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Apr. 28, 1975). If the entire language of the bill were ruled out in Committee of the Whole, the enacting clause would still exist and an amendment would still be in order if germane to the title of the bill and not containing an appropriation.

Point of Order Against Senate Bill

§ 12.18 Where language in violation of Rule XXI clause 4 (now clause 5) is stricken from a Senate bill in Committee of the Whole by a point of order, the Chairman reports that fact to the House.

On July 31, 1957,[12] the Committee of the Whole was considering S. 1865, a bill providing for development and modernization of the national system of navigation and traffic control facilities. At one point, proceedings were as follows:

> THE CHAIRMAN:[13] The time of the gentleman from Michigan has expired.
>
> All time has expired.
>
> The Committee will rise.
>
> Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Mahon, Chairman of the Committee of the Whole House on the State of the Union, stated that that Committee having had under consideration the bill (S. 1856) to provide for the development and modernization of the national system of navigation and traffic-control facilities to serve present and future needs of civil and military aviation, and for other purposes, pursuant to House Resolution 361, he reported the same back to the House.
>
> The Chairman also reported that the language in the bill on page 7, line 12, reading as follows: "and unexpended balances of appropriations, allocations, and other funds available or" was stricken out on a point of order.[14]

§ 13. House-Senate Relations

The general subject of relations between the House and Senate, and that of House-Senate conferences, are discussed in other chapters.[15] This section discusses a few issues that arise specifically with respect to appropriations.

Under the Constitution, it is exclusively the prerogative of the

12. 103 CONG. REC. 13181, 13182, 85th Cong. 1st Sess.

13. George H. Mahon (Tex.).

14. *Parliamentarian's Note:* The resulting change in the Senate bill was treated as an amendment of the Senate bill and so engrossed and messaged to the Senate, though not voted upon as a separate amendment.

15. See Ch. 32, House-Senate Relations, infra; Ch. 33, House-Senate Conferences, infra. See also Ch. 13, Powers and Prerogatives of the House, supra.

House to originate revenue bills. Article I, section 7, clause 1, provides that,

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.[16]

The scope of this prerogative is discussed in detail elsewhere.[17] (Because questions relating to the prerogative of the House to originate revenue legislation involve interpretation of the Constitution rather than House rules, they are decided by the House rather than the Chair.)[18]

The House has traditionally taken the view that this prerogative encompasses the sole power to originate at least the general appropriation bills. Mr. Clarence Cannon, of Missouri, has observed:[19]

> Under immemorial custom the general appropriation bills, providing for a number of subjects[20] as distinguished from special bills appropriating for single, specific purposes,[1] originate in the House of Representatives and there has been no deviation from that practice since the establishment of the Constitution.

Following the view expressed by Mr. Cannon, the House has returned Senate-passed general appropriation bills.[2]

The Senate has not always accepted the view that the House has the exclusive right to originate appropriation measures.[3]

Issues sometimes arise with respect to the implications of House rules barring, in specified circumstances, unauthorized appropriations and legislation on general appropriation bills,[4] and appropriations on legislative bills.[5]

Points of order under the House rule prohibiting appropriations on legislative bills[6] have been successfully directed against items of appropriation in Senate bills, for example,[7] but not against a Senate amendment to an appropriation bill.[8] Procedural remedies

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16. See *House Rules and Manual* § 102 (1981).

See also Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 92–82, 92d Cong. 2d Sess. pp. 125, 126 (1972).

17. See Ch. 13 § 13–20, supra.

18. See Ch. 13 § 13, supra.

19. Cannon's Procedure (1959) p. 20.

20. 4 Hinds' Precedents §§ 3566–68.

1. 8 Cannon's Precedents § 2285.

2. See Ch. 13 § 20.3, supra.

3. See Ch. 13 § 20.1, supra.

4. See Ch. 26, infra, for general discussion of Rule XXI clause 2.

5. See § 4, supra, for general discussion of appropriations on legislative bills.

6. Rule XXI clause 5, *House Rules and Manual* § 846 (1981).

7. See § 13.16, infra.

8. See 7 Cannon's Precedents § 1572. Rule XXI clause 5 does apply to an amendment in the House to a Senate

against the inclusion of appropriations in Senate bills also include possible points of order under section 401 of the Congressional Budget Act (if the Senate provision can be construed as new spending authority not subject to amounts specified in advance in appropriations acts where budget authority has not been provided in advance; section 401 is not applicable where money has already been appropriated and is in a revolving fund).

The House may also return Senate bills which contain appropriations to the Senate by asserting the constitutional prerogative of the House to originate "revenue" measures, which, as noted above, are construed to include at least "general appropriation bills."

A rule of the House[9] provides:

> No amendment of the Senate to a general appropriation bill which would be in violation of the provisions of clause 2 of Rule XXI, if said amendment had originated in the House,[10] nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall be first given by the House by a separate vote on every such amendment.

Under this rule, where a House legislative measure has been committed to conference, and the conferees agree to a Senate amendment appropriating funds, the conference report thereon may be ruled out.[11] In the 96th Congress, a point of order that House conferees had violated clause 2 of Rule XX by agreeing to a provision in a Senate amendment to a House legislative bill, directing the use of funds already appropriated for a new purpose, was conceded, and the conference report was ruled out of order.[12] But a point of order against an appropriation in a conference report on a legislative bill will only lie under the rule if that provision was originally contained in a Senate amendment and if House conferees were without specific authority to agree to that amend-

amendment to a House legislative bill. See *Procedure in the U.S. House of Representatives* Ch. 25 § 3.29 (4th ed.).

9. Rule XX clause 2, *House Rules and Manual* § 829 (1981).

10. Rule XXI clause 2, *House Rules and Manual* § 834 (1981), prohibits unauthorized appropriations and legislation on general appropriation bills. For further discussion of unauthorized appropriations and legislation on general appropriation bills, generally, and Senate amendments that violate the rule, see Ch. 26, infra.

