technically the matter could not be resolved in the conference. The new warning on cigarette packages required by the conference agreement necessitates a transition period to permit cigarette packages to be imprinted with the warning. Accordingly the managers on the part of the House will offer an amendment in the House to recede and concur in Senate amendment numbered 13 with an amendment as follows:

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

"Sec. 3. Section 5 of the amendment made by this Act shall take effect as of July 1, 1969. Section 4 of the amendment made by this Act shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act. All other provisions of the amendment made by this Act except where otherwise specified shall take effect on January 1, 1970."

Parliamentarian's Note: The Senate, which acted first on the conference report, was precluded from receding from its amendment with an amendment.[2] However, the House could have kept the papers following the conference

1. 116 CONG. REC. 6793–95, 91st Cong. 2d Sess.

2. *House Rules and Manual,* Jefferson's Manual § 526 (1997).

and acted first on the amendment in disagreement by receding and concurring in the Senate amendment with an amendment. The Senate could then have concurred in the House amendment. Or the conferees could have agreed to either the House or Senate version and then, following the adoption of the conference report in both Houses, could have considered by unanimous consent a concurrent resolution directing the Clerk of the House, in the enrollment of the bill, to insert a new date in lieu of that carried in the conference version.

Question Raised Against Validity of Report; Report Properly Signed by Majority of Conferees

§ 7.13 The Speaker overruled a point of order that a conference report failed to include a provision allegedly agreed upon in conference where a majority of the conferees of both Houses had signed the report and where the House conferees had the authority, under Rule XXVIII clause 3, to omit that provision.

On Dec. 17, 1973,[3] after the conference report on S. 1435, the District of Columbia Self-Government and Government Reorganization Act, was called up by Mr. Charles C. Diggs, Jr., of Michigan, Mr. Earl F. Landgrebe, of Indiana, rose:

> MR. LANDGREBE: Mr. Speaker, I want to make a point of order concerning section 738 of conference report No. 93–703, "Advisory Neighborhood Councils" for the reason that it fails to provide as the conferees stated and intended during the conference held on this legislation.
>
> In conference, the requirement was Neighborhood Councils must first be approved by the electors in the same public referendum required for the approval of the charter. Nowhere in section 738 does that requirement appear.
>
> If the legislation were approved, the councils would be created by operation of law, not by the affirmation of the electors as provided for by the conferees. This section is contrary to the intent of the conferees and this report must not be considered. . . .
>
> THE SPEAKER:[4] The Chair is prepared to rule. The gentleman from Indiana 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. 1435 was filed on December 6, 1973, the Chair has carefully scrutinized the agree-

3. 119 CONG. REC. 42034, 42035, 93d Cong. 1st Sess.
4. Carl Albert (Okla.).

ments 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, there is a Senate bill and a House amendment in the nature of a substitute therefor and both are extensive and comprehensive legislative proposals the task of writing a conference compromise is a difficult and painstaking task. . . .

The gentleman from Indiana has made the further point of order that the conference report is not properly before the House because a subsection of the report, allegedly agreed to in conference is not contained in the report submitted to the two Houses.

The Chair, of course, has no knowledge of how this agreement was reached. The only information the Chair has on what was agreed to in conference is derived from the conference report. The Chair does note that the subsection allegedly omitted was not contained in the Senate bill and thus the managers had the authority, under clause 3, rule XXVIII to eliminate that provision if they so desired.

Volume 5 of Hinds' Precedents section 6497, states that "A conference report is received if signed by a majority of the managers of each House." The Chair has examined the report and the papers and finds that it is signed by 6 of the 10 managers on the part of the House and by all 7 managers on the part of the Senate. The Chair can only observe that the report is here in a legal manner.

The Chair therefore overrules the point of order.

Authorization To Consider Inadvertently Omitted Matters

§ 7.14 By concurrent resolution, managers of a conference were authorized to consider, in addition to certain Senate amendments to a House bill pending before them, proposals by the Senate to strike other provisions of the House bill.

On July 20, 1956,[5] Speaker Sam Rayburn, of Texas, recognized Mr. Clair Engle, of California, who made the following request:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (S. Con. Res. 86) authorizing the conferees on H.R. 1774, abolishing the Verendrye National Monument, N. Dak., to consider certain additional Senate amendments that were inadvertently omitted from the official papers. . . .

THE SPEAKER: The Clerk will report the Senate concurrent resolution (S. Con. Res. 86).

The Clerk read as follows:

Resolved by the Senate (the House of Representatives concurring), That the conferees on H.R. 1774, in addition to the Senate amendments already pending before them, be

5. 102 CONG. REC. 13724, 84th Cong. 2d Sess.

authorized to consider the following amendments:

"(3) Page 1, line 6, strike out all after 'permits' down to and including 'site' in line 8.

"(4) Page 1, strike out all after line 8 over to and including line 5 on page 2.

"(5) Page 2, strike out lines 6 to 20, inclusive."

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

There was no objection.

The Senate concurrent resolution was agreed to.

Enlarging Matter in Scope of Conference

§ 7.15 By adoption of a concurrent resolution in both Houses, providing that a new section be inserted in the engrossment of the Senate amendment to a House bill, conferees may be authorized to consider a matter not originally committed to them in the House bill or the Senate amendment thereto.

