

§ 26. Senate Amendments to House Bills and Amendments; Conference Agreements

Rules in effect in the 93d Congress permitted any Member to demand a separate vote in the House on any motion, order, or rule to dispose of any Senate amendment which would be subject to a point of order under the germaneness rule and permitted a separate vote in the House on any nongermane Senate amendment or portion thereof included in a conference agreement.⁽¹⁸⁾ If as a result of such a vote, any such Senate amendment was rejected, the conference agreement as a whole was considered rejected.

By changes adopted in the second session of the 93d Congress,⁽¹⁹⁾ the procedure permitting separate debate and votes on non-

germane Senate amendments was extended to nongermane matter that (1) originally appeared in a Senate bill, (2) was not included in the House-passed version of that bill, and (3) appeared again in the conference report. The test for identifying such matter is whether it would have been ruled nongermane if offered in the House as an amendment to the House-passed version.

Each such matter contained in a conference report is subject to a point of order that it is not germane to the House-passed version. If the Speaker sustains the point of order, Members are permitted to offer a privileged motion to reject the nongermane matter specified in the point of order. The motion is decided by majority vote after 40 minutes of debate, equally divided between those in favor and those opposed to the motion.

Furthermore, the procedure for dealing with nongermane Senate amendments was extended to permit separate debate and votes on nongermane matter in Senate amendments reported in disagreement by a conference committee or pending before the House, the stage of disagreement having been reached. The provision relates to motions to recede and concur in a Senate amendment, with or without an amendment.

18. See former Rule XX clause 1, *House Rules and Manual* Sec. 827 (1973); Rule XXVIII clause 4, *House Rules and Manual* Sec. 913b (1973). From 1971 until 1973, clause 3 of Rule XX, which had been enacted as part of the Legislative Reorganization Act of 1970, provided that House conferees could not agree, without prior permission of the House, to Senate amendments that would violate clause 7 of Rule XVI if offered in the House.

19. H. Res. 998, 93d Cong. 2d Sess.

On a motion to recede and concur, the rule permits points of order against nongermane matter in the Senate amendment, provided such points are raised immediately after the motion is offered and before debate begins. Each sustained point of order may be followed by a privileged motion to reject, 40 minutes of debate, and a vote.

In the case of a motion to recede and concur in the Senate amendment with an amendment, it is in order, immediately after the motion is offered and before debate begins, to raise the same kind of points of order. However, these apply to the version of the amendment as it would appear if the motion were adopted. That is, the entity against which points of order can be raised is the proposed amended version of the Senate amendment. Copies of this version must be available on the floor when the motion to recede and concur with an amendment is offered.

As a result of another change in the rules, all procedures relating to nongermane Senate amendments are now consolidated in a single rule.⁽²⁰⁾

20. Rule XXVIII clause 5, including matter transferred from Rule XX clause 1 relating to the procedure concerning disposition of Senate nongermane amendments.

Prior to adoption of the rules described above, it was held that a Senate amendment to a House bill is not subject, in the House, to the point of order that it is not germane to the House bill.⁽¹⁾

It has also been held, and is still true, that, when a Senate amendment reported in disagreement by conferees or otherwise before the House is under consideration, a proposal to amend must be germane to the Senate amendment.⁽²⁾

Amendments to Senate amendments reported from conference in

1. See 113 CONG. REC. 34032, 34033, 90th Cong. 1st Sess., Nov. 28, 1967, especially remarks of Mr. Jones and Mr. Colmer, for discussion of efforts to modify this principle. For a discussion in the House concerning the Senate practice of adding nongermane amendments to House bills, including specific instances thereof prior to 1970, see 115 CONG. REC. 34305-309, 91st Cong. 1st Sess., Nov. 17, 1969. For an instance in which the House, by unanimous consent, concurred in a nongermane Senate amendment to House amendments to a Senate bill, see 116 CONG. REC. 12874, 91st Cong. 2d Sess., Apr. 23, 1970. Under consideration was S. 3253 (Committee on Public Works), to name certain buildings in Chicago after Everett McKinley Dirksen, with a Senate amendment authorizing emergency payments to "impacted area" educational agencies.

2. See §27.35, *infra*.

disagreement are subject to the same test of germaneness under clause 7 of Rule XVI applicable to any other amendment in the House, and conferees' motions are given no wider latitude regarding germaneness.⁽³⁾

Pursuant to clause 4 of Rule XXVIII, a point of order against a nongermane Senate provision included in a conference report may be made before debate begins on the report, and if the Chair sustains the point of order, a motion to reject that portion of the conference report, debatable for 40 minutes equally divided and controlled, is in order; it is then in order, following the disposition of that motion, to make further points of order and motions to reject. If any such motion is adopted, the conference report is considered as rejected and the pending motion (which is offered by the manager of the conference report) is, in the case of a House bill with a Senate amendment, to recede from disagreement to the Senate amendment and concur therein with an amendment consisting of the portion of the conference report not rejected. Such a motion is debatable for one hour, equally divided and controlled by the majority and minority (pursuant to clause 2(a) of Rule XXVIII).

3. See §27.30, *infra*.

If the conference report is on a Senate bill with a House amendment and a motion to reject a nongermane Senate portion of the conference report is agreed to, the pending question under clause 4 of Rule XXVIII is on House insistence upon its original amendment, the House being unable at that stage to amend its own amendment to the Senate bill.

By unanimous consent, the proceedings by which the House had agreed to a motion to reject a nongermane Senate provision included in a conference report, pursuant to clause 4 of Rule XXVIII, by a voice vote, were vacated in order to allow full debate and a recorded vote on the motion to reject.⁽⁴⁾

If the motion to reject a nongermane portion of the conference report is not agreed to, debate commences on the conference report itself.

Separate Vote on Nongermane Senate Provisions Agreed to in Conference, Where Senate Bill is Amended by Inserting House Bill in Lieu Thereof

§ 26.1 In response to a parliamentary inquiry, the

4. See the proceedings of Oct. 15, 1986, discussed in §26.31, *infra*.

Speaker indicated that under clause 4(a)(2), Rule XXVIII, a point of order could be made against a portion of a conference report on a Senate bill containing Senate matter not germane to the House-passed version, which point of order if sustained would permit a separate vote on the nongermane portion of the conference report, in the absence of a special rule waiving that point of order.

On Aug. 22, 1980,⁽⁵⁾ the House had under consideration S. 2719⁽⁶⁾ when a parliamentary inquiry was addressed to the Chair as described above. The inquiry and the Speaker's response were as follows:

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2719) to amend and extend certain Federal laws relating to housing, community and neighborhood development and preservation, and related programs, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE:⁽⁷⁾ Is there objection to the request of the gentleman from Ohio?

5. 126 CONG. REC. 22660, 22661, 96th Cong. 2d Sess.
6. The Housing and Community Development Act of 1980.
7. James C. Wright, Jr. (Tex.).

MR. [CHALMERS P.] WYLIE [of Ohio]: Mr. Speaker, reserving the right to object, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WYLIE: If we take up the Senate bill and amend it by striking all after the enacting clause and inserting in lieu thereof the House bill, do we limit the ability of any Member of this House to require a separate vote on any possible Senate provision agreed to in conference which would have been ruled nongermane if offered as an amendment to the House bill on the House floor?

THE SPEAKER PRO TEMPORE: The Chair would respond that a Member's right would not be limited by those circumstances. Under rule XXVIII, clause 4, a point of order may be made against a provision in a conference substitute which would not have been germane to the House-passed bill. If the Chair holds that the Senate amendment or provision would not have been germane, then a motion to reject that provision may be made. Therefore, the gentleman's rights are protected by the rule.

MR. WYLIE: Further reserving the right to object, Mr. Speaker, then any nongermane Senate provision brought back from conference may be subjected to a separate vote?

THE SPEAKER PRO TEMPORE: The answer is that it may be subjected to a separate vote under the rules of the House. The only way in which it would not be subject to a separate vote would be if the conference committee were to come under a rule adopted by the House which would waive points of order.

Point of Order Against Provision as Constituting Appropriation on Legislative Bill To Be Disposed of Before Germaneness Point of Order Under Rule XXVIII

§ 26.2 A point of order under clause 2 of Rule XX or under clause 5 of Rule XXI which, if sustained, would vitiate an entire conference report or motion to dispose of a Senate amendment as constituting an appropriation on a legislative bill, must be disposed of prior to points of order against a portion of a motion under clause 4 or 5 of Rule XXVIII alleged to contain a nongermane Senate provision to a House measure and which, if sustained, would merely permit a separate vote on rejection of that portion of the conference report or motion.

The proceedings of Oct. 1, 1980, during consideration of H.R. 5612 (relating to assistance for small business), are discussed in § 26.26, *infra*.

Germaneness of Senate Amendment Modified by House Amendment Prior to Conference Not Determined by Relationship to Original House-passed Bill

§ 26.3 The test of germaneness under Rule XXVIII, clause 4, of a portion of a conference report originally contained in a Senate amendment is its relationship to the final House version of the bill committed to conference, and not to the original House-passed bill which may have been superseded by a House amendment to the Senate amendment prior to conference; thus, where the House (by unanimous consent) amended a Senate amendment to include matter germane to the Senate amendment although not germane to the original House-passed bill, the Chair stated that a germaneness point of order would not lie against the Senate amendment as so modified in a conference report.

On July 28, 1983,⁽⁸⁾ during consideration in the House of the conference report on H.R. 2973 (inter-

8. 129 CONG. REC. 21401, 98th Cong. 1st Sess.

est and dividend tax withholding repeal], the principle described above was demonstrated:

MR. [TOM] HARKIN [OF IOWA]: . . . I have a parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE:⁽⁹⁾ The gentleman will state it.

MR. HARKIN: Mr. Speaker, under rule 28, it seems to me that after the reading of any conference report a point of order lies if, in fact, there is a provision in the conference report that is not germane to the bill that was passed by the House, and I do not think CBI is germane to the repeal of withholding.

THE SPEAKER PRO TEMPORE: In answer to the gentleman, by unanimous consent the House, prior to sending the bill to conference, joined both issues as a House amendment to the Senate amendment, so there is no germaneness question. . . .

MR. HARKIN: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HARKIN: Mr. Speaker, in other words, a unanimous-consent request was offered on the floor of the House during a House session to join both these issues and no one objected to that unanimous-consent request?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

Motion To Reject Nongermane Portion of Conference Report To Be Disposed of Before Other Points of Order Allowed

§ 26.4 Pursuant to clause 4(b) of Rule XXVIII, where a point of order against a portion of a conference report has been sustained on the ground that it was not germane to the House-passed version, the Speaker will not entertain another point of order against the conference report or against another portion thereof until a motion to reject the portion held nongermane, if made, has been disposed of.

The proceedings of Dec. 15, 1975, relating to the conference report on S. 622, the Energy Policy and Conservation Act, are discussed in Sec. 26.15, *infra*.

Point of Order That Conferees Exceeded Scope of Matters Committed to Them—Timeliness After Adoption of Motion To Reject and Recognition for Motion To Recede and Concur With Amendment

§ 26.5 Once a motion to reject a nongermane portion of a conference report has been adopted by the House pursu-

9. John J. Moakley (Mass.).

ant to clause 4 of Rule XXVIII, a point of order against the entire conference report under clause 3 of that rule comes too late if the Speaker has recognized a Member to offer a motion to recede and concur in the pending Senate amendment with an amendment consisting of that portion of the conference report not rejected.

Proceedings relating to consideration of the conference report on S. 622, the Energy Policy and Conservation Act, are discussed in detail in §26.15, *infra*. After the motion discussed therein, to reject a nongermane portion of the conference report pursuant to Rule XXVIII, clause 4, had been adopted, the following motion was made:⁽¹⁰⁾

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Staggers moves that the House recede from its disagreement to the Senate amendments to the House amendment and concur with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

That this Act may be cited as the "Energy Policy and Conservation Act"

10. 121 CONG. REC. 40681, 94th Cong. 1st Sess., Dec. 15, 1975.

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MR. STAGGERS [during the reading]:⁽¹¹⁾ Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER:⁽¹²⁾ Is there objection to the request of the gentleman from West Virginia?. . . .

Reserving the right to object, several Members engaged in colloquy with the Speaker as to the parliamentary status of the motion, the effect of the prior rejection of the conference report, and the rules governing debate on the motion. John B. Anderson, of Illinois, indicated during the exchange⁽¹³⁾ that he was prepared to make a point of order against a section of the bill on the ground that it was in violation of clause 3 of Rule XXVIII, in that it contained a proposition beyond the scope of the matters committed to the conference committee. Subsequently, the following inquiry raised the issue of the timeliness of such a point of order when the conference report had been rejected pursuant to clause 4 of Rule XXVIII and the Staggers motion to recede and concur with an amendment was pending:

MR. [CLARENCE J.] BROWN [Jr., of Ohio]: Mr. Speaker I have asked the

11. *Id.* at p. 40710.

12. Carl Albert (Okla.)

13. See 121 CONG. REC. 40711, 94th Cong. 1st Sess.

gentleman [Mr. John H. Rousselot, of California] to yield so that I may make this parliamentary inquiry.

Should the gentleman from California (Mr. Rousselot), who is now maintaining a reservation of objection, formally object, would it then be in order for the gentleman from Illinois (Mr. Anderson) to make a point of order against the language presently in the conference report which is under consideration on the motion offered by the gentleman from West Virginia (Mr. Staggers) on the basis of scope?

THE SPEAKER: It would not be in order.

MR. BROWN of Ohio: Mr. Speaker, is that not in order under any circumstances?

THE SPEAKER: Not at this point, the report has been rejected.

Parliamentarian's Note: A possible issue arising under Rule XXVIII, clause 4, is whether the point of order based on clause 3, that the conferees have exceeded the scope of the matters committed to them, may be made following the adoption, pursuant to clause 4, of the first motion to reject nongermane matter. Rule XXVIII, clause 4(d) states that "if any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be whether to recede and concur in

the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected." Thus, under the rule, there is a hiatus between the adoption of the first motion to reject and the final disposition of all other such motions, during which time one might consider the report as still technically before the House, and thus a point of order under clause 3 would be in order during that time. But while the report is not technically rejected until after the final disposition of further points of order, the rule states that the points of order in order at that time (after the adoption of the first motion to reject) are those made in order under the preceding provisions of the clause, those based on germaneness. Such an interpretation would preclude the point of order under clause 3 after adoption of the first motion to reject.

Debate on Motion To Reject Nongermane Portion of Conference Report

§ 26.6 Pursuant to Rule XXVIII clause 4, 40 minutes for debate on a motion to reject a nongermane portion of a conference report is equally divided between the proponent and an opponent of the motion to reject, and rec-

ognition is not based upon party affiliation; and the House conferee who has been recognized for 20 minutes in opposition to a motion to reject a nongermane portion of a conference report is entitled to close debate on the motion to reject.