11. See § 13.8, 13.9, infra.

12. See § 13.9, infra.

ment, and will not lie against a provision permitted by the House to remain in its bill.[13] Moreover, since the rule applies only to Senate amendments which are sent to conference, it does not apply to appropriations contained in Senate legislative bills.[14]

Where an appropriation for a certain purpose has been enacted into law, a provision in a legislative bill authorizing the use, without a subsequent appropriation, of those funds for a new purpose constitutes an appropriation prohibited by clause 5 of Rule XXI, and if in a Senate amendment included in a conference report violates clause 2 of Rule XX (prohibiting House conferees from agreeing to such a provision absent authority from the House).[15]

Prerogatives of House and Senate

§ 13.1 A discussion took place in the House with regard to the prerogatives of the House in initiating the forms of general appropriation bills, during debate on a motion that the House instruct its managers of a conference committee not to agree to a Senate amendment to a War Department appropriation bill.

On June 24, 1937,[16] during consideration of the War Department appropriation bill of 1938, the following proceedings took place:

> MR. [J. BUELL] SNYDER of Pennsylvania: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 6692, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.
>
> THE SPEAKER:[17] Is there objection? . . .
>
> MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, by direction of the Committee on Appropriations, I submit a motion, which I send to the desk.
>
> The Clerk read as follows:
>
> > Mr. Cannon of Missouri moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the

13. See § 13.12, infra.
14. See § 13.11, infra.
15. See *Procedure in the U.S. House of Representatives* Ch. 25 § 3.30 and Ch. 33 § 15.13. (4th ed.).
16. 81 CONG. REC. 6304–06, 75th Cong. 1st Sess.

    For further discussion of the powers of the two Houses with respect to revenue and appropriation measures, see Ch. 13, supra. See also Chs. 32 and 33, infra, for discussion of House-Senate relations, conferences, and related matters. And see § 13.2, infra.
17. William B. Bankhead (Ala.).

bill H.R. 6692, the Military Appropriation Act, 1938, be instructed not to agree to the Senate amendments to such bill numbered 47 to 77, inclusive, and 80, and not to agree to the amendment of the Senate amending the title of such bill.

MR. CANNON of Missouri: Mr. Speaker, the Constitution confers upon the House and the Senate respectively certain exclusive prerogatives. Among those reserved to the House by the Constitution is the right to originate revenue bills, and from the beginning of the Government the House has asserted and successfully maintained that the right to originate revenue bills also involves the right to initiate general appropriation bills. That has been the uniform practice, and in keeping with that doctrine the House has formulated the general appropriation bills since the establishment of the Government. Of course, the right to originate general appropriation bills necessarily includes the right to determine the form and the manner in which they shall be presented, and from the beginning the number and scope of the various annual supply bills have been determined by the House with the acquiescence of the Senate. Only on one or two rare occasions has this right of the House been questioned, and in each such instance the Senate has promptly disavowed any intention of infringing on the constitutional prerogatives of the House and yielded without contention.

The last instance was in the second session of the Sixty-second Congress and was the occasion for an exhaustive study of the subject by Hon. John Sharp Williams, formerly minority leader of the House and at the time a member of the Senate, which was published as a Senate document and which so conclusively confirmed the contention of the House that its right to originate the general supply bills and determine their form had not since been challenged until the receipt just now of a message from the Senate informing the House that the Senate has assumed the right to combine the two War Department appropriation bills by attaching the nonmilitary bill to the military bill as an amendment. . . .

The motion offered proposes [that House conferees be instructed] to decline to agree to the amendment by which the two bills have been merged or to any perfecting amendment which may have been made to the text of the nonmilitary bill. Under such instruction, House conferees will be at liberty to consider and agree in full on the final text of the War Department appropriation bill providing for military activities and the Senate may then message over as a separate bill the nonmilitary bill, as amended by the Senate, and the House will appoint conferees to meet with Senate conferees on the disagreeing votes of the two Houses on the bill as originated by the House of Representatives.

The motion was agreed to.

§ 13.2 The Senate receded from its amendments which proposed to attach a nonmilitary appropriation bill to a military activities appropriation bill and in so doing discussed the role of the Senate in amending general appropriation bills of the House.

On July 1, 1937,[18] the following proceedings took place in the Senate during consideration of a conference report on H.R. 6692 (appropriations for the military establishment):

> MR. [ROYAL S.] COPELAND [of New York]: Mr. President, I am about to move the adoption of the report, but before doing so I think an explanation should be made to the Senate. I am sure that the matter which I shall present will be of interest to every Senator, because it has to do with the rights of the Senate regarding appropriation bills.
>
> During the 15 years of my membership in the Senate, and for a long time prior thereto, it has been the custom to embody all appropriations for the Military Establishment in one bill. This year the House . . . undertook to . . . separate the appropriations and embody them in two bills, one devoted to the strictly military activities . . . and a second to the nonmilitary activities of the Government. . . .
>
> The Senate Committee on Appropriations decided to blend the bills and to present them to the Senate as they have been presented through many years. Explanation was made to the Senate, and the Senate, by unanimous vote, decided to accept and act upon the bill in the usual form.

After discussing the response of the House, and noting the existence of divergent views of the respective prerogatives of the Houses relating to appropriation bills and their form, the Senator stated:

> Of course, we do not concede . . . that the Constitution confers upon the House any such right to initiate general appropriation bills. . . .
>
> Mr. President, I am instructed by the Committee on Appropriations to say that we challenge the contention that it is the exclusive right of the House to determine the form and number of appropriation bills.

The Senator, however, noted the existence of special circumstances in the present case, and indicated he would therefore move that the conference report be agreed to. The conference report was accordingly agreed to. The following proceedings then took place:

> MR. COPELAND: I now move that the Senate agree to the amendments of the House to the amendments of the Senate numbered 24, 26, and 79.
>
> The motion was agreed to.
>
> MR. COPELAND: I now move that the Senate recede from its amendments still in disagreement, and its amendment to the title of the bill.
>
> The motion was agreed to.
>
> MR. [J. W.] ROBINSON [of Utah]: Mr. President, I should like to ask the Senator from New York to tell the Senate the status of the military appropriations, and the status of the nonmilitary appropriations. In what condition does this action leave them?