When H.R. 10612, the Tax Reform Act of 1976, was in conference, it became necessary to consider a topic not before the conferees since the matter was in neither the House text or the Senate amendment. The Senate concurrent resolution in this instance was called up in the House by unanimous consent.[6]

MR. [OMAR T.] BURLESON of Texas: Mr. Speaker, on behalf of the gentleman from Oregon (Mr. Ullman), who as we all know is now occupied in conference on the tax bill, I ask unanimous consent to take from the Speaker's table the Senate Concurrent Resolution (S. Con. Res. 137) to correct the engrossment of the Senate amendments to H.R. 10612, and consider the Senate concurrent resolution in the House.

The Clerk read the title of the Senate concurrent resolution.

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

There was no objection.

The Clerk read the Senate concurrent resolution as follows:

S. CON. RES. 137

Resolved by the Senate (the House of Representatives concurring), That the following language be inserted in the engrossment of the Senate amendments to H.R. 10612 and be considered as being in conference:

"SEC. 1510. TREATMENT OF CERTAIN LIFE INSURANCE CONTRACTS GUARANTEED RENEWABLE.

"(a) IN GENERAL.—Paragraph (d)(5) of section 809 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following sentence: 'For purposes of this paragraph, the period for which any contract is issued or renewed in-

6. 122 CONG. REC. 28969, 94th Cong. 2d Sess., Sept. 2, 1976.
7. Carl Albert (Okla.).

cludes the period for which such contract is guaranteed renewable.'.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1957.".

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

Application of Germaneness Rule

§ 7.16 A House amendment to a Senate amendment, reported from conference in disagreement, must be germane to the Senate amendment.

On Dec. 16, 1944,[8] the House was considering Senate amendment No. 17 to H.R. 5587, the first defense appropriation bill for 1945, which had been reported back from conference in disagreement. A motion by Mr. Clarence Cannon, of Missouri, to recede and concur in this amendment was divided on demand by Mr. Francis H. Case, of South Dakota, who then offered a preferential motion to concur with an amendment. Mr. Cannon raised a point of order against this motion, explaining:

The pending proposition is tied up with and incident to titles II and III of the act of October 14, 1940, which is an act providing solely for activities in connection with the prosecution of the war. The proposition the gentleman suggests has no relation to the war; it deals solely with an act of God and is entirely new matter not contemplated by the act of October 14, 1940, and appears in neither the House nor Senate bills. . . .

THE SPEAKER:[9] The Chair under the statement of the gentleman from Missouri and in a way supported by the gentleman from Illinois cannot see anything in the amendment or the proposal of the gentleman from South Dakota [Mr. Case] except an act of God; therefore the Chair thinks that the amendment is not germane and sustains the point of order.

MR. CASE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE: Mr. Speaker, is it not true that in ruling upon questions of this sort where they involve securing an agreement between the two bodies of the Congress considerable latitude is allowed for the purpose of reaching an agreement in the interest of comity and that the ordinary rules of germaneness do not apply strictly?

THE SPEAKER: The Chair would differ with the gentleman on that. The Chair does not think that conferees on the part of the House and the Senate could set aside the rule of germaneness.

8. 90 CONG. REC. 9611, 9612, 78th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

Test of Germaneness Where Senate Amendment Strikes House Text

§ 7.17 Where a Senate amendment proposes to strike out language in a House bill, the test of germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and that proposed to be stricken in the House text.

On Dec. 12, 1974,[10] following the adoption of the conference report on the bill H.R. 16901, the agricultural, environmental, and consumer appropriations for fiscal 1975, amendments reported in disagreement were under consideration.

The manager of the bill, Mr. Jamie L. Whitten, of Mississippi, offered a motion to recede and concur in a Senate amendment with an amendment which was a substitute for the Senate text in amendment numbered 8.

The Senate amendment was a restriction on use of funds in the bill to administer any tax on parking facilities. The compromise language was also a restriction on funds in the bill but addressed a larger category of projects.

The amendments, the point of order, and the Chair's ruling are carried here.

THE SPEAKER:[11] The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 52, line 20, strike: "SEC. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to administer any program to tax, limit, or otherwise regulate parking facilities."

MOTION OFFERED BY MR. WHITTEN

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

The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows:

"SEC. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to implement or enforce any provision of a state implementation plan promulgated or approved pursuant to Section 110 of the Clean Air Act that requires the review of indirect sources, as defined in 40 CFR 52.22(b)(1), pending completion of judicial review, pursuant to Section 307(b) of the Clean Air Act, or the indirect source regulations set forth in 40 CFR 52.22, or any other such regulation relating to indirect sources." . . .

10. 120 CONG. REC. 39272, 39273, 93d Cong. 2d Sess.

11. Carl Albert (Okla.).

MR. [PAUL G.] ROGERS [of Florida]: Mr. Speaker, I make a point of order against the amendment as read.

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

MR. ROGERS: Mr. Speaker, I raise a point of order on the ground of nongermaneness.