H.R. 5247, a bill reported from the Committee on Public Works and Transportation, consisted of one title relating to grants to state and local governments for local public works construction projects. A new title added by the Senate and contained in a conference report provided grants to state and local governments to assist them in providing public services. On Jan. 29, 1976,⁽¹⁴⁾ a point of order was made in the House, pursuant to Rule XXVIII clause 4, against the title added by the Senate. The title was held to be not germane, because it proposed a revenue-sharing program within the jurisdiction of the Committee on Government Operations, and because the approach taken in the Senate version was not closely related to the methods used to combat unemployment as delineated in the House bill.⁽¹⁵⁾ After the Speaker

14. 122 CONG. REC. 1582, 94th Cong. 2d Sess.

15. For further discussion of the ruling on the issue of germaneness, see §4.99, *supra*.

had ruled on the point of order, a motion was made:

MR. [JACK] BROOKS [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Brooks moves that the House reject title II of H.R. 5247, as reported by the committee of conference.

THE SPEAKER:⁽¹⁶⁾ The gentleman from Alabama (Mr. Jones) will be recognized for 20 minutes, and the gentleman from Texas (Mr. Brooks) will be recognized for 20 minutes.

MR. BROOKS: Mr. Speaker, I yield myself such time as I may consume.

MR. [FRANK] HORTON [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. HORTON: Mr. Speaker, my parliamentary inquiry is this: Do we have 20 minutes on the minority side?

THE SPEAKER: The Chair will state that the division of time is between those in favor and those opposed to the motion to reject title II. The gentleman from Alabama [Mr. Jones] has 20 minutes and the gentleman from Texas [Mr. Brooks] has 20 minutes.

MR. [JAMES C.] WRIGHT [Jr., of Texas, on behalf of Mr. Jones:]: Mr. Speaker, I have one other speaker, the majority leader. I do not know what the courtesy is, or the appropriate protocol, in a matter of this kind.

THE SPEAKER PRO TEMPORE: The Chair will rule that the gentleman from Texas [Mr. Wright] may close debate.

§ 26.7 The House conferee who has been recognized for 20

16. Carl Albert (Okla.).

minutes in opposition to a motion to reject a non-germane portion of a conference report is entitled to close debate on the motion to reject.

The proceedings of June 23, 1976, relating to the conference report on S. 3201, to amend the Public Works and Economic Development Act, are discussed in § 26.23, *infra*.

After Rejection of Nongermane Portion of Conference Report—Motion To Recede and Concur in Senate Amendment With Amendment Consisting of Remainder of Conference Report

§ 26.8 Where the House agrees to a motion to reject a non-germane portion of a conference report pursuant to Rule XXVIII clause 4, the pending question, in the form of a motion offered by the manager of the conference report, is to recede from disagreement to the Senate amendment and concur with an amendment consisting of the remaining portions of the conference report not rejected on the separate vote, and one hour of debate, equally divided between the majority and mi-

nority parties, is permitted on that pending question.

The proceedings of Dec. 12, 1979,⁽¹⁷⁾ during consideration of H.R. 595⁽¹⁸⁾ in the House, were as follows:

MR. [ROBERT H.] MOLLOHAN [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 595) to authorize the Administrator of General Services to dispose of 35,000 long tons of tin in the national and supplemental stockpiles, to provide for the deposit of moneys received from the sale of such tin, and for other purposes.

The Clerk read the title of the bill.

MR. [LARRY] McDONALD [of Georgia]: Mr. Speaker, I have a point of order.

THE SPEAKER:⁽¹⁹⁾ The gentleman will state it.

MR. McDONALD: Mr. Speaker, I make the point of order that the matter contained in clause 3 of section 3 of the substitute for the text of the bill recommended in the conference report would not be germane to H.R. 595 under clause 7 of rule XVI if offered in the House and is therefore subject to a point of order under clause 4(a) of rule XXVIII. . . .

MR. MOLLOHAN: . . . I concede the point of order.

THE SPEAKER: The point of order is sustained.

17. 125 CONG. REC. 35522, 35527, 35528, 96th Cong. 1st Sess.

18. A bill authorizing the General Services Administration to dispose of tin from the national stockpile.

19. Al Swift (Wash.).

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

The Clerk read as follows:

Mr. McDonald moves, pursuant to the provisions of clause 4(b) of rule XXVIII, that the House reject clause 3 of section 3 of the substitute for the text of the bill recommended in the conference report.

THE SPEAKER: The gentleman from Georgia (Mr. McDonald) will be recognized for 20 minutes, and the gentleman from West Virginia (Mr. Mollohan) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Georgia (Mr. McDonald). . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Georgia [Mr. McDonald].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 272, nays 122, not voting 39, as follows: . . .

So the motion was agreed to. . . .

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

The Clerk read as follows:

Mr. Mollohan moves pursuant to clause 4 of Rule XXVIII and the actions of the House, that the House recede from its disagreement to the

amendment of the Senate to the text of the bill and concur therein with an amendment as follows:

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

That this Act may be cited as the "Strategic and Critical Materials Transaction Authorization Act of 1979".

Sec. 2. There is authorized to be appropriated the sum of \$237,000,000 for the acquisition of strategic and critical material under section 6(a) of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e). Before any acquisition using funds appropriated under the authorization of this section may be carried out, a list of the materials to be acquired shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, and such acquisition may not then be carried out until the end of the 60-day period beginning on the date such list is received by such committees.

Sec. 3. The President is hereby authorized to dispose of materials determined to be excess to the current requirements of the National Defense Stockpile in the following quantities:

(1) 35,000 long tons of tin. . . .

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Mollohan) will be recognized for 30 minutes, and the gentleman from Maine (Mr. Emery) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. Mollohan).

§ 26.9 Pursuant to Rule XXVIII clause 4, where the House adopts a motion to reject a

portion of a conference report containing a modification of a nongermane Senate amendment, the conference report is considered as rejected and the manager is recognized to offer a motion (considered to be the pending question) to recede and concur in the Senate amendment with an amendment consisting of the remainder of the conference report.

The proceedings of Dec. 2, 1982, relating to rejection of matter found to be nongermane in the conference report on H.R. 2330 (the Nuclear Regulatory Commission authorization), are discussed in more detail in §§ 26.34 and 26.35, *infra*. The following exchange⁽²⁰⁾ occurred after adoption of the motion to reject a portion of the conference report:

THE SPEAKER PRO TEMPORE [William H. Natcher, of Kentucky]: Pursuant to clause 4, rule XXVIII, a motion to reject section 23 of the conference report having been adopted, the conference report is considered as rejected and the gentleman from Arizona [Mr. Udall] is recognized to offer an amendment consisting of the remainder of the conference report.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, pursuant to clause 4, rule XXVIII, and the action of the House, I

move that the House recede from its disagreement and concur in the Senate amendment with an amendment which I send to the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Udall moves that the House recede and concur in the Senate amendment with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate, insert the following.

After Rejection of Nongermane Portion of Conference Report Originally Contained in Senate Bill—Pending Motion To Insist Upon House Amendment to Senate Bill

§ 26.10 In response to a parliamentary inquiry, the Chair indicated that under Rule XXVIII clause 4, the adoption by the House of a motion to reject a nongermane portion of a conference report originally contained in a Senate bill would require the House to vote on a pending motion to insist upon the House amendment to the Senate bill. [Note: Under that rule, the House cannot amend its own amendment to a Senate bill.]

The proceedings of June 23, 1976, relating to the conference report on S. 3201, to amend the Public Works and Economic De-

20. 128 CONG. REC. 28552, 97th Cong. 2d Sess.

velopment Act, are discussed in Sec. 26.23, *infra*.

Motion To Recede and Concur With Amendment—Point of Order Permitted Under Rule XXVIII Against Portion of Motion Containing Senate Amendment

§ 26.11 Pursuant to clause 5(b) of Rule XXVIII, a Member may make a point of order against a portion of a motion to recede and concur in a Senate amendment reported from conference in disagreement, with a further amendment, on the ground that that portion of the Senate amendment contained in the motion was not germane to the House-passed measure; and a motion rejecting that portion of the motion to recede and concur with an amendment is in order if the point of order is sustained.

The proceedings of July 31, 1974, relating to the conference report on H.R. 8217, to provide exemptions from tariff duty of certain equipment on United States vessels, are discussed in section 26.30, *infra*.

Point of Order Based on Non-germaneness of House Amendment to Senate Amendment Should Be Under Rule XVI, Clause 7, Not Rule XXVIII

§ 26.12 Where a motion is made to concur in a Senate amendment with an amendment, and such proposed House amendment contains new matter and is not germane to the Senate amendment, any point of order against the House amendment should be based on Rule XVI, clause 7, rather than on Rule XXVIII, clauses 5(a) and 5(b), which permits points of order against Senate matter (including Senate amendments proposed to be amended by a motion to concur with an amendment); thus, where a point of order is based on the contention that a House amendment would not be germane to the Senate amendment, under Rule XXVIII, the Chair may treat the point of order as having been raised under Rule XVI, clause 7.

On June 30, 1987,⁽²¹⁾ during consideration of H.R. 1827 (sup-

21. 133 CONG. REC. 18294, 18295, 100th Cong. 1st Sess.

plemental appropriations for fiscal year 1987), the motion described above was offered to the following amendment in disagreement:

THE SPEAKER PRO TEMPORE:⁽¹⁾ The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 5: Page 3, after line 7, insert:

ADMINISTRATIVE PROVISION

Notwithstanding any other provision of law, none of the funds appropriated for fiscal year 1987 shall be used for the purpose of granting any patent for vertebrate or invertebrate animals, modified, altered, or in any way changed through engineering technology, including genetic engineering.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 5 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

Not to exceed \$14,100,000 appropriated and available for obligation and expenditure under section 108(a)(1) of Public Law 99-190, as

amended, shall remain available for obligation through September 30, 1988: *Provided*, That the Economic Development Administration shall close out the audits concerning grants to New York, New York pursuant to title I of the Local Public Works Capital Development and Investment Act of 1976, not later than August 1, 1987.

PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

None of the funds appropriated by this or any prior Act to the Patent and Trademark Office shall be used to purchase the mass storage requirement (PTO-10) portion of the U.S. Patent and Trademark Office Automation Project. . . .

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I make a point of order against amendment No. 5 reported in disagreement of the supplemental appropriation conference report on page 13 of the report, and on page 3 lines 19 through 23 of the printed bill now before us which relates to procurement by the U.S. Patent and Trade Market Office automation project pursuant to rule XXVIII, clause 5(a)(1). This rule relates to nongermane matter in amendments in disagreement.

As I interpret it, the rule states that any matter introduced as a new issue in a conference committee which would have been otherwise ruled out of order if it came before the House, would likewise be made eligible for a point of order as reported in amendments in disagreement from the conference committee should there be a motion from the House to recede from its disagreement with the Senate.

Mr. Speaker, the Senate amendment introduced as new material in the con-

1. Dan Glickman (Kan.).

ference committee would delay procurement funds for the Patent Office for the purchase of mass storage requirement equipment. The purchase is part of the overall automation of the U.S. Patent Office and I urge my point of order be sustained.

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota [Mr. Frenzel] is raising a point of order against the motion, is that correct, as being not germane to the Senate amendment under rule XVI, clause 7?

MR. FRENZEL: Yes, Mr. Speaker. . . .

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Smith] concedes the point of order and the point of order is sustained against the motion.

Rejection of Previous Question on Special Rule Waiving Points of Order Against Conference Report—Amendment Permitting Motion To Reject Nongermane Portion and Allowing an Amendment Adding Language of Original Nongermane Senate Amendment

§ 26.13 The House rejected the previous question on a special rule which waived all points of order against a conference report, thus permitting an amendment allowing a point of order against, and motion to reject, a non-

germane portion therein, and, upon adoption of the motion to reject, a motion to amend that portion of the conference report not rejected by adding the language of the original nongermane Senate amendment.

During consideration of H.R. 5⁽²⁾ in the House on Apr. 19, 1988,⁽³⁾ the following proceedings occurred:

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 427 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 427

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5) to improve elementary and secondary education, and all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration. A motion to recommit the conference report may not contain instructions.

Sec. 2. At any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole

2. Elementary and Secondary Education Act—Communications Act amendments.
3. 134 CONG. REC. 7345, 7346, 7354, 7355, 7484, 100th Cong. 2d Sess.

House on the State of the Union for the consideration of a bill containing the text printed in section three of this resolution, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed thirty minutes, equally divided and controlled by a proponent and an opponent, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order in the House or in the Committee of the Whole. At the conclusion of the consideration of the bill, the Committee shall rise and report the bill to the House, and the previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to commit, which may not contain instructions.

Subsequently, the previous question was moved, but upon a vote the motion was rejected.

MR. [TRENT] LOTT [of Mississippi]: Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Lott: Strike all after the resolving clause and insert in lieu thereof the following: "That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5) to improve elementary and secondary education, and all points of order against the conference report and against its consideration, except as provided by section 2 of this resolution are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

"Sec. 2. It shall be in order pursuant to clause 4 of rule XXVIII of the Rules of the House to raise a point of order against sec. 6101 of the con-

ference report. If, pursuant to such clause, the point of order is sustained and the section is then rejected by a vote of the House, it shall immediately be in order, without intervening motion, for any Member to offer a preferential motion to take from the Speaker's table the bill H.R. 5, together with the Senate amendment thereto, and to recede and concur in the Senate amendment with an amendment which shall consist of the text of that portion of the conference report not rejected together with the text of sec. 7003 of said Senate amendment as a substitute for sec. 6101 of the conference report as rejected by the House, said motion shall be considered as having been read, and all points of order against said motion are hereby waived." . . .

MR. LOTT: . . . I would like to urge the adoption of this substitute rule which would provide for the consideration of the ban on dial-a-porn language in the conference report and also, of course, the conference report on H.R. 5, the education bill. . . . Mr. Speaker, I move the previous question on the amendment in the nature of a substitute and the resolution.

THE SPEAKER:⁽⁴⁾ The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the amendment in the nature of a substitute offered by the gentleman from Mississippi (Mr. Lott).

The amendment in the nature of a substitute was agreed to.

THE SPEAKER: The question is on the resolution, as amended.

The resolution, as amended, was agreed to. . . .

4. James C. Wright, Jr. (Tex.).

MR. [THOMAS J.] BLILEY [Jr., of Virginia]: Mr. Speaker, pursuant to the rule just adopted and clause 4 of rule XXVIII, I make a point of order against section 6101 of the conference report, and ask to be heard on my point of order.

[There was no argument on the point of order, as the Speaker ruled immediately as follows:]

THE SPEAKER: The gentleman's point of order is well-taken, the modification of the Senate provision in question is not germane to the bill as passed by the House. The point of order is sustained.

MR. BLILEY: Mr. Speaker, I offer a privileged motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Bliley moves pursuant to clause 4 of rule XXVIII and House Resolution 427 as adopted by the House that the House do now reject section 6101 of the conference report on the bill H.R. 5. . . .

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

The motion was agreed to.