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18. CONG. REC. 6652–54, 75th Cong. 1st Sess. For further discussion of the powers of the two Houses with respect to revenue and appropriation measures, see Ch. 13, supra. See also Chs. 32 and 33, infra, for discussion of House-Senate relations, conferences, and related matters.

MR. COPELAND: Mr. President, title I of the Senate bill, which is the military part, has now been agreed to by both Houses, and on my motion, just made, we receded from the amendments which covered the nonmilitary appropriations.

I now wish to present to the Senate for immediate action House bill 7493, as amended by the Senate committee and by the Senate to cover the nonmilitary item, so that the House will be in the position of having two bills, as it desires.

MR. ROBINSON: In other words, that puts the Senate in the position of completely yielding to the House?

MR. COPELAND: Yes.

Reference of Bill to Committee on Appropriations

§ 13.3 The Speaker announces to the House that he has referred a general appropriation bill with Senate amendments thereto to the Committee on Appropriations

On July 2, 1945,[19] Speaker Sam Rayburn, of Texas, stated as follows:

THE SPEAKER: The Chair desires to announce that he has referred the bill H.R. 3368, the war agencies bill, with Senate amendments thereto, to the Committee on Appropriations.

Parliamentarian's Note: While the Speaker has this discretionary authority to refer Senate amendments to any bill under Rule XXIV clause 2, it is seldom exercised.

Conferees for Separate Chapters of Bill

§ 13.4 The Speaker has appointed a series of conferees for separate chapters of an appropriation bill.

On July 27, 1955,[1] a Member addressed Speaker Sam Rayburn, of Texas, as follows, and proceedings ensued as indicated below:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7278) making supplemental appropriations for the fiscal year ending June 30, 1956, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. Cannon and Taber; and on chapter I, Messrs. Whitten, Marshall, and H. Carl Anderson; on chapter II, Messrs. Preston, Thomas, and Bow; on chapter III, Messrs. Mahon, Sheppard, Sikes, Wigglesworth, Scrivner, and Ford; on chapter IV, Messrs. Passman, Gary, and Wigglesworth.

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19. 91 CONG. REC. 7142, 79th Cong. 1st Sess.

1. 101 CONG. REC. 11686, 84th Cong. 1st Sess.

§ 13.5 In appointing conferees on the general appropriation bill, 1951, the Speaker appointed a set of conferees for each chapter of the bill, and four Members to sit in the conference on all chapters.

On Aug. 7, 1950,[2] a Member addressed Speaker Sam Rayburn, of Texas, and the following proceedings ensued:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill H.R. 7786, an act making appropriations for the support of the Government for the fiscal year ending June 30, 1951, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and ask for a conference with the Senate.

THE SPEAKER: Is there objection to the request of the gentleman from Missouri? [After a pause.] The Chair hears none and appoints the following conferees.

Managers on the part of the House:

Messrs. Cannon, Rabaut, Norrell, Taber, and on Chap. I, Messrs. Bates of Kentucky, Yates, Furcolo, Stockman, and Wilson of Indiana; on Chap. II, Messrs. McGrath, Kirwan, Andrews, Canfield, and Scrivner; on Chap. III, Messrs. Rooney, Flood, Preston, Stefan, and Clevenger. . . .

MR. [FRANCIS H.] CASE of South Dakota: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE of South Dakota: Will the chairman take a minute to explain how the conferees will operate under this arrangement?

Mr. Cannon: Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

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

There was no objection.

MR. CANNON: Mr. Speaker, we expect to go to conference tomorrow morning at 10 o'clock. The bill will be taken up by chapters seriatim. As a chapter is reached the entire subcommittee which wrote that particular chapter, and which therefore is more familiar with it than anyone else on the committee, along with the other managers on the part of the House, will take up the chapter with the Senate conferees.

MR. CASE of South Dakota: This means, then, that the four Members who were first named will sit through the entire conference.

MR. CANNON: They are the ranking members on the central subcommittee which reported the bill to the House and will sit with the respective subcommittees throughout the conference.

MR. CASE of South Dakota: And the Members who are assigned to a particular chapter will receive notification as their particular chapter is approached?

MR. CANNON: When a chapter is taken up, the conferees on the next succeeding chapter will be notified. We hope to proceed with as little delay as possible, subject always to the approval of the managers on the part of the Senate.

2. 96 CONG. REC. 11894, 11895, 81st Cong. 2d Sess.

Agreement as to Selection of Conference Chairman

§ 13.6 An agreement was made between the House and the Senate Committees on Appropriations with respect to selecting a conference chairman.

On July 19, 1962,[3] Mr. Clarence Cannon, of Missouri, stated as follows:

> Mr. Speaker, each branch of Congress in conference has group autonomy. The selection of the conference chairman is procedural for orderly functioning of the conference. Realizing this, the question of the selection of the conference chairman for the present session of Congress shall be left to the decision of the two subcommittee chairmen.
>
> It is agreed by the joint committee on behalf of the full Committees on Appropriations of the Senate and House of Representatives that for this session only the subcommittee chairmen of each body shall decide who shall act as chairman of the conference. It is further agreed that the chairmen of the Senate and House Committees on Appropriations appoint representatives of each committee to serve as a joint committee to study all the issues involved and to report in January 1963 their recommendations.

Appropriations on Legislative Bills—Duty of Conferees

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

On May 22, 1936,[4] a Member addressed Speaker Joseph W. Byrns, of Tennessee, as follows, and proceedings ensued as indicated below:

> MR. [JAMES M.] MEAD [of New York]: Mr. Speaker, I call up the conference report on the bill (H.R. 9496) to protect the United States against loss in the delivery through the mails of checks in payment of benefits provided for by laws administered by the Veterans' Administration, and I ask unanimous consent that the statement may be read in lieu of the report.
>
> The Clerk read the title of the bill.
>
> MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Speaker, I make a point of order on the conference report that it includes an appropriation which is contrary to the rules of the House and the Senate. . . .
>
> THE SPEAKER: The gentleman from New York [Mr. Mead], chairman of the Committee on the Post Office and Post Roads, presents a conference report signed by the conferees on the part of the Senate and the House. The gentleman from Texas [Mr. Buchanan] makes the point of order that the conference report is out of order because the conferees on the part of the House

3. 108 CONG. REC. 14133, 14134, 87th Cong. 2d Sess.