The House provision provided only for parking, and the Senate struck completely the House provision.

This language is not germane in that it goes far beyond parking. The amendment would cover airports, it would cover highways, it would cover shopping centers, and it would cover sports arenas, regardless of whether any parking facilities are attached or associated.

There is no question but what this is not germane. It is far beyond what the House had stated, and I think it is not appropriate to be in an appropriation bill at all. Therefore I ask that it be stricken in accordance with the arguments used against the amendment.

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

MR. WHITTEN: I do, Mr. Speaker.

Mr. Speaker, the legislation to which the gentleman from Florida has referred has had the effect of stopping employment in the cities of this country. It has done this because they have to have a permit from the Environmental Protection Agency for parking. It has prevented new buildings in universities, hospitals, shopping centers—and this at a time of great unemployment in the United States. . . .

In the Senate it was felt that since there are lawsuits pending throughout the United States, I think in at least four instances, that this legislation covering parking was the key, that that part which had parking in it should be included in the conference and the conferees felt that in the interest of the Nation that those related matters which are a part and parcel of the provisions to which we were trying to direct our attention, should be accepted, and it was accepted by the conferees. . . .

MR. ROGERS: Mr. Speaker, if the gentleman will yield further, may I just say that these regulations insofar as the contracts for airports, highways, shopping centers and sporting arenas are not even effective until next year, the parking which the House acted on was covered, so that they are not germane.

THE SPEAKER: The Chair is ready to rule.

There is only one issue involved here and that is whether the amendment included in the motion of the gentleman from Mississippi is germane. It obviously is far more comprehensive than the House provision, and is not germane thereto. The Chair, therefore, sustains the point of order.

MOTION OFFERED BY MR. WHITTEN

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

The Clerk read as follows:

> Mr. Whitten moves that the House insist on its disagreement to the amendment of the Senate.

THE SPEAKER: The question is on the motion offered by the gentleman from Mississippi (Mr. Whitten).

Selective Waivers of Points of Order Against Conference Report

§ 7.18 The Committee on Rules has sometimes recommended selective waivers of points of order under Rule XXVIII clause 3, permitting points of order to lie against only specified sections of the report which might go beyond the scope of differences submitted to conference.

On Feb. 27, 1974,[12] the Committee on Rules called up a special order for consideration of the conference report on S. 2589, the Energy Emergency Act. The rule waived points of order against the report, but permitted points of order to be raised against two sections therein which arguably contained matter beyond the scope of the managers' authority under Rule XXVIII clause 3.

The previous question on the rule was defeated, an amendment was offered and adopted which provided for a blanket waiver but permitted a separate vote on the controversial sections.

The rule as reported, and the amendment offered after defeat of the previous question, are carried here.

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON S. 2589, ENERGY EMERGENCY ACT

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 901 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 901

Resolved, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report except against sections 105 and 110 thereof for failure to comply with the provisions of clause 3, rule XXVIII are hereby waived. Debate on said conference report shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member, for a separate vote to be had on a motion to strike out section 104 of the conference report. At the conclusion of any separate vote demanded under this procedure, and if section 104 has not been stricken out by such separate vote, the previous question shall be

12. 120 CONG. REC. 4397, 4407, 4408, 93d Cong. 2d Sess.

considered as ordered on agreeing to the conference report.

THE SPEAKER:[13] The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

MR. PEPPER: . . . House Resolution 901 provides that all points of order against the conference report are waived except against sections 105 and 110 for failure to comply with the provisions of clause 3, rule XXVIII of the Rules of the House of Representatives—pertaining to amendments accepted by the conferees which are beyond the scope of the House and Senate bills. . . .

Mr. Speaker, I yield 1 minute for the purpose of discussion only to the distinguished gentleman from West Virginia, the chairman of the Committee on Interstate and Foreign Commerce (Mr. Staggers). . . .

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I take the floor to urge the defeat of the previous question on this rule. As I am sure my colleagues are aware, the rule would permit a single Member of this House to assert a point of order against two sections of the bill—section 105 dealing with energy conservation plans and section 110, the so-called price rollback provision. In so doing the Rules Committee has provided an opportunity for a single opponent of this legislation to defeat it. Such a result most certainly would not be in the public interest. . . .

I know that the conference agreement remains controversial. I would expect legislation this important and complex to be so. But I urge that we permit the conference agreement to stand the test of a vote by the 435 Members of this House.

If the previous question is defeated, I will offer an amendment to the rule in the nature of a substitute which waives points of order on the entirety of the conference agreement, but permits separate votes on its most controversial sections. Accordingly, Members would have an opportunity to specifically express their assent or dissent to sections 104, 105, and 110 of the bill. If the House defeats the conference agreement then so be it. But at least let us give the House the chance to vote on it. Accordingly, I respectfully ask you to defeat the previous question on this rule. . . .

MR. PEPPER: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: The question is on ordering the previous question.

MR. PEPPER: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 144, noes 259, answered "present" 3, not voting 25. . . .

So the previous question was not ordered.

The Clerk announced the following pairs:

On this vote: . . .

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. STAGGERS

MR. STAGGERS: Mr. Speaker, I offer an amendment in the nature of a substitute.