MR. BLILEY: Mr. Speaker, I offer a privileged motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Bliley moves to take from the Speaker's table the bill H.R. 5 together with the Senate amendment thereto, and recede and concur in the Senate amendment with an amendment consisting of the text of that portion of the conference report on the bill H.R. 5 not rejected by the House together with the text of sec-

tion 7003 of the Senate amendment in place of section 6101 as rejected by the House, as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

Section 1. Short Title; Table of Contents.

(a) *Short Title.*—*This Act may be cited as the "Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988".*

(b) *Table of Contents.*— . . .

PART B—PROHIBITION OF DIAL-A-PORN

Sec. 6101. Amendment to the Communications Act of 1934.

Section 223(b) of the Communications Act of 1934 is amended

(1) in paragraph (1)(A), by striking out "under eighteen years of age or to any other person without that person's consent"; . . .

MR. BLILEY: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:⁽⁵⁾ The question is on the motion offered by the gentleman from Virginia (Mr. Bliley) that the House recede and concur in the Senate amendment with an amendment consisting of the text of that portion of the conference report on the bill H.R. 5 not rejected by the House together with the text of section 7003 of the Senate amendment in place of section 6101 as rejected by the House.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. BLILEY: Mr. Speaker, on that I demand the yeas and nays.

5. Richard J. Durbin (Ill.).

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 397, nays 1, not voting 34.

Parliamentarian's Note: Mr. Lott's amendment to the special rule was necessary if the measures affecting education and communications issues respectively were to be combined in one measure for consideration. Otherwise, upon rejection of the nongermane portions on a separate vote under Rule XXVIII, clause 4, the pending question would have been whether to concur with an amendment not including the nongermane communications portion.

Amendment Regulating Telephone Communications Not Germane to Education Bill

§ 26.14 To a bill relating to education, an amendment regulating telephone communications within the jurisdiction of another committee is not germane.

The proceedings of Apr. 19, 1988, relating to H.R. 5 (the Elementary and Secondary Education Act), are discussed in Sec. 26.13, *supra*.

Bill Imposing Fuel Economy Standards on Manufacturers—Amendment To Provide Loan Guarantees for Automotive Research and Development

§ 26.15 To a title of a House-passed bill reported from the Committee on Interstate and Foreign Commerce containing a program to improve automotive fuel efficiency by imposing fuel economy standards upon manufacturers, a modified portion of a Senate amendment in the nature of a substitute contained in a conference report providing loan guarantees for automotive research and development (a matter within the jurisdiction of the Committee on Science and Technology) was conceded to be nongermane, and a motion was agreed to pursuant to Rule XXVIII clause 4 rejecting that portion of the conference report.

On Dec. 15, 1975,⁽⁶⁾ during consideration of the conference report on S. 622 (the Energy Policy and Conservation Act) in the House,

6. 121 CONG. REC. 40671, 40676, 40677, 40680, 94th Cong. 1st Sess.

the proceedings described above occurred as follows:

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the Senate bill (S. 622) to increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report. . . .

MR. [BARRY] GOLDWATER [Jr., of California]: Mr. Speaker, I make a point of order to that part of section 301 which adds to the new motor vehicle improvements and cost saving account a new title V, part B, entitled "Application Advanced Automotive Technology."

My point of order is that it is non-germane, pursuant to clause 4, rule XXVIII.

Part B of title V was not in the House bill, as passed in H.R. 7014, but it was in the Senate version and it is in the conference report.

If the section had been offered as an amendment on the House floor, it would have been subject to a point of order as nongermane. Hence, it is subject to a nongermaneness point of order now under rule XXVIII, clause 4.

May I point out to the Speaker that the automotive R & D part of title V is wholly unrelated to the oil pricing and conservation thrust of the bill. Besides, the Science and Technology Committee has jurisdiction of all nonnuclear energy R. & D. matters, and this is an R. & D. incentive program which clearly falls in that jurisdiction.

The original Senate version of section 546 was contained in title II of the

Senate bill (S. 1883). H.R. 9174 was introduced on July 31, 1975, by the gentleman from Washington (Mr. McCormack) and was referred to the Committee on Science and Technology. H.R. 9174 basically included all of title II of the Senate bill (S. 1883), specifically the loan guarantee provision. The committee jurisdiction was positively established by that referral.

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

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I think that this is not a good point of order, but out of grace and in order to give the House a chance to vote on this as an orderly procedure—I protested the disorderly procedure with the ERDA bill which was before us—but in order to have orderly procedure I will not contest the point of order, and I do not think my good friend from West Virginia, the chairman of the committee (Mr. Staggers) will contest it. Under those circumstances, I think it is appropriate for the Chair to rule on the point of order with regard to germaneness in order that we may proceed. . . .

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

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, may I reserve the right to make a point of order? I am going to make a point of order against the whole conference report.

THE SPEAKER:⁽⁷⁾ That would come later.

MR. TEAGUE: But the Speaker will reserve my right?

THE SPEAKER: Could the Chair make himself clear to the gentleman? That

7. Carl Albert (Okla.).

might depend upon the outcome of the motion the gentleman from California will make.

MR. DINGELL: I think the gentleman wants to be heard; he desires to be heard.

I ask unanimous consent that he be heard at this time on the point of order. . . .

THE SPEAKER: The Chair has no authority to hear arguments on matters not related to the point of order made by the gentleman. If the gentleman from California makes a motion, the business which transpires after the motion made by the gentleman will determine whether certain other points of order will be in order. . . .

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

The Clerk read as follows:

Mr. Goldwater moves that part B, title V in section 301 of S. 622 be rejected.

THE SPEAKER: The gentleman from California (Mr. Goldwater) is recognized for 20 minutes and the gentleman from West Virginia (Mr. Staggers) is recognized for 20 minutes.

The motion was agreed to.⁽⁸⁾

House Bill Providing for Disposal of Tin From National Stockpile—Amendment Providing for Disposal of Silver

§ 26.16 To a House bill providing for the disposal of tin from the national stockpile, a Senate amendment included

8. 121 CONG. REC. 40681, 94th Cong. 1st Sess.

in the conference report providing for the disposal of silver from the stockpile was conceded to be nongermane and held to be subject to a motion to reject under Rule XXVIII clause 4.

The proceedings of Dec. 12, 1979, relating to H.R. 595, authorizing the Administrator of General Services to dispose of tin from the national stockpile, are discussed in § 26.8, supra.

Bill Amending Internal Revenue Code To Provide Tax Credits—Amendment Regarding Tax Credits for Home Purchases

§ 26.17 To a House bill containing several sections amending diverse portions of the Internal Revenue Code to provide individual and business tax credits, that part of a Senate amendment in the nature of a substitute which added a new section relating to tax credits for new home purchases and amended a portion of the law amended by the House bill was held to be germane.

On Mar. 26, 1975,⁽⁹⁾ it was demonstrated that the test of the ger-

9. 121 CONG. REC. 8900, 8902, 8930, 8931, 94th Cong. 1st Sess.

maneness of a portion of a Senate amendment in the nature of a substitute adding a new section to a House bill is the relationship of that section to the subject of the House bill as a whole. The proceedings during consideration of the conference report on H.R. 2166, the Tax Reduction Act of 1975, were as follows:

CONFERENCE REPORT (H. REPT. 94-120)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes, to increase the low income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, 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 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: . . .

TITLE II—REDUCTIONS IN INDIVIDUAL INCOME TAXES . . .

Sec. 208. Credit for purchase of new principal residence. . . .

TITLE VI—TAXATION OF FOREIGN OIL AND GAS INCOME AND OTHER FOREIGN INCOME . . .

Sec. 602. Taxation of earnings and profits of controlled foreign corporations and their shareholders. . . .

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Certain unemployment compensation.

Sec. 702. Special payment to recipients of benefits under certain retirement and survivor benefit programs.

. . .

SEC. 208. CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE

(a) Allowance of Credit.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowed) is amended by redesignating section 44 as section 45 and by inserting after section 43 the following new section:

“SEC. 44. PURCHASE OF NEW PRINCIPAL RESIDENCE.

“(a) General Rule.—In the case of an individual there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 5 percent of the purchase price of a new principal residence purchased or constructed by the taxpayer.

. . .

MR. [BARBER B.] CONABLE [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report on the ground it contains matter which is in violation of . . . clause 7, of rule XVI. The nongermane matter I am specifically referring to is that section of the report dealing with the tax credit on sales of new homes. It ap-

pears in section 208 of the conference report, on page 14, as reported by the Committee on Conference. . . .

[A] careful scrutiny of the titles of the House bill, as it was sent to the Senate, shows many types of tax measures, but nothing relating to the sale of homes. This clearly is an addition of a very divergent nature to the bill and deals with the nonbusiness and nonpersonal type of credit. . . .

MR. [AL] ULLMAN [of Oregon]: Mr. Speaker, I would like to speak against the point of order.

Mr. Speaker, this is a very broad bill. It was a broadly based bill when it left this House to go to the other body. It has many diverse sections and many different kinds of tax treatments. It does deal with tax credits. It did deal with tax credits when it left the House, both for individuals and for corporations.

Mr. Speaker, it seems to me this falls totally within the purview of the bill as we passed it in the House and should be considered germane to the bill.

THE SPEAKER: ⁽¹⁰⁾ The Chair is ready to rule.

The gentleman from New York (Mr. Conable) makes the point of order against section 208 of the conference report on the bill H.R. 2166 on the ground that it would not have been germane to H.R. 2166 as passed by the House and is thus subject to the provisions of clause 4, rule XXVIII.

In passing upon any point of order against a portion of the Senate amendment in the nature of a substitute which the conferees have incorporated

in their report, the Chair feels it is important to initially characterize the bill H.R. 2166 in the form as passed by the House. The House-passed bill contained four diverse titles, and contained amendments to diverse portions of the Internal Revenue Code of 1954. Title I of the House bill provided a refund of 1974 individual income taxes. Title II provided for reductions, including credits, in individual income taxes. Title III made several changes in business taxes, and title IV further affected business taxes by providing for the repeal of the percentage depletion for oil and gas.

The Senate amendment in the nature of a substitute contained provisions comparable to all four titles in the House-passed bill, and also contained a new title IV amending other portions of the Internal Revenue Code, making further amendments to the code with respect to tax changes affecting individuals and businesses, and a new title VI and title VII, relating to taxation of foreign and domestic oil and gas income and related income, and to the tax deferral and reinvestment period extension, respectively. The provision against which the gentleman makes the point of order was contained in section 205 of title II of the Senate amendment in the nature of a substitute.

The Chair would call the attention of the House to the precedent contained in Cannon's VIII, section 3042, wherein the Committee of the Whole ruled that to a bill raising revenue by several diverse methods of taxation . . . an amendment in the form of a new section proposing an additional method of taxation—a tax on the undistributed profits of corporations—was held ger-

10. Carl Albert (Okla.).

mane. The Chair would emphasize that the portion of the Senate amendment included in the conference report against which the point of order has been made was in the form of a new section to the House bill, and was not an amendment to a specific section of the House bill. As indicated in Deschler's Procedure, chapter 28, section 14.4, the test of germaneness in such a situation is the relationship between the new section or title and the subject matter of the bill as a whole.

The Chair would also point out that section 203 of the House bill, on page 10, amends the same portion of the code which this part of the conference report would amend.

For these reasons, the Chair holds that section 208 of the conference report is germane to the House-passed bill and overrules the point of order.

Amendment Authorizing Payments to Social Security Recipients

§ 26.18 To a House bill containing several diverse amendments to the Internal Revenue Code to provide individual and business tax credits, that part of a Senate amendment in the nature of a substitute contained in a conference report which authorized appropriations for special payments to social security recipients was deemed not to be related to tax benefit provisions in the Internal Revenue Code and was held to be not germane.

On Mar. 26, 1975,⁽¹¹⁾ during consideration of the conference report on H.R. 2166,⁽¹²⁾ it was held that to a proposition seeking to reduce tax liabilities of individuals and businesses by providing diverse tax credits within the Internal Revenue Code, an amendment to provide rebates to recipients under retirement and survivor benefit programs was not germane. The proceedings were as follows:

SEC. 702. SPECIAL PAYMENT TO RECIPIENTS OF BENEFITS UNDER CERTAIN RETIREMENT AND SURVIVOR BENEFIT PROGRAMS.

(a) Payment.—The Secretary of the Treasury shall, at the earliest practicable date after the enactment of this Act, make a \$50 payment to each individual, who for the month of March, 1975, was entitled . . . to—

(1) a monthly insurance benefit payable under title II of the Social Security Act,

(2) a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or

(3) a benefit under the supplemental security income benefits program established by title XVI of the Social Security Act; . . .

(c) COORDINATION WITH OTHER FEDERAL PROGRAMS.—Any payment made

11. 121 CONG. REC. 8911, 8912, 8931, 94th Cong. 1st Sess.

12. The Tax Reduction Act of 1975.

by the Secretary of the Treasury under this section to any individual shall not be regarded as income (or, in the calendar year 1975, as a resource) of such individual (or of the family of which he is a member) for purposes of any Federal or State program which undertakes to furnish aid or assistance to individuals or families, where eligibility to receive such aid or assistance (or the amount of such aid or assistance) under such program is based on the need therefor of the individual or family involved. . . .

MR. [BARBER B.] CONABLE JR., [of New York]: I make a point of order against the conference report on the ground that it contains matter which is in violation of clause 7, rule XVI.

The nongermane matter I am specifically referring to is that section of the report dealing with a rebate to social security recipients. This section appears as section 702 of the conference report on page 55. . . .

There is clearly nothing in the House bill dealing with social security matters. There is nothing relating to a trust fund or the relationship of trust fund and general fund.

For that reason, Mr. Speaker, it seems to me that this . . . is clearly outside the scope of the House bill. . . .

MR. [AL] ULLMAN [of Oregon]: . . . In the House-passed bill there was a provision very specifically rebating funds to individuals under title I. The measure included in this conference report does not affect the trust fund in any way. It does not in any way amend the Social Security Code.

In the statement of the managers we say the following:

The conferees emphasize that these payments are not Social Security benefits in any sense, but are intended to provide to the aged, blind, and disabled a payment comparable in nature to the tax rebate which the bill provides to those who are working.

Therefore, in a broadly based bill such as this kind, where various kinds of rebates are passed along to different segments of the public, it seems to me that this is perfectly within the scope of the bill and should be determined germane to the bill. . . .

THE SPEAKER:⁽¹³⁾ The Chair is prepared to rule.

Title V of the Senate amendment in the nature of a substitute "Miscellaneous Provisions" contained sections which did not amend the Internal Revenue Code and which could not be considered germane to any portion of the House-passed bill or the bill as a whole. Specifically, section 501 of the Senate amendment providing a special payment to recipients of benefits under certain retirement and survivor benefit programs, a modification of which was incorporated into section 702 of the conference report, is not germane to the House-passed bill. That provision is not related to the Internal Revenue Code and would provide an authorization of appropriations from the Treasury.

For this reason, the Chair holds that the section 702 of the conference report is not germane to the House bill and sustains the point of order.

MR. CONABLE: Mr. Speaker, I move the House reject the nongermane amendment covered by my point of order.