4. 80 CONG. REC. 7790–92, 74th Cong. 2d Sess.

in conference agreed to an amendment of the Senate providing an appropriation contrary to the rules of the House.

Senate amendment no. 1 contains the following language:

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

This amendment also contains the following language:

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

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

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

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

The Chair therefore sustains the point of order.

The Clerk will report the first amendment in disagreement.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. SNELL: Mr. Speaker, if the conference report is out of order, how can we consider it?

THE SPEAKER: The amendments are before the House and must be disposed of.

MR. SNELL: I supposed that the whole report went out.

THE SPEAKER: The report goes out, but that leaves the amendments before the House, and some action must be taken on them. It is for the House to say what action it will take. . . .

MR. [CARL E.] MAPES [of Michigan] (interrupting the reading of the Senate amendment): Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MAPES: Mr. Speaker, supplementing what the gentleman from New York [Mr. Snell] has said, an attempt was made to get this bill before the House by calling up the conference report and the conference report was held out of order. No further action to get the bill before the House has been taken. There has been no request to bring it up in any other way

except through the conference report, and the Speaker, very properly I think, has ruled that the conference report is out of order.

THE SPEAKER: The conference report was called up by the gentleman from New York [Mr. Mead]. The conference report has been held to be out of order, which leaves the Senate amendments before the House for consideration. The House must take some action on them.

MR. MAPES: How do the amendments get before the House for consideration?

THE SPEAKER: They are called up by the gentleman from New York [Mr. Mead].

MR. MAPES: No attempt has been made by the gentleman from New York [Mr. Mead], as I understand, to call them up.

THE SPEAKER: The Chair, in answer to the gentleman from Michigan, reads from section 3257 of Cannon's Precedents:

> When a conference report is ruled out of order the bill and amendments are again before the House as when first presented, and motions relating to amendments and conference are again in order.

The Chair thinks that completely answers the gentleman from Michigan.

MR. MAPES: That seems to cover the matter.

MR. [FREDERICK R.] LEHLBACH [of New Jersey]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. LEHLBACH: Are amendments put on a House bill by the Senate privileged?

THE SPEAKER: After the stage of disagreement has been reached they are. For this reason it is necessary that the House take some action upon the amendments at this time.

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

On Oct. 4, 1962,[5] a Member addressed Speaker pro tempore Carl Albert, of Oklahoma, and proceedings ensued as follows:

> MR. [THOMAS J.] MURRAY [of Tennessee]: Mr. Speaker, I call up the conference report on the bill (H.R. 7927) to adjust postal rates, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Tennessee?
>
> MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object and I do so in order to make a parliamentary inquiry, I desire to make a point of order against considerations of the conference report. . . .
>
> Mr. Speaker, I desire to make a point of order against consideration of the conference report, and I ask to be recognized at the proper time to make that point of order.

5. 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.

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

The Clerk will report the title of the bill.

The Clerk read the title of the bill.

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

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

Clause 2, rule XX, reads in part as follows:

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

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

> Sec. 1104. Notwithstanding any other provision of law the benefits made payable under the Civil Service Retirement Act by reason of the enactment of this part shall be paid from the civil service retirement and disability fund.
>
> The words "shall be paid from the civil service retirement and disability fund" constitute an appropriation within the meaning of clause 2 of rule XX. . . .
>
> Inasmuch as the House, when it sent the bill to conference, did not give specific authority to agree to such amendment I, therefore, submit that it is not in order for such language to be included in the conference report. . . .

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

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

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] makes a point of order that the language contained on page 110, section 1104, line 12, "shall be paid from the civil service retirement and disability fund" is in violation of clause 2, rule XX.

The Chair sustains the point of order.

§ 13.9 A point of order that House conferees had violated clause 2, Rule XX by agreeing to a provision in a Senate amendment to a House legislative bill, directing the use of funds already appropriated for a new purpose, was conceded and the conference report was ruled out of order.

On Nov. 29, 1979,[6] a conference report on H.R. 2676 (EPA research authorization for appropriations, fiscal year 1980) authorizing appropriations for environmental research and development was called up for consideration. Included in the conference report was a provision originally contained in a Senate amendment, directing that funds appropriated

6. 125 CONG. REC. 34113, 96th Cong. 1st Sess.

pursuant to the authorization be obligated and expended on a certain project not specifically funded by the appropriation law.

The Chair, noting that the appropriation bill for the activity concerned had already been enacted for the year in question, ruled that the provision at that time constituted an appropriation on a legislative bill and could not, under clause 2 of Rule XX, be agreed to by House conferees. The proceedings were as follows:

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

THE SPEAKER PRO TEMPORE:[7] The gentleman from Massachusetts will state the point of order.

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

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

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

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

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

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

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

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

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

In this instance, the conference report containing the Senate amendment having been ruled out of order because containing an appropriation, the manager of the conference report moved to recede and concur in the Senate amendment with an amendment merely encouraging, but not mandating, the use of funds already appropriated for a new purpose.[8]

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

8. 125 CONG. REC. 34114, 96th Cong. 1st Sess., Nov. 29, 1979.

§ 13.10 The rule restricting the authority of conferees in agreeing to appropriation language in Senate amendments does not apply to language in Senate bills.

On Jan. 25, 1972,[9] a conference report on S. 2819 (the foreign military assistance authorization) was under consideration which contained an additional provision beyond the scope of the differences committed to conference.[10] The Speaker, Carl Albert, of Oklahoma, in overruling a point of order against the report, noted that the House had adopted a resolution waiving points of order against the inclusion of such additional matter, and that clauses 2 and 3 of Rule XX (restricting the authority of House conferees from agreeing to appropriation or nongermane language, respectively, in Senate amendments) are not applicable where a Senate bill and House amendments are committed to conference. The proceedings were as indicated below:

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I desire to make a point of order against the consideration of the conference report. . . .