13. Carl Albert (Okla.).

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Staggers: Strike out all after the resolving clause of House Resolution 901 and insert in lieu thereof the following:

"That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report for failure to comply with the provisions of clause 3, Rule XXVIII, are hereby waived. Debate on said conference report shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member for a separate vote to be had on motions to strike out the following provisions of the conference report: Sections 110, 105, and 104, and such separate votes, if demanded, shall be taken in the foregoing order. At the conclusion of all of the separate votes demanded under this procedure, and if none of the sections have been stricken by such separate votes, the previous question shall be considered as ordered on agreeing to the conference report."

THE SPEAKER: The gentleman from West Virginia is recognized for 1 hour. . . .

MR. STAGGERS: Mr. Speaker, I thank the gentleman from Illinois for his comments. I am certain he is very sincere.

Mr. Speaker, I move the previous question on the amendment and on the resolution.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

Appropriation on Legislative Bill

§ 7.19 Conferees of the House may not in conference agree to a Senate amendment providing for an appropriation upon any other than a general appropriation bill without first having secured specific authority from the House to do so.

On May 22, 1936,[14] Mr. James M. Mead, of New York, called up the conference report on H.R. 9496, a bill to protect the federal government against losses sustained in mail delivery of checks containing veterans' benefits. Mr. James P. Buchanan, of Texas, raised a point of order against the

14. 80 CONG. REC. 7790–92, 74th Cong. 2d Sess.

conference report. The Speaker, Joseph W. Byrns, of Tennessee, responded:

> 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[15] 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.

§ 7.20 Where a Senate amendment carrying an appropriation was attached to a legislative bill originating in the House and such bill and amendment are referred to a conference committee, the managers on the part of the House may not agree in conference to such amendment but must bring it back to the House for a separate vote.

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

On July 29, 1935,[16] Mr. Marvin Jones, of Texas, made the following parliamentary inquiry:

> When an amendment carries an appropriation, such amendment being attached by the Senate to a legislative bill originating in the House, is it necessary that it be brought back for a separate vote on that particular amendment?
>
> THE SPEAKER:[17] The Chair thinks so, under the rules.
>
> The rule,[18] with which the gentleman is familiar, reads:
>
> > 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.
>
> The Chair thinks it is very clear, therefore, that the amendment would have to be brought back to the House for a separate vote.

§ 7.21 Where conferees agreed to a Senate amendment with an amendment providing that "benefits shall be paid from the civil service retirement and disability fund," such agreement constituted a violation of Rule XX clause 2, and was ruled out on a point of order.

On Oct. 4, 1962,[19] Mr. Tom Murray, of Tennessee, called up the conference report on H.R. 7927, the Postal Rate and Pay Act of 1962. Mr. H. R. Gross, of Iowa, raised a point of order:

> 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. . . .
>
> Mr. Speaker, since the pending conference report includes the language

16. 79 CONG. REC. 12004, 74th Cong. 1st Sess.
17. Joseph W. Byrns (Tenn.).
18. Rule XX clause 2, *House Rules and Manual* § 829 (1997).
19. 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.
20. *House Rules and Manual* § 829 (1997).

making an appropriation it is, I submit, out of order under clause 2 of rule XX. . . .

THE SPEAKER PRO TEMPORE:[1] 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.

Appropriations in Legislative Bills, Restriction on Managers Authority

§ 7.22 A conference report on a House bill authorizing funds for environmental research was ruled out on a point of order where the managers had agreed to a Senate amendment which diverted previously appropriated funds for a new purpose, thus violating Rule XX clause 2.

When the conference report on H.R. 2676, the Environmental Protection Agency research authorization for fiscal year 1980, was called up by the manager on Nov. 29, 1979,[2] a point of order was made against it on the ground that the managers on the part of the House had agreed to a Senate amendment constituting an appropriation in violation of the cited rule. An appropriation, previously agreed to, had provided funding for research and development to be allocated at the discretion of the Administrator. The conference language attempted to mandate that allocation to certain projects.

The point of order, and the offending language which is cited therein, are carried as well as the subsequent motion offered by the manager, Mr. Don Fuqua, of Florida, which "encouraged" but did not "mandate" the use of the previously appropriated funds.

MR. FUQUA: Mr. Speaker, I call up the conference report on the bill (H.R. 2676) to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1980, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[3] Pursuant to the rule the conference report is considered as having been read. . . .

The gentleman from Florida (Mr. Fuqua) will be recognized for 30 minutes, and the gentleman from Pennsylvania (Mr. Walker) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. Fuqua).

1. Carl Albert (Okla.).
2. 125 CONG. REC. 34113–15, 96th Cong. 1st Sess.
3. Abraham Kazen, Jr. (Tex.).

POINT OF ORDER

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts will state the point of order.

MR. BOLAND: Mr. Speaker, clause 5 of rule XXI prohibits committees without proper jurisdiction from reporting measures carrying appropriations. Interpretation of the rule has held that language reappropriating, making available, or diverting an appropriation already made for one purpose to another is not in order. This has been sustained numerous times, but it is very clearly stated in a ruling on August 11, 1921, and is a precedent that is nearly identical to the issue that is before us now.