13. Carl Albert (Okla.).

THE SPEAKER: The gentleman from New York is recognized for 20 minutes in support of his motion.

—Amendment To Provide Unemployment Benefits

§ 26.19 To a House bill amending diverse portions of the Internal Revenue Code to provide individual and business tax credits, a portion of a Senate amendment in the nature of a substitute contained in a conference report providing certain unemployment compensation benefits—a matter not within the class of tax benefits contained in the House bill—was conceded to be not germane.

On Mar. 26, 1975,⁽¹⁴⁾ during consideration of the conference report on H.R. 2166,⁽¹⁵⁾ a point of order against a Senate matter in the report was conceded and held to be not germane. The proceedings were as indicated below:

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. CERTAIN UNEMPLOYMENT COMPENSATION.

(a) AMENDMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974.—Section 102(e) of the Emer-

14. 121 CONG. REC. 8911, 8933, 94th Cong. 1st Sess.

15. The Tax Reduction Act of 1975.

gency Unemployment Compensation Act of 1974 is amended—

(1) in paragraph (2) thereof, by striking out “The amount” and inserting in lieu thereof “Except as provided in paragraph (3), the amount”; and

(2) by adding at the end thereof the following new paragraph:

“(3) Effective only with respect to benefits for weeks of unemployment ending before July 1, 1975, the amount established in such account for any individual shall be equal to the lesser of—

“(A) 100 per centum of the total amount of regular compensation (including the dependents’ allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

“(B) twenty-six times his average weekly benefit amount (as determined for purposes of section 202(b)(i)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year.”

(b) MODIFICATION OF AGREEMENTS.—The Secretary of Labor shall, at the earliest practicable date after the enactment of this Act, propose to each State with which he has in effect an agreement entered into pursuant to section 102 of the Emergency Unemployment Compensation Act of 1974 a modification of such agreement designed to cause payments of emergency compensation thereunder to be made in the manner prescribed by such Act, as amended by subsection (a) of this section. . . .

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I make a point of order

against the conference report on the ground that it contains matter which is in violation of the provisions of clause 7 of rule XVI. The nongermane matter that I am specifically referring to is that section of the report dealing with section 701, providing certain unemployment compensation benefits. . . .

I have looked over the House bill, and I can find no reference therein to unemployment compensation benefits. As nearly as I can figure it, this particular section came from a Senate nongermane amendment and has no relation whatsoever to anything that was contained in the House bill.

I, therefore, say the point of order should be sustained.

THE SPEAKER:⁽¹⁶⁾ Does the gentleman from Oregon desire to be heard upon the point of order?

MR. [AL] ULLMAN [of Oregon]: Mr. Speaker, I concede the point of order.

THE SPEAKER: The gentleman from Oregon concedes the point of order, and the point of order is sustained.

Parliamentarian's Note: In this instance, although a point of order against the nongermane Senate matter contained in the conference report was sustained, no motion was made under Rule XXVIII clause 4 to reject that matter.

—Amendment Affecting Certain Foreign Tax Credits

§ 26.20 To a House bill containing several sections

16. Carl Albert (Okla.).

amending diverse portions of the Internal Revenue Code to provide certain individual and business tax credits, a Senate amendment in the nature of a substitute contained in a conference report, which added a new section to the House bill and which dealt with earnings and profits of controlled foreign corporations and included limitations on the use of foreign tax credits from foreign oil-related income, was held germane.

On Mar. 26, 1975,⁽¹⁷⁾ the House had under consideration the conference report on H.R. 2166, the Tax Reduction Act of 1975. A point of order, raised against language in the report on grounds of nongermaneness, was overruled as indicated below:

SEC. 602. TAXATION OF EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS AND THEIR SHAREHOLDERS.

(a) REPEAL OF MINIMUM DISTRIBUTION EXCEPTION TO REQUIREMENT OF CURRENT TAXATION OF SUBPART F INCOME.—

(1) REPEAL OF MINIMUM DISTRIBUTION PROVISION.—Section 963 (relating to receipt of minimum distributions by domestic corporations) is hereby repealed.

17. 121 CONG. REC. 8909, 8915, 8933, 8934, 94th Cong. 1st Sess.

(2) CERTAIN DISTRIBUTIONS BY CONTROLLED FOREIGN CORPORATIONS TO REGULATED INVESTMENT COMPANIES TREATED AS DIVIDENDS.—Subsection (b) of section 851 (relating to limitations on definition of regulated investment company) is amended by adding at the end thereof the following new sentence:

“For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the extent that, under section 959(a)(1), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.”. . .

LIMITATION ON FOREIGN TAX CREDIT FOR TAXES PAID IN CONNECTION WITH FOREIGN OIL AND GAS INCOME

House bill.—No provision.

Senate amendment.—The Senate amendment repeals the foreign tax credit on all foreign oil-related income and allows any taxes on that income as a deduction. The amendment also provides that foreign oil-related income is to be taxed at a 24-percent rate.

Conference substitute.—The conference substitute modifies the Senate amendment and applies a strict limitation on the use of foreign tax credits from foreign oil extraction income and foreign oil-related income. . . .

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I make a point of order against the conference report on the ground that it contains matter which is in violation of the provisions of clause 7 of rule XVI. The non-germane matter that I am specifically referring to is that section of the report

dealing with taxation of earnings and profits of controlled foreign corporations and their shareholders in section 602 as reported by the committee of conference. . . .

As the Speaker well knows, I am sure, from listening carefully to the explanations regarding previous points of order, at no point during the consideration of the House-passed bill is there any mention of foreign taxation and the dealings of foreign taxes insofar as American corporations and their subsidiaries are concerned.

Title I of the 1975 tax bill dealt with the refund for 1974 taxes. Title II dealt with reductions in individual income taxes. Title III dealt with certain changes in business taxes, the title which dealt with the investment tax credit or income tax total, particularly as related to small businesses.

This particular provision, Mr. Speaker, in no way deals with a matter that was covered, mentioned, or dealt with by the bill that is presented to the House, or voted upon by the House. . . .

MR. [AL] ULLMAN [of Oregon]: . . . Mr. Speaker, the bill that the House passed had a great many diverse sections in it; it had credits. The matter that has been raised is an amendment to the Internal Revenue Code very clearly, and much of it is in the way of a credit. We have dealt with credits here both for individuals and for corporations in the bill that the House passed.

It seems to me that in a bill of this scope and in a bill that deals as broadly with tax credits and matters such as this that does involve an amendment to the Internal Revenue Code, it is

very clearly within the province of the bill, and should be ruled germane.

THE SPEAKER:⁽¹⁸⁾ The Chair is prepared to rule.

For the reasons stated in the opinion of the Chair on a similar point of order made by the gentleman from New York (Mr. Conable) and for the reasons stated by the gentleman from Oregon, the Chair overrules the point of order.

Bill Relating to Boating Safety—Amendment to Internal Revenue Code To Promote Reforestation

§ 26.21 A point of order pursuant to Rule XXVIII clause 4, that a conference report on a House bill relating to boating safety, reported by the Committee on Merchant Marine and Fisheries, contained a nongermane Senate amendment amending the Internal Revenue Code to promote reforestation, was conceded and sustained.

On Sept. 25, 1980,⁽¹⁹⁾ the Committee of the Whole had under consideration the conference report on H.R. 4310, the Recreational Boating Safety and Facilities Improvement Act of 1980. The conference report stated in part:⁽²⁰⁾

18. Carl Albert (Okla.).

19. 126 CONG. REC. 27410, 96th Cong. 2d Sess.

20. 126 CONG. REC. 25572, 25574, 96th Cong. 2d Sess., Sept. 16, 1980.

CONFERENCE REPORT (H. REPORT NO. 96-132)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, 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 to the text of the bill 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:

TITLE I—RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT

Sec. 101. This title may be cited as the "Recreational Boating Safety and Facilities Improvement Act of 1980."

Sec. 102. The Federal Boat Safety Act of 1971 (Public Law 92-75, 85 Stat. 213), as amended, is amended as follows:

(1) In section 2 by striking the first sentence and inserting in lieu thereof the following: "It is declared to be the policy of Congress and the purpose of this Act to improve recreational boating safety and facilities and to foster greater development, use, and enjoyment of all the waters of the United States by encouraging and assisting participation by the several States, the boating industry, and the boating public in the development, administration, and financing of a national recreational boating safety and facilities improvement program; by authorizing the establishment of national construction

and performance standards for boats and associated equipment; and by creating more flexible authority governing the use of boats and equipment." . . .

TITLE III—REFORESTATION

SEC. 301. AMORTIZATION OF REFORESTATION EXPENDITURES.

(a) In General.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

“SEC. 194. AMORTIZATION OF REFORESTATION EXPENDITURES.

“(a) Allowance of Deduction.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired. . . .

“(c) Definitions and Special Rule.—For purposes of this section—

“(1) Qualified timber property.—The term ‘qualified timber property’ means a woodlot or other site located

in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

The proceedings on Sept. 25, 1980, were as follows:

MR. [MARIO] BIAGGI [of New York]: Mr. Speaker, I call up the conference report on the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:⁽¹⁾ Under the rule, the conference report is considered as read. . . .

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, I make a point of order under clause 4 of rule XXVIII that title III of the conference report accompanying H.R. 4310 is a nongermane amendment.

Mr. Speaker, H.R. 4310, as it passed the House, related to boating safety. It did not amend the Internal Revenue Code. Title III now in the conference report relates to a trust fund for reforestation and contains a significant amendment to the Internal Revenue Code. It would have been nongermane to H.R. 4310 when that bill was originally considered by the House.

The purpose of the bill before us is to amend the Federal Boat Safety Act to improve recreational boating safety

1. Thomas S. Foley (Wash.).

and facilities through the development and financing of a national improvement program. Title III provides several Federal initiatives to promote reforestation on both private and public timberlands by providing an amortization schedule and investment credit for a limited amount of qualifying reforestation expenditures each year, as well as the establishment of a trust fund to finance the reforestation activities.

There should be no question that title III is nongermane to the purposes of the bill. It has been a long established principle of germaneness that—

An amendment changing existing law in order to achieve one individual purpose is not germane to a proposition which does not amend that law and which seeks to accomplish another individual purpose. (Deschler's Procedure, chapter 28)

This is exactly the case before us today. In general the bill would amend the Federal Boat Safety Act of 1971 whereas title III would amend the Internal Revenue Code of 1954, as amended. There is no relationship or similarity of purpose between boat safety and reforestation, except that some boats are made of wood. I contend, Mr. Speaker, that title III should be ruled nongermane and considered in violation of clause 7 of rule XVI. . . .

MR. BIAGGI: Mr. Speaker, we concede the point of order.

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

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

The Clerk read as follows:

Mr. Frenzel moves that the House reject title III of the conference report accompanying H.R. 4310.

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota (Mr. Fren-

zel) will be recognized for 20 minutes, and the gentleman from New York (Mr. Biaggi) will be recognized for 20 minutes.

Grants to States for Local Public Works Construction Projects—Grants To Assist States in Providing Public Services

§ 26.22 Where a House bill reported from the Committee on Public Works and Transportation consisted of one title relating to grants to state and local governments for local public works construction projects, a new title added by the Senate and contained in a conference report providing grants to state and local governments to assist them in providing public services was held not germane to the House bill as proposing a revenue sharing program within the jurisdiction of the Committee on Government Operations and as using an approach not closely related to that (public works construction) contained in the House version.

On Jan. 29, 1976,⁽²⁾ during consideration of the conference report

2. 122 CONG. REC. 1582, 94th Cong. 2d Sess.

on H.R. 5247,⁽³⁾ Speaker Carl Albert, of Oklahoma, held that a title added by the Senate in the conference report was not germane to the House bill. The proceedings were as follows:

MR. [ROBERT E.] JONES, Jr. of Alabama: Mr. Speaker, I call up the conference report on the bill (H.R. 5247) to authorize a local public works capital development and investment program, 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. . . .

MR. [JACK] BROOKS [of Texas]: Mr. Speaker, I make a point of order that title II of the conference report to H.R. 5247 constitutes a nongermane Senate amendment to the House-passed bill and is in violation of clause 4 of rule XXVIII of the House rules. . . .

Mr. Speaker, when H.R. 5247 was before the House in May, it was for the sole purpose of authorizing appropriations for the construction of public works projects to help alleviate unemployment. Along with 312 other Members of the House, I supported that legislation.

However, when the bill was before the Senate, title II, an entirely different and unrelated matter, was added. Title II is not a public works provision. Title II simply authorizes appropriations for the basic day-to-day support of the budgets of State and local governments. It is, in short, a revenue sharing provision.

3. Local Public Works Capital Development and Investment Act of 1975.

Mr. Speaker, you, yourself, must have recognized this as revenue sharing legislation when you referred identical legislation introduced in the House exclusively to the Government Operations Committee. Title II clearly falls within the jurisdiction of the Government Operations Committee, not the Public Works Committee.

Even in the Senate, this provision came out of the Government Operations Committee, not the Public Works Committee. Perhaps if the Senate had a rule on germaneness as we do, we would not be facing this problem right now.

Had title II been offered in the House when this bill was before us on the floor, it would clearly have been subject to a point of order as nongermane under clause 7 of rule XVI. It, therefore, continues to be nongermane under clause 4 of House rule XXVIII dealing with conference reports.

Mr. Speaker, I recognize that committee jurisdiction is not the exclusive test of germaneness. I do not base my point of order on this issue alone. This provision simply has nothing to do with public works, the only matter which was before the House in H.R. 5247. To the contrary, the use of title II funds for construction purposes is specifically prohibited. Furthermore, there is not one word in title II to guarantee that the funds will be used to stimulate employment, the primary purpose of H.R. 5247.

Mr. Speaker, title II does not come within the jurisdiction of the Public Works Committee. It does not constitute public works or emergency employment legislation, and it could not have been incorporated into the bill

when it was previously before the House. For these reasons, I respectfully request that my point of order be sustained. . . .

MS. [BELLA S.] ABZUG [of New York]: . . . There has been a certain confusion presented here, and that is in the meaning of the rule which this House passed and which my esteemed chairman, the gentleman from Texas (Mr. Brooks) referred to. Clause 4, rule XXVIII, was passed by this House in 1970 and 1972. This procedure which the House adopted in 1972 was intended to do away with the situation wherein the Senate . . . attached to a House-passed bill matter that was wholly unrelated to the subject on which the House had acted. . . .

The bill as reported from the conference does not contain provisions whose subject and substance is different. Title I of the conference report version is almost identical with the House-passed bill. Title II, upon which there is now brought a question of a separate vote, is the conference version and is also directed, as is title I, to the question of assistance in unemployment, and is so aimed at correcting it at the local level. . . . The allocation of funds is dependent on the extent to which unemployment in any area exceeds the national average, so that both the public works, title I, and title II, countercyclical assistance, have the same, identical goal. That is, to ease the current recession. . . .