Mr. Speaker, I make a point of order on the grounds that certain provisions of the bill are not germane and exceed the authority of the conference. I point specifically, Mr. Speaker, to the language to be found on page 13 of the report, section 658:

> Sec. 658. Limitation on Use of Funds.—
>
> (a) Except as otherwise provided in this section, none of the funds appropriated to carry out the provisions of this Act or the Foreign Military Sales Act shall be obligated or expended until the Comptroller General of the United States certifies to the Congress that all funds previously appropriated and thereafter impounded during the fiscal year 1971 for programs and activities administered by or under the direction of the Department of Agriculture, the Department of Housing and Urban Development, and the Department of Health, Education and Welfare have been released for obligation and expenditure.

Mr. Speaker, I contend that this language goes far beyond the scope of the legislation, far beyond any intent of the Congress It is neither germane nor does it come within the scope of the legislation. . . .

MR. [THOMAS E.] MORGAN [of Pennsylvania]: . . . The rule is broad and covers the objections made by the gentleman from Iowa. Last November the House sent to conference two foreign aid bills, one economic and one military, which passed the Senate. At that time the House struck out all after the enacting clauses of both bills and inserted in lieu thereof the complete text of H.R. 9910, which had passed the House last August.

All the provisions of both the House and Senate bills that were in disagree-

9. 118 CONG. REC. 1076, 1077, 92d Cong. 2d Sess.

10. Inclusion of such matter violates Rule XXVIII clause 3.

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

THE SPEAKER: The Chair is ready to rule.

The gentleman from Iowa has raised a point of order against the conference report on the ground that the House conferees have exceeded their authority by including in the conference report provisions not germane or not in either the Senate bill or the House amendment and agreed to an appropriation in violation of clause 2, rule XX. That rule provides in relevant part:

> No amendment of the Senate . . . providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

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

The Chair also points out that the resolution under which this conference report is being considered specifically waives points of order under clause 3, rule XXVIII.

The action of the conferees in adding the language in section 658 of the conference report is protected by this waiver of points of order.

For these reasons the Chair overrules the point of order.

§ 13.11 Clause 2 of Rule XX which precludes House conferees from agreeing to Senate amendments providing for appropriations in a conference report absent specific authority applies only to Senate amendments which are sent to conference and not to appropriations contained in Senate legislative bills.

On June 30, 1976,[11] the Speaker[12] overruled a point of order against a conference report containing a provision permitting a new use of funds in an existing revolving fund, even though such provision constituted an appropriation on a legislative bill, since the provision had been contained in the Senate bill and since clause 2 of Rule XX is not applicable where a Senate bill and House amendments are committed to conference. The proceedings were as follows:

> MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3295) to extend the authorization for annual contributions under the U.S. Housing Act of 1937, to extend certain

11. 122 CONG. REC. 21632, 21633, 94th Cong. 2d Sess.
12. Carl Albert (Okla.).

housing programs under the National Housing Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report. . . .

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

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

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

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

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

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

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

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

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

The FHA insurance funds are designed to provide the reserves for payments on defaulted mortgages and for the operation of HUD related to the various insurance programs and any diversion of the use of such funds such as for payment for defects in the structure would violate clause 5 of rule XXI. In further support of this point of order, and specifically on the point that the provisions constitute a diversion of funds for a separate purpose not within the intention of the legisla-

tion establishing the fund, I cite the ruling of the Chair on October 5, 1972, which holds that an amendment allowing for the use of highway trust fund moneys to purchase buses,

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

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

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

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

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

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. . . .

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

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

THE SPEAKER: The Chair is ready to rule.

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

The Chair has ruled on this matter before.

On January 25, 1972, the Chair ruled in connection with a point of order made by the gentleman from Iowa (Mr. Gross) against the conference report on a foreign military as-

sistance authorization bill (S. 2819) on the ground that the House conferees had exceeded their authority by including in the conference report an appropriation entirely in conflict with clause 2, rule XX. That rule provides, in relevant part, that "no amendment of the Senate"—that is the important language—no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

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

The Chair, therefore, overrules the point of order.

After the above ruling, Mr. Brown pointed to the following language in the conference report as representing, in effect, an agreement by the Senate "with a Senate amendment":

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

The Speaker responded that a conference report on a Senate bill which recommends that the Senate concur in the House amendment with an amendment does not place before the House a Senate amendment against which a point of order can be raised under clause 2 of Rule XX, since the conference report represents only a proposed compromise and not a Senate amendment originally committed to conference.[13]

§ 13.12 Although Rule XXI clause 5 permits a point of order against an appropriation in a legislative bill or amendment to be raised "at any time" during the initial consideration of the bill or amendment under the five-minute rule in the House, a point of order against similar language permitted to remain in the House version and included in a conference report on that bill will not lie, since the only rule prohibiting such inclusion (Rule XX clause 2) is limited to language originally contained in a Senate amendment where House conferees have not been specifically authorized to agree thereto.

The following proceedings took place on May 1, 1975,[14] during consideration of a conference report, as indicated below:

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R.

13. 122 CONG. REC. 21634, 94th Cong. 2d Sess., June 30, 1976.

14. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess.

6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of U.S. Armed Forces in Indochina, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report. . . .

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

THE SPEAKER [Carl Albert, of Oklahoma]: The gentlewoman will state it.

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

In the House bill (H.R. 6096), section 3 dealt with evacuation programs referred to in section 2 of the bill and waived the same series of laws with respect thereto. In order for section 3 to be considered, it required a rule from the Rules Committee. And a rule was granted waiving points of order against section 3 of the bill. But section 7 of the conference report, in speaking of evacuation programs authorized by the entire act and not just by one section, exceeds the scope of section 3 of the bill and exceeds the waiver that was permitted under the rule. It therefore violates rule XXI, clause 5, and violates rule XX, clause 2, which prohibits House conferees from accepting a Senate amendment providing for an appropriation on a nonappropriation bill in excess of the rules of the House. . . .

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

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

THE SPEAKER: The Chair is ready to rule.

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

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

virtually identical to section 3 of the House bill, and they have not agreed to a Senate amendment containing an appropriation. Therefore, clause 2, rule XX, is not applicable to the present conference report.