In the paragraph authorizing appropriations for the health and ecological effects activity of the water quality research and development program House conferees on H.R. 2676 agreed to retain in the bill the following provision added by the Senate:

> *Provided,* That of the funds appropriated pursuant to this paragraph $900,000 shall be obligated and expended on the Cold Climate Research program through the Environmental Protection Agency's Corvallis Environmental Research Laboratory, Corvallis, Oregon.

The 1980 Environmental Protection Agency budget request did not include any funding for cold climate research. The 1980 appropriation of EPA's research and development programs also did not include any funding for cold climate research.

The proviso amounts to a diversion of funds previously appropriated and violates clause 5, rule XXI.

Mr. Speaker, I urge that the point of order be sustained.

THE SPEAKER PRO TEMPORE: Does the gentleman from Florida (Mr. Fuqua) wish to speak on the point of order?

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

THE SPEAKER PRO TEMPORE: The point of order is conceded and sustained.

So the conference report was ruled out on the point of order.

AMENDMENTS IN DISAGREEMENT

The Clerk will designate the first amendment in disagreement.

Senate amendment No. 1 reads as follows:

> Senate amendment No. 1: Page 1, strike out all after line 6 over to and including line 10 on page 7 and insert:
>
> SEC. 2. (a) There are authorized to be appropriated to the Environmental Protection Agency for environmental research, development, and demonstration activities for the fiscal year 1980 for the following activities:
>
> (1) $95,999,500 for water quality activities authorized under the Federal Water Pollution Control Act of which—
>
> (A) $23,124,000 is for Health and Ecological Effects programs: *Provided,* That of the funds appropriated pursuant to this paragraph, $900,000 shall be obligated and expended on the Cold Climate Research program through the Environmental Protection Agency's Corvallis Environmental Research Laboratory, Corvallis, Oregon. . . .

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

The Clerk read as follows:

Mr. Fuqua moves that the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SEC. 2. (a) There are authorized to be appropriated to the Environmental Protection Agency for environmental research, development, and demonstration activities for the fiscal year 1980 for the following activities:

(1) $66,659,000 for water quality activities authorized under the Federal Water Pollution Control Act of which—

(A) $25,224,000 is for the Health and Ecological Effects program:

Provided, That the Agency is encouraged to obligate and to expend $900,000 of these funds on the Cold Climate Research program through the Agency's Corvallis Environmental Research Laboratory, Corvallis, Oregon. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Florida (Mr. Fuqua).

The motion was agreed to.

The remaining amendments in disagreement were subsequently considered en bloc and disposed of by a single motion to recede and concur.

Restrictions on Conferees Agreeing to Legislative Provisions in Appropriation Conference

§ 7.23 A House rule prohibits the inclusion in a conference report on a general appropriation bill of Senate amendments containing legislation; but where such amendments are reported from conference in disagreement and called up for disposition by separate motion, they are not subject to points of order under Rule XX.

On Dec. 4, 1975, the House had under consideration the conference report on a general appropriation bill.[4] When the Speaker laid before the House an amendment in disagreement, a Member made a point of order against the amendment on the ground that it contained legislation in violation of Rule XXI clauses 2(b) and (c).[5] Rule XX was also cited. The Speaker[6] overruled the point of order, as shown.[7]

THE SPEAKER: The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

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4. H.R. 8069, Labor-HEW appropriations for fiscal 1976.
5. *House Rules and Manual* §§ 834b, 834c (1997).
6. Carl Albert (Okla.).
7. 121 CONG. REC. 38714, 94th Cong. 1st Sess., Dec. 4, 1975.

Senate amendment No. 72: Page 47, line 4, insert:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

POINT OF ORDER

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I raise a point of order on the amendment. This is legislation on an appropriation bill, and I would like to be heard on the point of order.

THE SPEAKER: The gentleman from Massachusetts may be heard on his point of order.

MR. CONTE: Mr. Speaker, I rise in support of a point of order against Senate amendment No. 72 to the Labor-HEW Appropriations Act of 1976.

At this point, I should like to direct the Chair to rule 21, section 2 of the House regarding the prohibition of legislation in an appropriations bill. The pertinent language states:

> Nor shall any provisions in any such bill or amendment thereto changing existing law be in order. . . .

While the Senate amendment No. 72 might appear to only act as a limitation on spending, it will actually change basic law as I will now set out.

Section 215(a), title II of the Equal Educational Opportunities Act of 1974 provides the following language, which limits the specific distance a student may be transported in a schoolbusing program:

> No court, department or agency of the United States shall, pursuant to section 214, order the implementation of a plan that would *require the transportation of any student to a school other than the school closest to his place of residence* which provides the appropriate grade level and type of education for such student. (Emphasis added.)

Notice that the distance a student can be transported is limited to the "school closest or next closest to his place of residence." I should now address myself to the language of the Senate amendment here in question:

> None of the funds contained in this act shall be used to *require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home,* and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964. (Emphasis added.)