MR. [JAMES C.] CLEVELAND [of New Hampshire]: . . . The fundamental method used in the original bill to stimulate the economy is to provide for the construction of public works projects. The methods used in the amendment provide for the stabiliza-

tion of budgets of general purpose governments, the maintenance of basic services ordinarily provided by the State and local governments, emergency support grants to State and local governments to coordinate budget-related actions with the Federal Government. Clearly, the methods provided for in the Senate amendment are on their face so different from those in the House bill as to preclude their being considered as the same or closely allied. For this reason, then, the amendment is in violation of clause 4, rule XVI.

THE SPEAKER: The Chair is ready to rule.

The gentleman from Texas (Mr. Brooks) makes the point of order that title II of the conference report, which was contained in the Senate amendment to H.R. 5247, would not have been germane if offered as an amendment in the House and is thus subject to a point of order under rule XXVIII, clause 4.

The test of germaneness in this case is the relationship between title II of the conference report and the provisions of H.R. 5247 as it passed the House. The Chair believes that had title II been offered as an amendment in the House it would have been subject to a point of order on two grounds.

First, one of the requirements of germaneness is that an amendment must relate to the fundamental purpose of the matter under consideration and must seek to accomplish the result of the proposed legislation by a closely related means—Deschler's Procedure, chapter 28, sections 5 and 6. The fundamental purpose of the bill when considered by the House was to combat

unemployment by stimulating activity in the construction industry through grants to States and local governments to be used for the construction of local public works projects.

While the fundamental purpose of title II of the conference report is related to the economic problems caused by the recession, specifically unemployment, the means proposed to alleviate that problem are not confined to public works construction. Title II authorizes grants to States and local governments to pay for governmental services such as police and fire protection, trash collection and public education. The managers, in their joint statement, specifically state that the grants under title II are for the “maintenance of basic services ordinarily provided by the State and local governments and that State and local governments shall not use funds received under the act for the acquisition of supplies or for construction unless essential to maintain basic services.” An additional purpose of this title is to reduce the necessity of increases in State and local government taxes which would have a negative effect on the national economy and offset reductions in Federal taxes designed to stimulate the economy. The Chair therefore finds that the program proposed by title II of the report is not closely related to the method suggested in the House version of the bill.

Second, title II of the report proposes a revenue sharing approach to the problems faced by State and local governments during the present recession. General revenue sharing is a matter within the jurisdiction of the Committee on Government Operations under rule X, clause 1(h)(4), and a bill, H.R. 6416, in many respects identical

to title II of the report, was introduced in the House on April 28, 1975, and referred to that committee. While committee jurisdiction is not the exclusive test of germaneness—Deschler’s Procedure, chapter 28, section 4.16—it is a relevant test where, as here, the scope of the House bill is within one committee’s jurisdiction. The precedents indicate that as a bill becomes more comprehensive in scope the relevance of the test is correspondingly reduced. The bill, as it passed the House, was not a comprehensive antirecession measure overlapping other committees’ jurisdictions, but proposed a specific remedy, local public works construction assistance, to a complex problem. Given the limited scope of the bill as it passed the House, the Chair finds the jurisdiction test quite persuasive in this instance.

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

§ 26.23 Where a House amendment reported from the Committee on Public Works and Transportation consisted of one title relating to grants to state and local governments for local public works construction projects, a new title contained in the Senate bill and in the conference report providing grants to state and local governments to assist them in providing public services was held not germane to the House amendment, as proposing a revenue-sharing program within

the jurisdiction of the Committee on Government Operations, and not closely related to the public works construction provisions contained in the House version.

During consideration of the conference report on S. 3201⁽⁴⁾ in the Committee of the Whole, it was demonstrated that to be germane, an amendment must not only seek to accomplish the same result as the matter proposed to be amended but must contemplate a method of achieving that end which is closely related to the method contained in the proposition to which offered. The proceedings of June 23, 1976,⁽⁵⁾ were as follows:

MR. [ROBERT E.] JONES [Jr.] of Alabama: Mr. Speaker, I call up the conference report on the Senate bill (S. 3201) to amend the Public Works and Economic Development Act of 1965, to increase the antirecessionary effectiveness of the program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill. . . .

MR. [JACK] BROOKS [of Texas]: Mr. Speaker, I make the point of order that title II of the conference report constitutes a nongermane Senate provision to the House-passed version of the

bill, in violation of rule XXVIII, clause 4. . . .

Mr. Speaker, we are in the identical position we were in last January when a House-passed bill authorizing grants for public works construction projects was brought back to the House containing a Senate amendment that established an entirely new program of Federal assistance to State and local governments.

The Chair will recall that at that time I raised the same point of order and the Chair sustained it on two grounds: First, that the program proposed in title II did not relate sufficiently to the fundamental purpose of the House-passed bill; and second, that title II proposes a revenue-sharing program which is within the jurisdiction of the Government Operations Committee.

Mr. Speaker, we have precisely the same situation here. The House has passed H.R. 12972, providing solely for the construction of public works projects to help cut unemployment. The Senate added a provision for grants to State and local governments to pay for basic governmental services, and that provision has been brought back again as title II of the conference report.

Title II is still a form of revenue sharing and clearly not germane to the subject matter of H.R. 12972. Also, it is not within the jurisdiction of the Public Works and Transportation Committee. . . .

MR. JONES of Alabama: . . . Mr. Speaker, this proposition has been resolved before. We concede the point of order.

THE SPEAKER:⁽⁶⁾ The gentleman from Alabama (Mr. Jones) concedes the

4. A bill to amend the Public Works and Economic Development Act.

5. 122 CONG. REC. 20020-29, 94th Cong. 2d Sess.

6. Carl Albert (Okla.).

point of order. The point of order is sustained. . . .

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

The Clerk read as follows:

Mr. Brooks moves the House reject title II of S. 3201 as reported by the Committee of Conference.

THE SPEAKER: The gentleman from Texas (Mr. Brooks) is recognized for 20 minutes. . . .

THE SPEAKER PRO TEMPORE:⁽⁷⁾ The gentleman from Texas (Mr. Brooks) has 2 minutes remaining, and the gentleman from Texas (Mr. Wright) has 2 minutes remaining. The gentleman from Texas (Mr. Wright) has the right to close debate.

MR. BROOKS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BROOKS: Mr. Speaker, is it not true that in the event that title II would be voted down, the recourse for the House would be to send this bill, as amended, back to the Senate, and they could then appoint another conference committee and we could proceed with the bill and pass the bill without even having to get it vetoed?

THE SPEAKER PRO TEMPORE: The Chair will state that the House could insist upon its amendment and return the bill to the Senate.

7. Sam Gibbons (Fla.).

House Bill Authorizing Funds for States To Create Public Works Jobs—Amendment Mandating Expenditure of Previously Appropriated Funds Deferred Under Impoundment Control Act

§ 26.24 In a conference report on a House bill (originally reported from the Committee on Public Works and Transportation) authorizing funds for state and local governments to create new public works jobs, a Senate amendment adding a new title to mandate the expenditure of previously appropriated funds for public works and reclamation (as a purported disapproval of the deferral of such funds under the Impoundment Control Act) and to set a discount rate for reclamation and public works projects—matters within the respective jurisdictions of the Committees on Appropriations and Interior and Insular Affairs—was conceded to be nongermane and subject to a point of order under clause 4 of Rule XXVIII and to a motion to reject that portion.

On May 3, 1977,⁽⁸⁾ the House had under consideration the conference report on H.R. 11 when the situation described above occurred; the proceedings were as follows:

MR. [ROBERT A.] ROE [of New Jersey]: Mr. Speaker, I call up the conference report on the bill (H.R. 11) to increase the authorization for the Local Public Works Capital Development and Investment Act of 1976, 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.

MR. [ROBERT A.] YOUNG of Missouri: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER PRO TEMPORE:⁽⁹⁾ The gentleman will state his point of order.

MR. YOUNG of Missouri: Mr. Speaker, the inclusion of title II of the conference report on H.R. 11 is in violation of clause 4 of rule XXVIII of the Rules of the House of Representatives.

Mr. Speaker, it should be obvious to my colleagues that this bill—H.R. 11—has come back from conference with an unrelated, nongermane amendment.

Title 1 of this bill authorizes \$4 billion to be channeled to State and local governments throughout the country to create new public works jobs. The goal is to reduce the Nation's high unemployment rate.

In contrast, title 2 concerns previously approved water projects, with a principal goal of providing new flood

8. 123 CONG. REC. 13242, 13243, 95th Cong. 1st Sess.

9. Abraham Kazen, Jr. (Tex.).

control, water management and recreational benefits.

The jurisdiction over title 2 currently rests with the Appropriations Committee, and no longer involves the Public Works Committee. Therefore, title 2 should be excluded from consideration now and allowed to be handled by the appropriate committee.

My argument of nongermaneness is based on several precedents cited in Deschler's Procedure. May I call your attention to 4.25 of Deschler's chapter 28 which reads:

To a bill reported by the Committee on Public Works authorizing funds for highway construction and for mass transportation systems which use motor vehicles on highways, an amendment relating to urban mass transit (a subject within the jurisdiction of the Committee on Banking and Currency) and to rapid rail transportation and assistance to the railroad industry (within the jurisdiction of the Committee on Interstate and Foreign Commerce) was ruled out as not germane. 118 Congressional Record 34111, 34115, 92d Congress, 2nd Session, Oct. 5, 1972.

I would also like to cite [4.9] reading:

An amendment relating to railroads generally, which was offered to a bill pertaining solely to urban transportation, was ruled out as not germane. 116 Congressional Record 34191, 91st Congress, 1st Session, Sept. 29, 1970.

Finally I ask you to refer to 4.12 which reads:

To a bill establishing penalties for desecration of the American flag, an amendment establishing certain restrictions upon exporting the flag was ruled out as not germane. 113 Congressional Record 16495, 90th Congress, 1st Session, June 20, 1967.

These precedents form the basis of my point of order—that title 2 is simply not germane to the local public works bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from New Jersey (Mr. Roe) wish to be heard in debate on the point of order?

MR. ROE: No, Mr. Speaker. We concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey (Mr. Roe) concedes the point of order. The Chair sustains the point of order.

MR. YOUNG of Missouri: Mr. Speaker, I move, in conformity with the matter involved in the point of order, that the House reject title II of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Young) is recognized for 20 minutes on his motion.

Bill Restricting Antitrust Remedies Against Local Governments—Amendment To Repeal Limitation on Agency's Use of Funds To Conduct Antitrust Actions Against Local Governments

§ 26.25 To a House bill restricting remedies under existing antitrust law against local governments, but not addressing authority of a federal agency to prosecute antitrust actions or the availability of appropriated funds to that agency for that purpose, a Senate amendment

included in a conference report repealing a limitation in an appropriation law for that year on the use of funds by that agency to conduct antitrust actions against local governments was held not germane, since the amendment related to agency activities and funds not addressed in the House bill.

During consideration of H.R. 6027⁽¹⁰⁾ in the House on Oct. 11, 1984,⁽¹¹⁾ the Speaker Pro Tempore sustained a point of order in the circumstances described above. The conference report, submitted on Oct. 10,⁽¹²⁾ and the proceedings of Oct. 11, were as indicated below:

Mr. [PETER W.] RODINO [Jr., of New Jersey] submitted the following conference report and statement on the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments:

CONFERENCE REPORT (H. REPT. NO. 98-1158)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6027) to clarify the application of the Federal

10. The Local Government Antitrust Act of 1984.
11. 130 CONG. REC. 32219, 32220, 32223, 32224, 98th Cong. 2d Sess.
12. *Id.* at p. 31441.

antitrust laws to the official conduct of local governments, 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 to the text of the bill 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. 5. Section 510 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985 (Public Law 98-411), is repealed.

MR. RODINO: Mr. Speaker, pursuant to House Resolution 616, I call up the conference report on the bill (H.R. 6027) to clarify the application of the Clayton Act to the official conduct of local governments, and for other purposes.

The Clerk read the title of the bill.

MR. RODINO (during the reading): Mr. Speaker, I ask unanimous consent that the conference report be considered as read.

THE SPEAKER PRO TEMPORE:⁽¹³⁾ Is there objection to the request of the gentleman from New Jersey?

There was no objection.

MR. [CHARLES] WILSON [of Texas]: Mr. Speaker, I have a point of order.

I make the point of order that the last section of the conference report contains nongermane matters within the definition of clause 4 of rule XXVIII. . . .

Mr. Speaker, if the objectionable section had been offered to the House bill,

it would have been in violation of the provisions of clause 7 of rule XVI of the House rules. The provision is a repeal of appropriations law.

That provision deals with spending levels for the Federal Trade Commission for this fiscal year. The legislation is a permanent piece of legislation that amends our antitrust laws. These amendments reduce monetary damages that local governments may be liable for in antitrust suits.

That has nothing to do with the provision of the last section of this conference report to which my point of order is directed.

MR. RODINO: Mr. Speaker, I rise in opposition to the point of order against section 5 of the conference report. The fundamental purpose of this conference report is to provide for continued enforcement of the antitrust laws without severely damaging local governments. This legislation before us continues to ensure that antitrust violations will be prosecuted; but limits the amount of damages which can be assessed in such a case against a local governmental unit. It allows the aggrieved party to ensure that injunctive relief will be available to terminate anti-competitive activity of a local government.

The fundamental purpose of the section against which the gentleman raises a point of order is to permit the Federal Trade Commission to continue to bring antitrust suits against municipalities. The Federal Trade Commission is limited in the remedies that it may pursue: The FTC cannot seek damages, only injunctive relief. That is what this bill is all about, preventing damage suits while leaving injunctive remedies in place.

13. Steny H. Hoyer (Md.).

Mr. Speaker, I believe that the provisions of section 5 are wholly consistent with the fundamental purpose of the rest of the conference report and are therefore germane and the point of order should not be sustained. . . .

MR. [HAMILTON] FISH [Jr., of New York]: . . . The so-called taxicab rider which would be repealed by section 5 of this bill currently impedes the ability of the FTC to bring the very type of injunctive relief enforcement which the bill before us envisions and presumes. While removing the threat of money damages, we do not intend that local governments be totally immune from Federal antitrust laws. Suits for injunctive relief will be a safety net against potential anticompetitive activities by localities.

Thus, repeal of section 510 of Public Law 98-411 is fully consistent with the overall purposes of this bill. To remove section 5 from this legislation would, ironically, prevent the FTC enforcement when a locality is involved in anticompetitive conduct.

Again, the FTC would not recover money damages under the structure of H.R. 6027, but it could seek an injunction to bring anticompetitive activities by localities to a halt. The fair balance in this legislation would be distorted if the FTC remains unable to exercise its normal statutory responsibilities to enforce compliance with our antitrust laws.

Section 5 is consistent with the fundamental purposes of this legislation and should remain in this bill. It is germane in a logical, substantive sense. This is an antitrust bill. The FTC is an antitrust enforcement agency. H.R. 6027 is an amendment to the

Clayton Act. The FTC, along with the Department of Justice, enforces that very same Clayton Act.