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

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

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

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

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

Amendments to Senate Amendments

§ 13.13 Where a Senate amendment on a general appropriation bill proposes an expenditure not authorized by law, it is in order in the House to perfect such Senate amendment by germane amendments.

The following proceedings took place on Feb. 8, 1937,[15] during consideration of H.R. 3587, a deficiency appropriations bill:

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Speaker, I move to recede and concur in the Senate amendment with an amendment, which I send to the Clerk's desk. . . .

MR. [HENRY] ELLENBOGEN [of Pennsylvania]: Mr. Speaker, I offer a pref-

15. 81 CONG. REC. 975, 976, 75th Cong. 1st Sess.

erential motion, which I send to the Clerk's desk.

The Clerk read as follows:

Mr. Ellenbogen moves that the House recede and concur in Senate amendment no. 9.

MR. WOODRUM: Mr. Speaker, I ask for a division of the question.

THE SPEAKER PRO TEMPORE:[16] The gentleman from Virginia demands a division of the question. The question is, Shall the House recede from its disagreement to the Senate amendment?

The question was taken, and the motion to recede was agreed to.

MR. WOODRUM: Mr. Speaker, I move to concur in the Senate amendment with an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

> Mr. Woodrum moves that the House concur in the Senate amendment with an amendment as follows: In lieu of the matter inserted by said amendment insert the following: "or of any appropriation or other funds of any executive department or independent executive agency shall be used after June 30, 1937, to pay the compensation of any person detailed or loaned for service in connection with any investigation or inquiry undertaken by any committee of either House of Congress under special resolution thereof."

MR. ELLENBOGEN: Mr. Speaker, I make the point of order that the motion of the gentleman from Virginia violates the rules of the House in that it is legislation on an appropriation bill.

THE SPEAKER PRO TEMPORE: The Chair will state that the Senate amendment is legislation, and the amendment to that amendment offered by the gentleman from Virginia is not out of order because it contains legislation. The Chair therefore overrules the point of order.

MR. [THOMAS] O'MALLEY [of Wisconsin]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. O'MALLEY: Mr. Speaker, I make the point of order that the amendment of the gentleman from Virginia is not germane, since it limits the Senate amendment by date.

THE SPEAKER PRO TEMPORE. The Chair will state that it deals with the same subject matter, and the mere limitation of the Senate amendment by date does not destroy its germaneness, and the Chair therefore overrules the point of order.

§ 13.14 Where the Senate attaches to an appropriation bill a legislative amendment, it is in order in the House to concur with a perfecting amendment provided such amendment does not broaden the scope of the legislation in the Senate amendment.

On June 15, 1933,[17] during consideration of Senate amendments to the independent offices appropriation bill,[18] the following proceedings took place:

The Clerk read as follows:

16. John J. O'Connor (N.Y.).

17. 77 CONG. REC. 6150, 73d Cong. 1st Sess.

18. H.R. 5389.

Amendment No. 30: On page 57, after line 14, insert:

"Sec. 6. After the enactment of this act the Postmaster General is directed to suspend payments upon any air mail or ocean mail contract to any individuals, companies, or corporations which, singly or in combination with other individuals, companies, or corporations receiving a subsidy, pay any salary or salary combined with bonus to any officer, agent, or employee in excess of a salary of $17,500. . . ."

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Speaker, I move to recede and concur with an amendment, which I send to the desk.

The Clerk read as follows:

Mr. Woodrum moves that the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows: In lieu of the matter inserted by said amendment insert the following:

"Sec. 6. Hereafter the Postmaster General shall not award any air mail contract or any ocean mail contract under the Merchant Marine Act of 1928 to any individuals, companies, or corporations which, singly or in combination with other individuals, companies, or corporations pay any salary, or salary combined with bonus, to any officer, agent, or employee in excess of $17,500. . . ."

MR. [EDWARD W.] GOSS [of Connecticut]: Mr. Speaker, a point of order.

The amendment as I heard it read contains the word "hereafter", making this permanent law, forever. I have no particular objection to the language contained, that makes it for the duration of the life of this appropriation bill, but it might not be wise, under certain circumstances, to make it permanent, forever. The word "hereafter" makes it legislation on an appropriation bill, which makes it permanent legislation.

MR. WOODRUM: The original text makes it permanent legislation.

MR. GOSS: But it reads "after the enactment of this act."

THE SPEAKER:[19] We are considering the Senate amendment. The entire amendment of the Senate is legislation which the House may now perfect by any germane amendment.

MR. GOSS: I will reserve it for the moment, to hear further explanation. I do not want to see it made permanent law.

MR. WOODRUM: The only change which the House makes in it is the very proper change not to undertake to make this retroactive to apply to contracts. They have postoffice contracts that have already been made in good faith, but it does provide——

MR. GOSS: For all time.

MR. WOODRUM: Yes; until Congress changes it, because the original language was for all time. . . .

THE SPEAKER: The Chair overrules the point of order made by the gentleman from Connecticut.

§ 13.15 In amending a Senate amendment the House is not confined within the limits of the amount set by the original bill and the Senate amendment.

On June 20, 1932,[20] during consideration of H.R. 11267, the

19. Henry T. Rainey (Ill.).

20. 75 CONG. REC. 13522–25, 72d Cong. 1st Sess.