As is readily apparent, where the Equal Educational Opportunities Act of 1974 (Public Law 93–380) limits busing to either the student's immediate or adjacent school district, the Senate amendment further limits the transportation to the student's immediate district. I am sure the Chair can see this apparent attempt to change the effect of section 215(a) of Public Law 93–380.

I should like to note that while this is a Senate amendment and may be consistent with the rules of that House—it is not controlling. It is clear that since this is an appropriations bill and naturally originates in the House, it is the House rules which are controlling and I cite rule 20 on this point:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the State of the Union, if, originating in the House, it would be subject to that point.

For these reasons, Mr. Speaker, I contend that this amendment carries the standard of a simple limitation in an appropriations bill, but in reality is a prima facie case of legislation in an appropriations bill, which on its face changes existing law.

Therefore, I urge that this point of order be sustained.

Thank you, Mr. Speaker.

THE SPEAKER: The Chair is ready to rule.

The Chair overrules the point of order raised by the gentleman from Massachusetts (Mr. Conte) because when that stage is reached that an amendment is in disagreement between the two Houses, the rule—clause 1 of rule XX—cited by the gentleman from Massachusetts no longer applies and the amendment may be disposed of in the House. The Senate amendment is reported back in disagreement and not as part of the conference report, therefore clause 2 of rule XX is not applicable and the Senate amendment may be considered by the House.

House Authorization To Include Legislation in Appropriation Measure

§ 7.24 The House may by unanimous consent send an appropriation bill to conference and authorize the House conferees to agree to Senate legislative amendments notwithstanding the restrictions contained in Rule XX clause 2.

On June 3, 1936,[8] Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas, to make the following request:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 12624, the first deficiency appropriation bill, together with the Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate; also that the managers on the part of the House, notwithstanding the provisions of clause 2, rule XX, be authorized to agree to any Senate amendment with or without amendment, except the Senate amendment having to do with the Florida ship canal and the Senate amendment providing $300,000,000 for public-works projects.

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

There was no objection.

Appropriation Unauthorized by Law

§ 7.25 A point of order against a conference report, made on the theory that the managers

8. 80 CONG. REC. 8822, 74th Cong. 2d Sess.

on the part of the House had agreed to a Senate amendment to an appropriation bill which provided for an appropriation which was not authorized by law (and thus in violation of Rule XXI clause 2), was overruled.

On the legislative day of Sept. 25, 1961,[9] after the Clerk read the conference report on H.R. 9169, supplemental appropriations for fiscal 1962, the following occurred:

> MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the conference report, and I refer especially to the paragraph on page 30, under the title of "Preservation of Ancient Nubian Monuments—Special Foreign Currency Program":
>
> > For purchase of Egyptian pounds which accrue under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), for the purposes authorized by section 104(k) of that Act, $4,000,000 to remain available until expended.
>
> Mr. Speaker, to my mind that appropriation is not covered by the statute on which it is based. . . .
>
> To my mind, this authorization was not covered by the language of section 104(k). In my opinion, it does not include the sort of operation that is mentioned here. It does not have proper authority for an appropriation of this character. It does not authorize purchase of currency. . . .
>
> THE SPEAKER PRO TEMPORE:[10] The Chair is prepared to rule. . . .
>
> The Chair has carefully studied the provisions of section 104(k), the organic law, which includes among other things:
>
> > To promote and support programs of medical and scientific research, cultural and educational development, health, nutrition, and sanitation: *Provided,* That foreign currencies shall be available for the purpose of this subsection (in addition to funds otherwise made available for such purposes) only in such amounts as may be specified from time to time in appropriation acts. . . .
>
> Continuing what the Chair has said, it is the opinion of the Chair that section 104(k) justifies the language contained in the conference report, and the Chair overrules the point of order.

Expansion of Exception to Restrictions on Executive Power

§ 7.26 When a Senate amendment to a House bill contained a prohibition against impoundment of appropriations authorized in the bill, as well as an exception to this prohibition, the language agreed upon by the conferees which broadened this exception was held to be

9. 107 CONG. REC. 21521, 21522, 87th Cong. 1st Sess.

10. John W. McCormack (Mass.).

a further restriction and not to exceed the authority of the conferees.

On July 7, 1943,[11] the House was preparing to consider the conference report on H.R. 2798, the roads bill, when Mr. John Taber, of New York, raised a point of order:

> Mr. Speaker, I make the point of order that the conference report is not within the range of the conference in that section 9 of the bill as proposed in the conference report is not an item that was in the bill as it passed the House or the Senate.

After hearing Mr. Jesse P. Wolcott, of Michigan, on the point of order, Speaker Sam Rayburn, of Texas, gave the following ruling:

> The Chair is prepared to rule.
>
> Section 9 of the Senate amendment reads as follows:
>
> > No part of any appropriation authorized in this act shall be impounded or withheld from obligation or expenditure by any agency or official other than the Commissioner of Public Roads.
>
> Section 9 is purely a limitation and it is a limitation on everyone except the Commissioner of Public Roads.
>
> The language agreed upon in conference is more restrictive than the language of the original section 9 in the opinion of the Chair because it strikes out the words "other than the Commissioner of Public Roads" and inserts "unless the War Production Board shall certify that the use of critical material for additional highway construction would impede the conduct of the war."
>
> It seems to the Chair, section 9 dealing with limitations, that this is simply a further restriction and limitation and the Chair would be compelled to overrule the point of order raised by the gentleman from New York.
>
> The point of order is overruled.