Section 510 of Public Law 98-411 was, in reality, legislation on an appropriation bill, so its repeal is germane, but the fact is that its original enactment was not germane. . . .

THE SPEAKER PRO TEMPORE: . . . [T]he Chair has had the opportunity of reviewing the point of order raised by the gentleman from Texas that pursuant to clause 4 of rule XXVIII, the conferees on H.R. 6027 have agreed to a nongermane Senate provision. Section 5 of the conference report on H.R. 6027 contains the substance of section 3 of the Senate amendment, which repealed section 510 of Public Law 98-411, the State, Justice, Commerce Appropriation Act for fiscal year 1985. The section proposed to be repealed prohibits the expenditure of funds in that appropriation act for the Federal Trade Commission to conduct antitrust actions against municipalities or other units of local government.

H.R. 6027 as passed by the House only addresses the issue of antitrust remedies for claims against local governments, and merely limits monetary relief for a Federal or private cause of action against a local government under the Clayton Act. While the House bill may limit the remedies which the FTC may obtain in such suits, in the same way it limits any claimant, the House bill does not address the general authority of the FTC to prosecute antitrust actions, or the conditions under which the FTC may use its appropriated funds for the coming fiscal year.

The Chair would also point out that the conference report and Senate

amendment directly amend a general appropriation act not addressed in the House bill.

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

MR. WILSON: Mr. Speaker, I move, pursuant to clause 4(b) of rule XXVIII, to strike section 5 of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Wilson] is entitled to 20 minutes in support of his motion.

Parliamentarian's Note: If the Chair sustains a point of order that conferees have agreed to a nongermane Senate provision, a motion to reject that provision is in order pursuant to clause 4(b) of Rule XXVIII, and is debatable for 40 minutes, equally divided between the Member making the motion and a Member opposed; if the motion to reject is not agreed to, debate commences on the conference report itself.

House Bill Narrowly Amending Small Business Act—Senate Amendment Providing for Payment of Attorney Fees to Parties Prevailing Against United States in Court

§ 26.26 To a House bill narrowly amending the Small Business Act reported from the Committee on Small Business, a Senate amendment adding a new title pro-

viding for the payment of attorney fees and other court expenses to parties prevailing against the United States in court litigation on any subject matter, and amending title 28 (within the jurisdiction of the Committee on the Judiciary) was held not germane, pending a motion to recede and concur in the Senate amendment with an amendment including such provisions, after the conference report on the bill had been ruled out of order.

The proceedings of Oct. 1, 1980,⁽¹⁴⁾ during consideration of H.R. 5612 in the House, were as follows:

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

The Clerk read as follows:

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

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

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

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

TITLE II—EQUAL ACCESS TO JUSTICE ACT

Sec. 201. This title may be cited as the “Equal Access to Justice Act”.

FINDINGS AND PURPOSE

Sec. 202. (a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings. . . .

AWARD OF FEES AND OTHER EXPENSES IN CERTAIN AGENCY ACTIONS

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

“§ 504. Costs and fees of parties

“(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.”

“(d)(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment

of final judgments is made pursuant to section 2414 of title 28, United States Code. . . .”

MR. SMITH of Iowa: Mr. Speaker, this amendment retains all of the language agreed to by the conferees, but it specifically provides that the provisions for the payment of judgments, attorney’s fees and other expenses are effective only to the extent and in the amounts approved in advance in appropriations acts. . . .

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

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

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

[T]he amendment, as I understand it, further allows for attorneys’ fees to be paid in excess of what was prescribed for in the legislation out of the Small Business Committee. The general application of the bill is far in excess. I still think that the germaneness of the amendment of the gentleman is in question. . . .

THE SPEAKER PRO TEMPORE:⁽¹⁵⁾ The Chair will dispose of the appropriation point of order first.

Then the Chair will take up the matter of germaneness.

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

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

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

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

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

Therefore, the gentleman's amendment strikes at the germaneness of the bill that is being considered before us. Therefore, Mr. Speaker, if it is in excess, I would deem that the amendment is not germane.

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

the Chair would sustain a point of order as to title II of the motion.

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

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

The Clerk read as follows:

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

Housed-passed Bill Relating to Employment and Training—Senate Provision To Promote Formation of Labor-Management Committees

§ 26.27 A Senate provision contained in a conference report, proposing the establishment of programs to encourage the formation of joint labor-management committees, was held not germane to the House-passed bill, which amended the Comprehensive Employment and Training Act with respect to improved employment and training services but did not address labor-management relations.

During consideration of the conference report on S. 2570 in the House on Oct. 14, 1978,⁽¹⁶⁾ a point of order against the provision de-

15. William H. Natcher (Ky.).

16. 124 CONG. REC. 38559-62, 95th Cong. 2d Sess.

scribed above was conceded. The proceedings were as follows:

MR. [AUGUSTUS F.] HAWKINS [of California]: Mr. Speaker, I call up the conference report on the Senate bill (S. 2570) to amend the Comprehensive Employment and Training Act of 1973 to provide improved employment and training services, to extend the authorization, and for other purposes.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE:⁽¹⁷⁾ Pursuant to the rule, the statement of the managers is considered as read. . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I raise a point of order with respect to the conference report on S. 2570, Comprehensive Employment and Training Act Amendments of 1978, on the grounds that the conference report contains nongermane matter. Specifically, section 6 of the report proposes to include a "Labor Management Cooperation Act of 1978." . . .

MR. HAWKINS: Mr. Speaker, I concede the point of order. I think it is valid.

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

MR. ASHBROOK: Mr. Speaker, I make a motion of high privilege to reject the nongermane matter which was the subject of the point of order just sustained.

The Clerk read as follows:

Mr. Ashbrook moves to reject section 6 of the conference report.

In speaking on his motion, Mr. Ashbrook further addressed the issues affecting the germaneness of the Senate provision:

17. George E. Danielson (Calif.).

MR. ASHBROOK: Mr. Speaker, the point of order was conceded for obvious reasons. It is a statutory enactment.

Mr. Speaker, this section has absolutely nothing to do with the Comprehensive Employment and Training Act. Further it was not contained in the House bill H.R. 12542 nor was it contained in the amendments of the House to the bill S. 2570.

This section was added by the Senate. In examining the substance of this section, it is quite clear that it is not germane to the Comprehensive Employment and Training Act. The joint statement of managers accompanying the conference report specifically notes that it is: "a separate statute to provide for the establishment of programs to encourage the formation of joint labor management committees."

The purpose of such committees would be to improve communications between labor and management, to enhance job security and organizational effectiveness and to assist labor organizations and employers in resolving problems not susceptible to resolution within the collective bargaining process. These joint labor management committees would operate on a plant, area and industrywide basis.

Significantly, this section of the conference report amends several sections of existing law in the Labor-Management Relations Act of 1947. It amends section 203 and 205 to provide for administration of this new program by Federal mediation and conciliation services.

In addition, section 6 of the conference report amends section 203(C) of the Labor Management Relations Act. The effect of this amendment is to

make employer payments to such joint labor management committees a mandatory subject of bargaining.

I believe that the precedents unequivocally establish that this section of the conference report is non-germane. For instance, under section 799 of the annotation of the Rules of the House of Representatives—on page 539—it is stated:

Generally to a bill amending one existing law, an amendment changing the provisions of another law or prohibiting assistance under any other law is not germane (May 11, 1976).

Further in Deschler's Procedure, chapter 28, section 33, precedents are cited with respect to amendments changing existing law to bills not citing the law. For instance the precedent cited at section 33.2 holds that to a bill amending two sections of the Fair Labor Standards Act an amendment proposing changes in the Tariff Act of 1930 was ruled out as nongermane (113 CONG. REC. 27214, 90th Cong. 1st Sess., Sept. 28, 1967).

In sum, because section 6 of the conference report amends existing law that was not the subject of the House passed bill to reauthorize the Comprehensive Employment and Training Act, such section should be ruled out as nongermane. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Ohio (Mr. Ashbrook) to reject section 6 of the conference report.

The question was taken; and the Speaker Pro Tempore announced that the noes appeared to have it. . . .

On a division (demanded by Mr. Symms) there were—ayes 61, noes 96.

So the motion was rejected.

House Bill Concerning Foreign Relations and Operation of State Department and Other Agencies—Senate Amendment To Provide Guidelines for Acceptance of Foreign Gifts

§ 26.28 To a House bill containing diverse amendments to existing laws within the jurisdiction of the Committee on International Relations, relating to foreign relations and the operation of the Department of State and related agencies, a portion of a Senate amendment thereto contained in a conference report, amending the Foreign Gifts and Decorations Act (within the jurisdiction of the same committee) to provide guidelines and procedures for the acceptance of foreign gifts by United States employees and to provide that the House Committee on Standards of Official Conduct adopt regulations governing acceptance by Members and House employees of foreign gifts, was held germane when a point of order was raised against a portion of the conference report under Rule XXVIII clause 4.

During consideration of the conference report on H.R. 6689⁽¹⁸⁾ in the House on Aug. 3, 1977,⁽¹⁹⁾ the Speaker Pro Tempore overruled a point of order in the circumstances described above. The proceedings were as follows:

FOREIGN GIFTS AND DECORATIONS

Sec. 515. (a)(1) Section 7342 of title 5, United States Code, is amended to read as follows:

“§7342. Receipt and disposition of foreign gifts and decorations

“(a) For the purpose of this section—

“(1) ‘employee’ means—

“(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission . . .

“(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress . . .

“(6) ‘employing agency’ means—

“(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e), and (g)(2)(B) shall be carried out by the Clerk of the House . . .

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch

18. The Foreign Relations Authorization Act for fiscal year 1978.

19. 123 CONG. REC. 26532, 26533, 95th Cong. 1st Sess.

employees and for all executive branch employees . . .

“(b) An employee may not— . . .

“(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

“(c)(1) The Congress consents to—

“(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

“(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

“(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States. . . .

MR. [BRUCE F.] CAPUTO [of New York]: Mr. Speaker, a point of order.

I would like to make a point of order and I regret that it comes at so late an hour and after the previous discussion. I make the point of order that the matter contained in section 515 of the conference report would not be germane to H.R. 6689 under clause 7 of rule XVI if offered in the House and is therefore subject to a point of order under clause 4 of rule XXVIII.

Let me state that the language in the conference report substantially changes the terms under which the Members of Congress can accept or authorize acceptance of things of value from foreign governments.

The Constitution clearly provides in article I that each House shall write its

own rules. The House has a rule of its own on this matter, rule 44, which we only recently modified, under which Members of Congress could receive things of value from foreign governments.

The conference report changes that rule because it is a subsequent act of this House and in direct conflict with that rule. In Jefferson's Manual, section 335 and Deschler's Procedures, chapter 5, that is clearly improper. We cannot change the rules of the House in that manner. Let me read from Jefferson's Manual, section 335 briefly. It says:

But a committee may not report a recommendation which, if carried into effect, would change a rule of the House unless a measure proposing amendments to House rules has initially been referred to the Committee of the Whole by the House.

This has not been referred to the Committee of the Whole by the House as required by the precedents. Indeed, this is the first time the House has viewed this matter and it would have been impossible for us to have referred it to the Committee of the Whole. It was put in by the other body. We never considered it.

If the Chair does not sustain my point of order, he will be in effect sustaining the other body in writing the rules of this House. . . .

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, clause 4 of House rule 43 deals only with gifts to employees. It does not deal with gifts of foreign governments, which is the subject of this amendment.

Furthermore, Mr. Speaker, we have specifically provided that nothing in

this section shall be construed in derogation of any regulations prescribed by any Member or agency, and in this instance it would be the Congress or the Ethics Committee, which provides for more stringent limitations on the receipt of gifts and declarations by employees.

We are dealing with this in this amendment, because it deals with the foreign gifts and declarations section which affects other members of the Government not having anything to do incidentally with Members of the House and in no way changes the rules of the House.

MR. CAPUTO: Mr. Speaker, on page 21 of the committee report, section 515 says such act is amended and then it says, "a Member of Congress." It clearly applies to Members of Congress.

Let me state what it does. It permits Members of Congress to accept gifts of more than minimum value.

Page 22, section (c)(1)(B) clearly changes rule 24.

THE SPEAKER PRO TEMPORE: ⁽²⁰⁾ The Chair is ready to rule.

The gentleman from New York makes a point of order that the conference report contains, in section 515, matter contained in the Senate amendment which would not have been germane to the bill if offered in the House.

Section 515 amends the Foreign Gifts and Declarations Act to provide new guidelines and procedures relating to the acceptance by employees of the United States of gifts and awards from foreign governments. The section provides that the Committee on Standards

²⁰. Dan Rostenkowski (Ill.).

of Official Conduct shall have the functions of regulating the minimum value of an acceptable gift for Members and employees of the House of Representatives, of consenting to the acceptance by Members and employees of gifts in certain circumstances, and of disposing of unacceptable gifts through the General Services Administration. H.R. 6689, the Foreign Relations Authorization Act, as passed by the House, contained a wide variety of amendments to existing laws within the jurisdiction of the Committee on International Relations relating generally to the foreign relations of the United States and the operations of the Department of State, the U.S. Information Agency, and the Board for International Broadcasting. It thus appears to the Chair that an amendment to the Foreign Gifts and Declarations Act, a law within the jurisdiction of the committee and relative to our foreign relations, would have been germane to the bill if offered in the House, particularly since section 111 of the House bill dealt with foreign employment by officers of the United States notwithstanding article I, section 9 of the Constitution. The Foreign Gifts and Declarations Act arose from the identical constitutional provision. The fact that the Senate amendment placed new responsibilities on a standing committee of the House does not render the provision subject to a point of order, since no attempt is made to amend the rules of the House or to otherwise exceed the jurisdiction of the Committee on International Relations.

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

Parliamentarian's Note: The point of order was based on the

grounds that the provision had the effect of amending the Rules of the House, to allow the acceptance of gifts prohibited by House Rule 43, the Code of Official Conduct. The actual effect of the provision, however, was merely to assign the regulatory authority under the Act in relation to the House of Representatives, not to supersede a more restrictive standard imposed by the Rules or standards of the House of Representatives.

Bill Requiring Oil Imports To Be Carried on United States Vessels—Amendment Relating to Construction of Vessels in Domestic and Foreign Commerce

§ 26.29 To a House bill requiring that a percentage of United States oil imports be carried on United States-flag vessels, a modified portion of a Senate amendment contained in a conference report dealing with the construction of vessels in either domestic or foreign commerce to meet certain antipollution requirements was held not germane.

During consideration of the conference report on H.R. 8193⁽¹⁾ in

1. The Energy Transportation Security Act.

the House on Oct. 10, 1974,⁽²⁾ it was held that to a bill imposing vessel cargo preference rules for the importation of certain products in foreign commerce, a Senate amendment relating to construction of vessels used in foreign and domestic commerce was not germane. The proceedings were as follows:

MRS. [LEONOR K.] SULLIVAN [of Missouri]: Mr. Speaker, I call up the conference report on the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, 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.