Economy Committee amendment to the legislative appropriation bill, a Senate amendment was under consideration which provided for an 11 percent reduction in all government salaries in excess of $2,500. An amendment was offered proposing to reduce salaries by a graduated scale with a minimum exemption of $1,200. A point of order was made as follows, and proceedings ensued as indicated below:

MR. [FIORELLO H.] LAGUARDIA [of New York]: Mr. Speaker, I make the point of order that the subject matter contained in the gentleman's motion at this time is not proper in that there is nothing before the House at this time which shows a change of attitude on the part of the House in its action on the question of salary reduction. There are two propositions before the House. One is the House bill providing for a reduction with a $2,500 exemption, and the other is the Senate so-called furlough plan. The gentleman seeks to concur in the Senate plan with an amendment, and the matter in the amendment is not germane to that plan. The gentleman's motion is beyond the province of conferees. The subject matter contained in the motion is an entirely new proposition. If conferees have failed to agree on either the House bill or Senate bill, then they should be discharged. If the gentleman seeks to carry out a reduction plan, then I submit that the House has not indicated by vote or otherwise that it recedes from its original position. What the gentleman is seeking to do is to get legislative action de novo on a matter which has already been passed on by the House. When we come to that point—enter on our own initiative or from the Senate—new conferees representing the views of the House should be and would be appointed. I repeat, Mr. Speaker, that the view of the House must first be presented by friends of the proposition to the Senate conferees. There is no indication in the report or otherwise that the House bill was actually sponsored in conference by the conferees on the part of the House, and I submit that at this stage we can not legislate de novo in order to carry out the personal views or preference of the conferees. The House should at least be given the opportunity to express itself on its own bill. In this roundabout method the House is compelled to take other action without first knowing what the attitude of the other body on the proposition may be.

MR. [JOHN C.] SCHAFER [of Wisconsin]: Mr. Speaker, I believe the Chair should hold that the amendment offered by the gentleman from Alabama is out of order, because the amendment goes beyond the range of difference between the action of the House and the Senate. The furlough plan incorporated in the bill by the Senate and the salary-reduction plan as passed by the House contain no salary reductions in salaries below $2,500 per year. I believe on that point alone the amendment is not germane, and therefore it is not in order, as the conferees have exceeded their authority.

MR. [JOHN] MCDUFFIE [of Alabama]: Mr. Speaker, I think the Chair has ample precedent for overruling the point of order raised by the gentleman

from Wisconsin, because, in the first place we are not dealing with a conference report, and in the second place, I direct the attention of the Speaker to the fact that anything that is germane is permissible to be written in an amendment such as I have offered.

THE SPEAKER PRO TEMPORE [William B. Bankhead, of Alabama]: The Chair is ready to rule.

The gentleman from New York (Mr. LaGuardia) interposes a point of order against the amendment offered by the gentleman from Alabama (Mr. McDuffie) to the Senate proposal, upon the ground that it does not affirmatively appear that the House conferees really took into consideration the action and voice of the House in the conference. That, of course, is a matter entirely beyond the province of the Chair, and is a matter of speculation, necessarily. The Chair, therefore, overrules that point of order.

The gentleman from Wisconsin (Mr. Schafer) raised the point of order that the provisions embodied in the motion of the gentleman from Alabama to recede and concur with an amendment to the Senate amendment was beyond the limits fixed in either the House bill or the Senate amendment. The Parliamentarian has furnished the Chair with a syllabus of an opinion by Chairman Hepburn, of Iowa, made on February 26, 1902, which may be found in Hinds' Precedents (vol. 5, sec. 6187). It is as follows: "In amending a Senate amendment the House is not confined within the limits of amount set by the original bill and the Senate amendment." The Chair thinks that that decision disposes of the point of order raised by the gentleman from Wisconsin. The Chair desires to say in passing upon these points of order that in cases of this kind the only requirement is that the amendment proposed in the motion to recede and concur with an amendment must be germane to the Senate amendment. This question arose on May 3, 1922, when Mr. Speaker Gillett, in overruling a point of order similar to this, held that to a Senate amendment providing a new method of taxation in the District of Columbia and revising the fiscal relationship of the District of Columbia and the United States with other incidental propositions an amendment proposing a different scheme is germane, although different in detail.

The Chair thinks that these decisions fully cover points of order raised by the gentleman from New York and the gentleman from Wisconsin, and therefore overrules the points of order.

Similarly, on June 28, 1932,[1] the following proceedings took place during consideration of the Navy appropriation bill:[2]

THE SPEAKER:[3] The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Amendment No. 16: Page 23, line 17, strike out "$1,014,250" and insert in lieu thereof "$1,191,850."

MR. [WILLIAM A.] AYRES (of Kansas): Mr. Speaker, I move that the House recede and concur with an amendment.

The Clerk read as follows:

Mr. Ayres moves to recede and concur in Senate amendment No. 16

1. *Id.* at pp. 14207, 14208.
2. H.R. 11452.
3. John N. Garner (Tex.).

with the following amendment: In lieu of the sum proposed by said amendment insert the following: "$1,157,535 (none of which shall be available for increased pay for making aerial flights by nonflying officers or observers except eight officers above the grade of lieutenant commander, to be selected by the Secretary of the Navy)."

Mr. LaGuardia: I make the point of order that the amendment offered by the gentleman from Kansas is beyond the power and scope of the conferees; that it brings in entirely new matter, that the difference between the Senate bill and the House bill is simply one of amount, and we can not at this stage of the proceedings legislate on the bill.

THE SPEAKER: On the grounds the gentleman makes his point of order the Chair will overrule it. The question is on the motion to concur with an amendment.

The motion was agreed to.

THE SPEAKER: Let the Chair say in connection with that point of order that if the gentleman from New York had made the point of order that the proposed amendment was not germane to the Senate amendment, the Chair thinks it would have been sufficient, but the gentleman from New York said it was beyond the jurisdiction of the conferees, and the motion to concur with an amendment is not subject to that point of order.

Point of Order Against Appropriations in Senate Bill

§ 13.16 A point of order under the rule barring appropriations in a legislative bill may be raised against an item of appropriation in a Senate bill.

On July 30, 1957,[4] during consideration of S. 1865, a bill establishing an airways modernization board and to provide for the development and modernization of the national system of navigation and traffic control facilities to serve present and future needs of civil and military aviation, a provision granting authority to transfer "unexpended balances of appropriations, allocations, and other funds available," was ruled out by Chairman George H. Mahon, of Texas, as an appropriation reported from a nonappropriating committee in violation of clause 4, rule XXI.

The language having been stricken from the Senate bill pursuant to the point of order, that fact was reported by Chairman Mahon to the House.[5] The language stricken from the bill on the point of order was treated as an amendment of the Senate bill and so engrossed and messaged to the Senate.