Amendment to Legislative Item Left in Appropriation Bill

§ 7.27 Where an item in an appropriation bill legislative in nature passes the House without a point of order being made against it and the Senate merely increases the amount of money provided therefor, a conference report may not be ruled out of order on the ground that the conferees exceeded their authority by not bringing the matter back to the House for a separate vote.

On May 11, 1945,[12] Mr. Louis C. Rabaut, of Michigan, called up the conference report on H.R. 2603, making appropriations for fiscal 1946 for the Departments of

11. 89 CONG. REC. 7385, 7386, 78th Cong. 1st Sess.

12. 91 CONG. REC. 4466, 4468, 4469, 79th Cong. 1st Sess.

State, Justice, Commerce, the Judiciary, and federal loan agencies. Mr. Robert F. Jones, of Ohio, made a point of order against the report on the ground that it made appropriations for activities not previously authorized by law—conducting an industrial census. Speaker Sam Rayburn, of Texas, responded:

> The Chair is ready to rule.
>
> The Chair has listened to the statement of the gentleman from Ohio in support of the point of order he raises against the conference report. The paragraph starting on page 54, beginning at line 7 and ending on line 7, page 55, was in the bill when it passed the House. Even though the paragraph might have been subject to a point of order then, it was not made, and the paragraph remained in the bill. The Chair is of the opinion this is only a question of amount of money. The House put in appropriation of $4,757,000 under the heading of compiling census reports, and so forth. If in the House an amendment had been made changing the sum of $4,757,000 to $5,318,000, or any other amount, it would certainly have been in order.
>
> MR. JONES: Mr. Speaker, may I be heard further on the point of order?
>
> THE SPEAKER: Yes.
>
> MR. JONES: Mr. Speaker, when the original bill was in the House, there was a point of order made against the following language, which I think was an authorization for this item which had been left in the bill. The language is as follows:
>
> And for sample surveys throughout the United States for the purpose of estimating the size and characteristics of the Nation's labor force and population, including personal services, at the seat of government.
>
> That clause was left out of the bill. This, as I understand, Mr. Speaker, is for a sample survey of industrial statistics.
>
> THE SPEAKER: But the Chair goes back to the original proposition that the paragraph remained in the bill. . . .
>
> . . . The paragraph was not stricken out in the House on a point of order. The only question involved being a question of amount, the Chair overrules the point of order.

Waiver of Points of Order Against Appropriation Bill; Waiver Carries Over to Conference Report

§ 7.28 Where a special rule in the House waives points of order against portions of an appropriation bill which are unauthorized by law, and the bill passes the House with those provisions included therein and goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since waiver of points of order under Rule XXI clause

2,[13] carries over to the consideration of the same provisions when the conference report is before the House.

On Dec. 20, 1969,[14] Mr. Otto E. Passman, of Louisiana, submitted and called up the conference report on H.R. 15149, foreign assistance appropriations for fiscal 1970. Mr. Sidney R. Yates, of Illinois, raised a point of order against the report on the ground that it contained appropriations that had not yet been authorized by law. Mr. Gerald R. Ford, of Michigan, defended the conference report, explaining an earlier assertion by Mr. Passman that the provisions alleged to be objectionable by Mr. Yates were in the appropriations bill as it passed the House.

MR. GERALD R. FORD: . . . Mr. Speaker, we do as a matter of practice appropriate money from time to time that is not specifically authorized as a matter of law. Furthermore, in this particular case when the foreign aid appropriation bill came to the floor of the House, a specific rule was granted waiving points of order.

It would be my argument that the benefit of that rule would still be applicable in the consideration of the conference report.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[15] The Chair will hear the gentleman further.

MR. ZABLOCKI: Mr. Speaker, does the rule waiving points of order under which the House appropriation bill was considered by the Committee of the Whole House on the State of the Union continue through conference report consideration? Would not the rule apply only for consideration of the appropriation bill waiving points of order during the time it was considered by the Committee of the Whole? Certainly the rule should not carry over to the conference report? If it does the Members of the House abrogate their legislative prerogatives. . . .

My parliamentary inquiry, Mr. Speaker, is: Does the rule under which the appropriation bill came to the House carry over and continue into the conference report?

THE SPEAKER: The Chair will state that will have a bearing on the point of order that is raised at the present time. . . .

. . . [T]he Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of $454,500,000. The Senate reduced this figure to $350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

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13. *House Rules and Manual* § 834 (1997).

14. 115 CONG. REC. 40445–48, 91st Cong. 1st Sess.

15. John W. McCormack (Mass.).

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

§ 7.29 Where an appropriation bill is considered in the House under a rule waiving points of order against a provision therein which is unauthorized by law, and the Senate then amends the unauthorized provision, reducing the sum of money involved and striking out a portion of the language, conferees may (without violating the provisions of Rule XX clause 2)[16] agree to a sum between the two and restore the House language.