MR. [PIERRE S.] DU PONT [of Delaware]: Mr. Speaker, I make a point of order against section 6 of the conference report under rule 28, clause 4(a), and rule 16, clause 7, the germaneness rule.

Section 6 is not germane because it deals with a different subject matter—the construction requirements of vessels—than the bill which deals with the regulation of oil imports.

The conference report amends section 901 of the Merchant Marine Act of 1936 (46 U.S.C. 1241) which deals with the operation, charter, and cargo of vessels.

Section 6 of the conference report—originally adopted by the Senate and not in the House bill—deals with the construction of vessels and antipollu-

tion procedures contained in the Ports and Waterways Safety Act of 1972.

Section 6 has nothing to do with vessel cargoes. It requires construction of vessels with double bottoms for use on certain limited waters of the United States. This is in no way related to the purpose or intent of the bill which is to place cargo preference rules on the importation of oil and oil products.

Under the precedents of the House under rule 16, clause 7 similar amendments have been held nongermane. See precedents V, 5884 and decisions of Chairman Garrett, May 6, 1913 (page 1234) and Speaker Clark, May 8, 1913 (page 1381). . . .

MRS. SULLIVAN: Mr. Speaker, the bill as amended by the Senate, and as modified by the conferees, makes explicit the fact that the U.S.-flag tankers subject to the bill must be constructed and operated using the “best available pollution technology.” In any case, this would in all probability be inferred from the term “U.S.-flag commercial vessels” in the House-passed bill—see Public Law 92-340.

In addition, the provision requires that certain tankers have double bottoms, but the requirement in no way changes the thrust of the House bill. In all candor, Mr. Speaker, I cannot see how it can be argued that a provision requiring pollution prevention technology and standards on the vessels carrying the preference cargo mandated by the bill can be considered nongermane. . . .

THE SPEAKER:⁽³⁾ The Chair is prepared to rule.

The gentleman from Delaware makes a point of order against section

2. 120 CONG. REC. 35181, 93d Cong. 2d Sess.

3. Carl Albert (Okla.).

6 of the conference report on H.R. 8193 on the ground that the section is not germane to the provisions of the bill as passed by the House.

The bill as passed by the House related solely to the requirement that a percentage of U.S. oil imports to be carried on U.S.-flag vessels and provided regulations in relation thereto. Section 7 of the Senate amendment in the nature of a substitute is directed to the construction of vessels transporting oil either in foreign or domestic commerce. As modified by section 6 of the conference report, that portion of the conference report is clearly not related to the subject matter of the House bill, and the Chair sustains the point of order that section 6 of the conference report is not germane to H.R. 8193.

MR. DU PONT: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. du Pont moves that the House reject section 6 of the bill, H.R. 8193, as reported by the committee of conference.

(Mr. du Pont asked and was given permission to revise and extend his remarks.)

MR. DU PONT: Mr. Speaker, the Chair has just ruled that section 6 of the bill as reported by the committee of conference is not germane. Let me say to my colleagues what this means. This is not a point of order similar to a point of order made in a regular House procedure. In that case section 6 would simply be stricken from the bill under consideration and that would be the end of it, but that is not the situation we have here.

We are dealing with a conference report and because we are dealing with

a conference report we are entitled to a separate vote on the nongermane section, so even though section 6 of the conference report was ruled not germane, the debate now occurs on that section, and at the end of 40 minutes we will have a vote solely on section 6, and then we will go on to consider the rest of the conference report.

Certain Exemptions From Tariff Duty Applicable to United States Vessels—Amendment To Extend Unemployment Benefits

§ 26.30 To a bill exempting from tariff duty certain equipment and repairs for vessels operated by or for agencies of the United States, a modified section of a Senate amendment thereto extending benefits under the unemployment compensation program was held to be not germane.

On July 31, 1974,⁽⁴⁾ the House had under consideration the conference report on H.R. 8217, a bill exempting from tariff duty certain equipment and repairs for vessels operated by or for agencies of the United States. A Senate amendment, reported from conference in disagreement, had added nongermane provisions, including pro-

4. 120 CONG. REC. 26082, 26083, 26088, 26089, 93d Cong. 2d Sess.

posed changes relating to unemployment compensation and the Social Security program. Some modification of the Senate provisions was proposed, by means of a motion to recede and concur in the Senate amendment with a further amendment. A point of order was made on the grounds that such portion of the Senate amendment as was contained in the motion was not germane to the House-passed measure.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States, 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:⁽⁵⁾ Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of July 16, 1974.) . . .

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

The Clerk read as follows:

Mr. Mills moves that the House recede from its disagreement to the Senate amendment to the text of the bill, H.R. 8217, and concur therein with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amend-

ment to the text of the bill (page 2, after line 6)), insert the following:

Sec. 3. The last sentence of section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (as added by section 20 of Public Law 93-233 and amended by section 2 of Public Law 93-256 and by section 2 of Public Law 93-329) is amended by striking out "August 1, 1974" and inserting in lieu thereof "April 30, 1975".

Sec. 4. (a) The second sentence of section 204(b) of the Emergency Unemployment Compensation Act of 1971 is amended to read as follows: "Amounts appropriated as repayable advances and paid to the States under section 203 shall be repaid, without interest, as provided in section 905(d) of the Social Security Act." . . .

Sec. 5. Section 1631 of the Social Security Act is amended by adding the following at the end thereof:

"REIMBURSEMENT TO STATES FOR INTERIM ASSISTANCE PAYMENTS

"(g)(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision). . . .

MR. [J. J.] PICKLE [of Texas]: Mr. Speaker, I make a point of order on section 3 of this bill because it does not conform to the House germaneness rule, rule 28, clause 5(b)(1).

In no way can this section be germane to the House-passed H.R. 8217.

5. Carl Albert (Okla.).

The House bill dealt with exempting from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971.

Section 3 deals with the unemployment compensation program as it relates to extended benefits. This has nothing to do with the "repair of vessels."

Mr. Speaker, I feel that it is necessary to take time to explain why the Senate unemployment compensation amendment is nongermane to the House-passed tariff bill.

It is nongermane on its face, and I ask that my point of order be sustained. . . .

MR. MILLS: Mr. Speaker, I must admit that the point of order is well taken. I cannot resist the point of order.

THE SPEAKER: The point of order is sustained.

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

The Clerk read as follows:

Mr. Pickle moves that the House reject section 3 of the proposed amendment to the Senate amendment to the text of the bill H.R. 8217.

THE SPEAKER: The gentleman from Texas (Mr. Pickle) will be recognized for 20 minutes, and the gentleman from Arkansas (Mr. Mills) will be recognized for 20 minutes.

Bill Authorizing Appropriations to Carry Out Commodity Exchange Act—Senate Provisions Authorizing Transfer of Forest Lands and Changing Basis for Computing Emergency Compensation Under Agricultural Act

§ 26.31 On a conference report on a Senate amendment to a House bill, where the House bill only authorized appropriations to carry out the Commodity Exchange Act and made technical improvements in that Act, the Chair sustained points of order and entertained motions to reject two nongermane Senate provisions included in the conference report, pursuant to clause 4 of Rule XXVIII, as follows: (1) a provision authorizing the transfer of national forest lands in Nebraska; and (2) a provision changing the basis for computation of emergency compensation for the 1986 wheat program under the Agricultural Act of 1949.

On Oct. 15, 1986,⁽⁶⁾ the House had under consideration the con-

6. 132 CONG. REC. 31498, 31499, 31502-06, 99th Cong. 2d Sess.

ference report⁽⁷⁾ on H.R. 4613, the Futures Trading Act of 1986, when the proceedings described above occurred, as follows:

Mr. de la Garza submitted the following conference report and statement on the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act:

CONFERENCE REPORT (H. REPT. 99-995)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act, 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 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:

Section 1. Short Title and Table of Contents.

(a) Short Title.—This Act may be cited as the "Futures Trading Act of 1986".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

Amendments

TITLE I—FUTURES TRADING

Sec. 101. Fraudulent Practices.

7. For complete conference report and statement, see the proceedings of the House of Oct. 14, 1986.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by striking out "on or subject to the rules of any contract market," the second place it appears in the first sentence; and

(2) by adding at the end thereof the following new paragraph:

"Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market". . . .

Sec. 202. Basis for Computation of Emergency Compensation Under the 1986 Wheat Program.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(c)(1)(E)(ii)) is amended by striking out "marketing year for such crop" and inserting in lieu thereof "first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops". . . .

Sec. 207. Transfer of Land.

(a) In General.—Subject to subsections (b), (c), and (d), the Secretary of Agriculture shall convey to the Nebraska Game and Parks Commission, all right, title, and interest of the United States in approximately 173 acres of National Forest System land in Dawes County, Nebraska, as depicted on a Department of Agriculture, Forest Service map entitled 'Land Conveyance, Nebraska National Forest', dated October, 1985. The map and legal description of the land conveyed by this section shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture. . . .

MR. [CHARLES O.] WHITLEY [of North Carolina]: Mr. Speaker, I make a point of order against the nongermane amendment contained in the conference report relating to the transfer of national forest lands in the State of Nebraska.

THE SPEAKER:⁽⁸⁾ The gentleman from North Carolina (Mr. Whitley) will identify that portion of the bill.

MR. WHITLEY: Mr. Speaker, the point of order is specifically made against section 207 of title II of the conference report. . . .

MR. [E] DE LA GARZA [of Texas]: . . . Mr. Speaker, the committee and the conference committee agreed on the text of the legislation which is the Commodity Futures Trade Commission.

The other body then added various and sundry other bills and we have to concede the point that they were not germane and they were extraneous to the matter. Therefore, I find myself in the situation where I could not but otherwise yield to the point of order, Mr. Speaker.

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

MR. WHITLEY: Mr. Speaker, I move to delete section 207 from the conference report. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from North Carolina [Mr. Whitley].

The motion was agreed to.

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I make a point of order against the conference report to H.R. 4613 under rule XXVIII, clause 4, of the House rules for the reason that

it contains a Senate amendment that is in violation of rule XVI, clause 7, because it contains matter nongermane to H.R. 4613 as passed by the House.

H.R. 4613, as reported by the Committee on Agriculture, and adopted in the House, was a bill 'to authorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements in that act.'

The Senate added a nongermane amendment to H.R. 4613, section 504, entitled "Basis For Computation Of Emergency Compensation Under the 1986 Wheat Program" that amends the Agricultural Act of 1949 relating to the wheat program for cooperating farmers. It is an amendment that would have violated rule XVI, clause 7, had such matter been offered as an amendment in the House. . . .

THE SPEAKER PRO TEMPORE:⁽⁹⁾ . . . In the opinion of the Chair, section 202 of the conference report as added in the Senate would not have been germane to the House-passed bill; so the point of order is sustained.

MR. MADIGAN: Mr. Speaker, I move to reject the matter in the conference report originally contained in section 504 of the Senate amendment to H.R. 4613 and now contained in section 202 of the conference report entitled "Basis for Computation of Emergency Compensation Under the 1986 Wheat Program" (H. Rept. 99-995). . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois [Mr. Madigan]. . . .

MR. MADIGAN: Mr. Speaker, I object to the vote on the ground that a

8. Thomas P. O'Neill (Mass.).

9. John J. Moakley (Mass.).

quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present. . . .

The vote was taken by electronic device, and there were—yeas 162, nays 239, not voting 31.

So the motion was rejected.

Parliamentarian's Note: By unanimous consent, the proceedings above by which the House had agreed to Mr. Whitley's motion to reject the non-germane Senate provision included in the conference report, pursuant to clause 4 of Rule XXVIII, by a voice vote, were vacated in order to allow full debate and a recorded vote on the motion to reject. Subsequently, the motion was adopted and the conference report was rejected. .

House Amendment to Senate Joint Resolution Authorizing Conference on Library and Information Services—Senate Amendment Rendering Prohibition Against Sex Discrimination Inapplicable to College Fraternities and Sororities

§ 26.32 To a House amendment in the nature of a substitute for a Senate joint resolution, authorizing the President to call a White House Conference on Library and Infor-

mation Services, a portion of a Senate amendment contained in the conference report which provided that the prohibition against sex discrimination contained in title IX of the Education Amendments of 1972 shall not apply to college social fraternities and sororities and to certain voluntary youth service organizations was held not germane, thereby permitting a motion under clause 4 of Rule XXVIII to reject that portion of the conference report.

On Dec. 19, 1974,⁽¹⁰⁾ the House had under consideration the conference report on Senate Joint Resolution 40, to authorize and request the President to call a White House Conference on Library and Information Services. The conference report stated in part as follows:⁽¹¹⁾

CONFERENCE REPORT (H. REPT. NO. 93-1619)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendments of the House to the joint resolution (S.J. Res. 40) to authorize and request the President to call a White House Con-

10. 120 CONG. REC. 41389, 41392, 93d Cong. 2d Sess.

11. See 120 CONG. REC. 40547-50, 93d Cong. 2d Sess., Dec. 17, 1974.

ference on Library and Information Services in 1976, 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 to the amendment of the House to the text of the joint resolution 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:

That (a) the President of the United States is authorized to call a White House Conference on Library and Information Services not later than 1978.

(b)(1) The purpose of the White House Conference on Library and Information Services (hereinafter referred to as the "Conference") shall be to develop recommendations for the further improvement of the Nation's libraries and information centers and their use by the public. . . .

Sec. 3. (a) Section 901(a) of the Education Amendments of 1972 is amended by striking out "and" at the end of clause (4) thereof and by striking out the period at the end of clause (5) thereof and inserting in lieu thereof "; and", and by inserting at the end thereof the following new clause:

"(6) This section shall not apply to membership practices—

"(A) of a social fraternity or social sorority which is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or

"(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the member-

ship of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age". . . .

JOINT EXPLANATORY STATEMENT OF
THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendments of the House to the joint resolution (S.J. Res. 40) to authorize and request the President to call a White House Conference on Library and Information Services in 1976, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the joint resolution struck out all after the resolving clause and inserted a substitute text. The Senate concurred with the amendment of the House to the text of the joint resolution with an amendment which was a substitute for both the House amendment to the text of the joint resolution and the Senate joint resolution. The House recedes from its disagreement to the amendment of the Senate to the amendment of the House to the text of the joint resolution with an amendment which is a substitute for both the House amendment and the Senate amendment thereto. The differences between the House amendment, the Senate amendment to the House amendment, and the substitute agreed to in conference are noted below except for minor technical and clarifying changes made necessary by reason of the conference agreement. . . .

16. *Amendment to Title IX of the Education Amendments of 1972.* The Senate amendment amends section 901(a) of the Education Amendments

of 1972 (Public Law 92-318, 86 Stat. 373), relating to the prohibition of sex discrimination, to provide that section 901 shall not apply to membership practices of (1) certain social fraternities and social sororities consisting primarily of students in attendance at an institution of higher education; and (2) voluntary youth service organizations, including the YMCA, the YWCA, Girl Scouts, Campfire Girls, and Boy Scouts, the membership of which traditionally has been limited to persons of one sex and to persons 19 years of age or less.

The Senate amendment also provides that this amendment shall be effective on, and retroactive to July 1972.

There is no comparable House provision. The House recedes with an amendment clarifying the exemption from the provisions of title IX of the membership practices of the YMCA's, YWCA's, Girl Scouts, Boy Scouts, and Campfire Girls. The conferees agree that any reference to fraternities, sororities, or organizations exempted under section 501(a) of the Internal Revenue Code of 1954 shall be limited to those fraternities, sororities, or organizations which are socially oriented and do not engage in political activities. Social fraternities which are service oriented shall also qualify under clause 6(A) of section 901(a). For purposes of section 901(a), alumni of fraternities and sororities shall not be deemed to be active members.

A point of order was made against a portion of the conference report, as follows:

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I make a point of order against section 3 of the conference report, that section which amends section 901(a) of the Education Amendments of 1972, on the basis that

had this been offered as an amendment during the consideration of Senate Joint Resolution 40 in the House, it would have been a nongermane amendment.

Under clause 4, rule XXVIII a motion can be offered to handle this matter separately. Thus I make a point of order that that section of the conference report is nongermane under the rules of the House. . . .

THE SPEAKER:⁽¹²⁾ It is obvious to the Chair that section 3 of the conference report is not germane to the House amendment. The point of order is sustained. Does the gentleman from Wisconsin (Mr. Steiger) have a motion to reject the section?

MR. STEIGER of Wisconsin: I do have a motion to reject, Mr. Speaker.

Mr. Speaker, I offer a motion to strike.

The Clerk read as follows:

Mr. Steiger of Wisconsin moves to strike section 3 of the conference report. . . .

THE SPEAKER: The question is on the motion to strike section 3, offered by the gentleman from Wisconsin (Mr. Steiger).

The question was taken; and on a division (demanded by Mr. Steiger of Wisconsin) there were—yeas 37, nays 102.

So the motion to strike was rejected.

12. Carl Albert (Okla.).

Bill Addressing Official Conduct of Federal Officials—Amendment Authorizing Appointment of Prosecutor To Investigate Public and Private Conduct

§ 26.33 The Speaker sustained a point of order, under Rule XXVIII clause 4, that a Senate provision contained in a conference report, authorizing the appointment of a special prosecutor to investigate and prosecute alleged criminal conduct of certain federal officials, including but not limited to conduct directly related to their official duties, would not have been germane if offered to the House-passed bill, which addressed in various ways only the official conduct of federal officials.

On Oct. 12, 1978,⁽¹³⁾ during consideration in the House of S. 555, the Ethics in Government Act of 1978, a point of order was sustained against a provision contained in the conference report. The proceedings were as follows:

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I make a point of order against title VI of the conference report. That, for the Speaker's informa-

tion, is the title dealing with the special prosecutor language in the conference report. . . .

Mr. Speaker, my point of order is based upon rule XXVIII, which is the germaneness section. It is my position, Mr. Speaker, that title VI is a non-germane Senate amendment and it violates that section of the House rules which I have cited. . . .

[T]he language in the special prosecutor amendment added by the Senate is so broad and sweeping that it covers in several respects private individuals, that is to say, new classes of people who are not covered under the sweep of the ethics bill. . . .

The special prosecutor bill, which is tacked onto the ethics bill, is a complicated and important piece of legislation. It was considered in detail by a different subcommittee in the Committee on the Judiciary which did not consider the ethics bill. It is true that the Committee on the Judiciary reported out a special prosecutor bill but it was never brought to the floor of the House and, indeed, has never been debated nor subject to amendment by Members of this House.

It is a far-reaching piece of legislation, it is complicated, different in form, different in purpose, different in all respects from the ethics bill which we did consider several days ago.

I hope that the Speaker, when the Speaker is prepared to rule, will recognize that germaneness, if it is to have any meaning at all, is offended in a fundamental way by allowing the Senate to tack on an issue which is so basically different and unrelated to the ethics bill which we considered earlier. . . .

13. 124 CONG. REC. 36459-61, 95th Cong. 2d Sess.

MR. [JAMES R.] MANN [of South Carolina]: . . . The House amendment to S. 555 is actually the text of H.R. 1 as passed by the House. The text of H.R. 1, as finally approved, was actually the text of an amendment in the nature of a substitute as amended. Thus, the issue, as I understand it, is whether the provisions of title VI of the conference report would have been germane to the amendment in the nature of a substitute which eventually became the text of House bill, H.R. 1, had the provisions of title VI been offered as an amendment to the amendment in the nature of a substitute. I believe that the provisions of title VI would have been germane to the amendment in the nature of a substitute and that the Chair should therefore overrule the point of order.

. . . .

The basic test for determining germaneness is whether the fundamental purpose of the amendment is germane to the fundamental purpose of the bill. The question here, then, is whether the fundamental purpose of title VI is germane to the fundamental purpose of the amendment in the nature of a substitute. I submit that it is. The purpose of the amendment in the nature of a substitute, which is subtitled the "Ethics in Government Act," is to promote ethical conduct by Federal Government officials and certain other private citizens. The purpose of title VI of the conference report is also to promote ethical conduct.

A second test for germaneness is whether the subject matter of the amendment relates to the subject matter of the bill. The question here is whether the subject matter of title VI of the conference report relates to the

subject matter of the amendment in the nature of a substitute. I submit that it does.

The subject matter of the amendment in the nature of a substitute was broad. It encompassed ethical standards and conduct involving officials in all three branches of the Federal Government—legislative, executive, and judicial—as well as certain private citizens.

With regard to Federal Government employees and officials, it required detailed financial disclosure statements to be filed by people in all three branches of Government. It established an Office of Government Ethics with broad authority, including the power to promulgate regulations pertaining to "conflicts of interest and ethics in the executive branch." It amended our Federal criminal law in the area of conflicts of interest. . . .

The gentleman from California concedes that the amendment in the nature of a substitute encompasses private citizens. He argues, however, that those private citizens are connected in some way with the Government.

Mr. Speaker, I submit that the private citizens covered in title VI of the conference report encompass only one narrow group. The President's campaign manager is connected to the Government just as much as the partner of some Government employee who may be violating some law in appearing before some Government agency. He is connected in the same way as the business partner of a Government employee would be connected. . . .

THE SPEAKER PRO TEMPORE:⁽¹⁴⁾ . . . In looking at the gentleman's point of

14. Norman Y. Mineta (Calif.).

order in this instance the gentleman from California makes two points, one as title VI relates to new classes of persons not covered by the House-passed bill, and the other in terms of the breadth of the types of conduct subject to investigation by the special prosecutor. . . .

It seems that under what is being considered here, the breadth of the investigation which the special prosecutor may undertake, goes far beyond the scope of the activity regulated by the House-passed bill. In looking at title VI, it authorizes the special prosecutor to investigate any violation of any Federal criminal law other than a violation constituting a petty offense—conduct which may or may not directly relate to the official duties of the persons covered. For that reason . . . the Chair does sustain the point of order.

Bill Authorizing Appropriations for Nuclear Regulatory Commission—Amendments to Organic Law Governing Commission

§ 26.34 To a House bill authorizing appropriations for two years for the Nuclear Regulatory Commission but not directly or indirectly amending the Atomic Energy Act regarding nuclear energy policy, a modification of a Senate amendment contained in a conference report providing a ten-year review and monitoring program to limit foreign uranium im-

ports, thereby proposing an extensive change in policy under the organic law governing that agency's operations, was conceded to be not germane.

On Dec. 2, 1982,⁽¹⁵⁾ during consideration of the conference report on H.R. 2330, the Nuclear Regulatory Commission authorization for 1982 and 1983, a point of order was made, pursuant to Rule XXVIII, clause 4, against a Senate amendment contained in the conference report. The Senate amendment as modified in the conference report stated in part as follows, and the point of order was made by Mr. Bill Frenzel, of Minnesota, as indicated below:

Uranium Supply

Sec. 23. (a)(1) Not later than 12 months after the date of enactment of this section, the President shall prepare and submit to the Congress a comprehensive review of the status of the domestic uranium mining and milling industry. This review shall be made available to the appropriate committees of the United States Senate and the House of Representatives. . . .

(b)(1) Chapter 14 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

Sec. 170B. Uranium Supply.

"a. The Secretary of Energy shall monitor and for the years 1983 to 1992

15. 128 CONG. REC. 28537, 97th Cong. 2d Sess.

report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section. . . .

"e. (1) During the period 1982 to 1992, if the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than thirty-seven and one-half percent of actual or projected domestic uranium requirements for any two consecutive year period, then the Secretary shall immediately revise criteria for services offered under paragraph (A) of section 161 v. to enhance the use of source material of domestic origin for use in utilization facilities licensed, or required to be licensed, under section 103 or 104b. of this Act within or under the jurisdiction of the United States arising under existing contracts or option contracts. . . .

"f. In order to protect essential security interests of the United States, upon the initiation of an investigation under subsection e. to determine the effects on the national security of imports of source material or special nu-

clear material pursuant to section 232 of the Trade Expansion Act of 1962, it shall be unlawful to execute a contract or option contract resulting in the import of additional source material or special nuclear material from foreign sources, which is intended to be used in domestic utilization facilities licensed, or required to be licensed, under section 103 or 104b. of this Act. This prohibition shall remain in effect for a period of two years or until the President has taken action to adjust the importation of source material and special nuclear material so that such imports will not threaten to impair the national security, whichever first occurs." . . .

MR. FRENZEL: Mr. Speaker, I have a point of order against section 23 of the conference report substitute. . . .

I make a point of order that the matter contained in section 23 of the conference substitute recommended in the conference report would not be germane to H.R. 2330 under clause 7 of rule XVI if offered in the House and is, therefore, subject to a point of order under clause 4 of rule XXVIII.

THE SPEAKER PRO TEMPORE:⁽¹⁶⁾ Does the gentleman from Arizona (Mr. Udall) desire to be heard?

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, we concede the substance of the point of order the gentleman is making.

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

MR. FRENZEL: Mr. Speaker, pursuant to the provisions of clause 4, rule XXVIII, I move that the House reject section 23 of the conference substitute recommended in the conference report.

¹⁶ William H. Natcher (Ky.).

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota (Mr. Frenzel) is recognized for 20 minutes on his motion.

§ 26.35 To a House bill authorizing appropriations for two years for the Nuclear Regulatory Commission but not amending the Atomic Energy Act with respect to nuclear energy policy, provisions in a Senate amendment contained in a conference report amending several sections of that Act making permanent changes in the law relating to limitation on use of special nuclear material, disclosure of Department of Energy information, and deadlines for promulgation of environmental standards by EPA and NRC for uranium mill tailings were conceded to be nongermane under Rule XXVIII, clause 4, permitting a divisible motion to reject those portions of the conference report.

On Dec. 2, 1982,⁽¹⁷⁾ a point of order was made against portions of a conference report pursuant to Rule XXVIII, clause 4, which permits such points of order against nongermane matter contained in conference reports. The conference

17. 128 CONG. REC. 28544, 97th Cong. 2d Sess.

report stated in part as follows, and the point of order was made by Mr. Samuel S. Stratton, of New York, as indicated below:

LIMITATION ON USE OF SPECIAL NUCLEAR MATERIAL

Sec. 14. Section 57 of the Atomic Energy Act of 1954 (42 U.S.C. 2077) is amended by adding at the end thereof the following new subsection:

"e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes." . . .

Sec. 18. (a) Section 275 of the Atomic Energy Act of 1954 is amended—

(1) by striking in subsection a. "one year after the date of enactment of this section"

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate by product material (as defined in section 11 e. (2)) under this Act on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

"(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to

subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

. . .
(b)(1) Section 108(a) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding the following new paragraph at the end thereof:

“(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 in final form by such date, remedial action taken by the Secretary under this title shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.”.

(2) The second sentence of section 108(a)(2) of the Uranium Mill Tailings Radiation Control Act of 1978 is repealed. . . .

MR. STRATTON: Mr. Speaker, I make a point of order that the matter contained in sections 14, 17, and 18 of the substitute for the Senate amendment in the conference report would not be germane to H.R. 2330 if offered in the House and is, therefore, subject to a point of order under the rules of the House.

I make this point of order, Mr. Speaker, because sections 14, 17, and 18 would be permanent changes in law and this bill is a 2-year authorization bill; also, the three sections contain matters that fall within the jurisdiction of the Armed Services Committee.

THE SPEAKER PRO TEMPORE:⁽¹⁸⁾ The Chair recognizes the gentleman from Arizona (Mr. Udall).

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, I concede the point of order and wish to be heard in the regular order on the motion.

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

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

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Stratton moves that the House reject sections 14, 17, and 18 of the substitute recommended in the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from New York (Mr. Stratton) will be recognized for 20 minutes, and the gentleman from Arizona (Mr. Udall) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from New York (Mr. Stratton).

Mr. Stratton, in the ensuing debate, further addressed the issue of germaneness:

Section 14 of the conference report . . . is nongermane as an amendment to the House bill authorizing appropriations for the Nuclear Regulatory Commission. Section 14 was a Senate amendment that deals with special nuclear material by amending the Atomic Energy Act of 1954, but special nuclear material is material that is used for the purpose of making nuclear weapons and is, therefore, under the jurisdiction of the Committee on Armed Services.

18. William H. Natcher (Ky.).

The language of section 14, as adopted by the conferees, would therefore have been nongermane had such an amendment been offered in the House.

Section 17, which was a Senate amendment to the House bill, is also nongermane since it would revise permanent law through a 2-year authorization. This section would revise a statute dealing with the release of information concerning security measures by the Secretary of Energy, and other matters that involve the nuclear weapons program of the Department of Energy.

Parliamentarian's Note: The motion to reject the nongermane portions of the conference report was substantively and grammatically divisible, so that a division of the question on any of the three sections could have been demanded by any Member prior to the Chair's putting the question on the motion to reject, in order to avoid a subsequent point of order against one of the sections just to obtain a separate subsequent vote on a motion to reject that one section.

§ 27. —Amendment to Senate Amendment

The reader will note from prior sections in this chapter that when judging the germaneness of an amendment to a proposition under consideration and originating in

the House, the amendment must relate to the subject matter and to the pending text under immediate consideration. For example, in sections 2 and 18, *supra*, it is demonstrated that an amendment must be germane to the pending portion of the bill to which offered, or to the amendment to which offered, as the case may be, whether in the form of a motion to strike out and insert, to strike out, or to insert. Similarly, section 21, *supra*, indicates that perfecting amendments to amendments in the nature of a substitute or to substitute amendments need only be germane to the inserted language contained in said substitutes, it being irrelevant whether or not the perfecting amendment might be germane to the underlying (perhaps broader) bill which said substitute seeks to strike out and replace. In that contest, the language of the underlying bill proposed to be stricken is not taken into consideration when determining the germaneness of a second degree amendment to a substitute proposing to insert other language. It is only the pending text under immediate consideration against which the germaneness of proposed amendments thereto is judged. This test of germaneness is consistent with Rule XIX governing the permis-