On Dec. 20, 1969,[17] Mr. Otto E. Passman, of Louisiana, called up the conference report on H.R. 15149, foreign assistance appropriations for fiscal 1970. Mr. Sidney R. Yates, of Illinois, raised a point of order against this conference report on the ground that it contained provisions unauthorized by law. He stated that the conference compromise on H.R. 14590, the foreign assistance authorization bill, provided for a total amount of $350 million for military assistance without specifying amounts for any particular country. The House version of the appropriations bill contained the following provisions that were deleted in conference on the authorization bill: a total amount for military assistance of $454.5 million with $50 million earmarked for Korea and $54.5 million for the Republic of China. Mr. Yates then alluded to the conference report on H.R. 15149:

MR. YATES: . . . It is stated on page 7 of the conference report with respect to amendments Nos. 23, 24, 25, and 26, under the heading "Military Assistance":

Insert appropriate section numbers; appropriate $404,500,000 instead of $454,500,000 as proposed by the House and $350,000,000 as proposed by the Senate;—

Then there is this language, Mr. Speaker:

and restore language deleted by the Senate earmarking $54,500,000 for the Republic of China.

Mr. Clement J. Zablocki, of Wisconsin, was then recognized by Speaker John W. McCormack, of Massachusetts:

Mr. Speaker, I rise in support of the point of order and to express my strong opposition to the conference report on foreign aid appropriations.

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

17. 115 CONG. REC. 40445–48, 91st Cong. 1st Sess.

This report contains a line item for foreign military assistance of $404.5 million. That amount is $54.5 million more than the amount which the House authorized yesterday by approving the conference report on the foreign aid authorization bill.

For that reason, I believe that this conference report is completely and flagrantly out of order. Let me cite to this body rule XXI, part 2, of the Rules of the House of Representatives. It states:

> No appropriation shall be reported in any general appropriations bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

Mr. Passman then explained the particular relationship between the foreign-aid authorization and appropriations bills.

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

Mr. Speaker, it is my understanding that the lateness of the so-called authorization bill, which does not exist in fact, as yet, and the very fact that the majority leader of the other body said there would be no authorization bill, and the chairman of the Foreign Relations Committee said there would be no authorization bill, made it necessary for us to move this bill through the Appropriations Committee, the Rules Committee, and the Rules Committee gave us a rule waiving points of order. We have moved the bill, as I understand it, according to the rules of the House, and this appropriation bill became an authorization bill also, in the absence of any authorization act. Even at this late hour we still do not have an authorization bill because the conference report on the authorization bill was only adopted yesterday by both Houses and has not yet reached the President for his signature.

Mr. Gerald R. Ford, of Michigan, added:

. . . [I]n this particular case when the foreign aid appropriation bill came to the floor of the House, a specific rule was granted waiving points of order.

It would be my argument that the benefit of that rule would still be applicable in the consideration of the conference report.

MR. ZABLOCKI: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The Chair will hear the gentleman further.

MR. ZABLOCKI: Mr. Speaker, does the rule waiving points of order under which the House appropriation bill was considered by the Committee of the Whole House on the State of the Union continue through conference report consideration? . . .

THE SPEAKER: The Chair will state that will have a bearing on the point of order that is raised at the present time. . . .

The Chair is aware of the fact pointed out by the gentleman from Illinois—that the authorization bill for fiscal 1970, while passed by both Houses, has not yet become law. As pointed out in the debate on this point of order, the conference report now before the House does carry an amount for military assistance that is $54,500,000 above the figure which

would be authorized by H.R. 14580, the Foreign Assistance Act of 1969.

However, the Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of $454,500,000. The Senate reduced this figure to $350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

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

Appropriations in Amendments to Senate Bills

§ 7.30 Although the managers on the part of the House may not without the prior consent of the House agree to a Senate amendment providing for an appropriation not authorized by law or an appropriation upon any bill other than a general appropriation bill, this restriction does not apply where a Senate bill with House amendments is committed to conference.

On Jan. 25, 1972,[18] Mr. Thomas E. Morgan, of Pennsylvania, called up the conference report on S. 2189, the Foreign Assistance Act of 1971, and obtained the consent of the House that the statement of the managers be read in lieu of the report. At this point, Mr. H. R. Gross, of Iowa, raised a point of order against the conference report on the grounds that it contained matter that was beyond the range of disagreement submitted to the conferees, and which was not germane to the Senate bill or House amendment. Mr. Morgan responded to the point of order:

. . . Last November the House sent to conference two foreign aid bills, one economic and one military, which passed the Senate. At that time the House struck out all after the enacting clauses of both bills and inserted in lieu thereof the complete text of H.R. 9910, which had passed the House last August.

All the provisions of both the House and Senate bills that were in disagreement were considered in conference. The House having adopted a rule to send these two Senate bills to conference therefore the amendments to which the gentleman from Iowa has objected automatically became House amendments and the provisions from the Senate bill are no longer subject to a point of order.

THE SPEAKER:[19] The Chair is ready to rule.

The gentleman from Iowa has raised a point of order against the conference report on the ground that the House

18. 118 CONG. REC. 1076, 1077, 92d Cong. 2d Sess.

19. Carl Albert (Okla.).