Special Rule Waiving Points of Order

§ 13.17 A resolution is set forth below waiving points of

4. 103 CONG. REC. 13056, 85th Cong. 1st Sess.
5. *Id.* at pp. 13181, 13182, July 31, 1957.

order against a conference report on a general appropriation bill, and making in order a motion to recede from disagreement and to concur therein with an amendment.

On Dec. 23, 1963,[6] the following proceedings took place:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I present a privileged resolution (H. Res. 600) from the Committee on Rules and ask for its immediate consideration.

The Clerk read the title of the resolution.

THE SPEAKER:[7] The resolution will be referred to the House Calendar and ordered to be printed.

The resolution is as follows:

Resolved, That upon the adoption of this resolution it shall be in order to consider without the intervention of any point of order the conference report on the bill (H.R. 9499) making appropriations for foreign aid and related agencies for the fiscal year ending June 30, 1964, and for other purposes, and that during the consideration of the amendment of the Senate numbered 20 to the bill, it shall be in order to consider, without the intervention of any point of order, a motion by the Chairman of the Managers on the part of the House to recede and concur in said Senate amendment numbered 20 with an amendment.

Suspension of Rules for Matters Not in Disagreement

§ 13.18 The two Houses having been unable to agree on all provisions of the bill, the House, under a motion to suspend the rules, passed a new bill containing matters in the original bill not in controversy.

On July 2, 1942,[8] the Department of Agriculture appropriation bill for fiscal 1943 was passed in the House in the following manner:

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, I move to suspend the rules and pass the bill H.R. 7349, which I send to the Clerk's desk.

The Clerk read as follows:

A bill making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1943, and for other purposes.

THE SPEAKER:[9] Is a second demanded?

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, I demand a second.

MR. TARVER: Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

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6. 109 CONG. REC. 25495, 88th Cong. 1st Sess.

Note: The waiver of points of order against the amendment was necessary because the language of the amendment would have been subject to the point of order that it constituted further legislation on an appropriation bill.

7. John W. McCormack (Mass.).

8. 88 CONG. REC. 5953, 5954, 5960, 5961, 77th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

THE SPEAKER: Is there objection to the request of the gentleman from Georgia (Mr. Tarver)?

There was no objection.

MR. TARVER: Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, this is a proposal to enact for the present fiscal year 1943, the provisions of H.R. 6709, the Agricultural appropriation bill, insofar as those provisions have been agreed upon by the House and the Senate, and with respect to the appropriations for the farm tenant land purchase program and for the Farm Security Administration, which are in disagreement, the provisions of the bill are for expenditures by the Farm Security Administration for these purposes for the next 60 days; that is, for the months of July and August, which will be authorized upon the same bases proportionate for the time involved as the expenditures for those purposes were authorized in the Agricultural Appropriation Act for the fiscal year 1942, with the proviso that any amount expended by the Farm Security Administration for these purposes during the months of July and August shall be charged against whatever amounts are finally appropriated by the Congress to the uses of the Farm Security Administration for these objectives.

As I said, all of the provisions of the bill, and all of the limitations in the bill so far as there does not exist disagreement between the House and Senate with reference thereto, are proposed to be enacted. The proviso with regard to Commodity Credit Corporation funds is to be enacted except as the Senate amendments thereto in disagreement are involved.

There is also a further proviso in title II of the bill which I have just sent to the Clerk's desk, which would validate expenditures upon the bases which I have described to and including the 1st day of July.

H.R. 7349 passed in the House. Subsequently, various Members discussed the consequences of the bill's passage. Some of the remarks are as follows:

MR. DIRKSEN: Mr. Speaker, may I inquire whether or not the majority leader wants to say anything about the situation that is now in abeyance for the information of the House?

MR. [JOHN W.] MCCORMACK [of Massachusetts]: I have nothing to advise the House about at this time. The Senate has adjourned, and I have been informed that they sent the bill which passed the House a short time ago to the committee.

MR. DIRKSEN: Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

THE SPEAKER: Is there objection?

Mr. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, reserving the right to object, as I understand the parliamentary situation, as far as the appropriation bill is concerned, it is this. The House passed the regular Department of Agriculture appropriation bill. It went to the Senate. The Senate placed amendments. The two Houses were in disagreement and conferees were appointed. That appropriation bill is in conference. This afternoon certain members of the Appropriations Committee who happened to be the conferees on the agriculture bill brought in another and different appropriation

bill.[10] It was passed under suspension of the rules, with a new number. It had no connection with the bill in conference. It was an independent bill. After that bill passed the House and went to the Senate, the Senate recognized it as a new appropriation bill, which it is, and treated it according to the rules of the Senate, and referred it to the Appropriations Committee of the Senate for consideration. The Senate conferees had no part in framing the new bill. So that today the regular agriculture appropriation bill is in conference between the two Houses. Today's House action has had no effect on the conference committee. Another appropriation bill covering much of the same matter has been referred to the Senate Committee on Appropriations.

MR. MCCORMACK: I think the gentleman's statement fairly presents the picture except—I would not want to take issue—but I would want to enlarge or express my own views on one observation which the gentleman made—that it had no relationship to the bill in conference. It at least had an attempted relationship.

MR. MIRCHENER: Yes; the two bills deal with the same subject matter, but one bill was the legitimate child of the rules of the House and the Appropriations Committee. The other bill was not.

MR. MCCORMACK: I am not taking issue with my friend, but I will certainly say there was an attempted relationship. At least the House in its own way attempted to meet the legislative situation that exists.

Amendment by Concurrent Resolution

§ 13.19 Items in an appropriation bill not in disagreement between the two Houses, and hence not committed to the conferees, have been changed through consideration by unanimous consent of a concurrent resolution directing the changes in the enrollment of the bill.

On July 23, 1962,[11] the following proceedings took place:

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, pursuant to the unanimous agreement of last Friday, I call up for consideration a House concurrent resolution.

The Clerk read as follows:

H. CON. RES. 505

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives be authorized and directed in the enrollment of the bill H.R. 11038 to make the following changes in the engrossed House bill:

(1) Page 2, strike out lines 13 to 16, inclusive. . . .

(28) Page 14, strike out lines 4 to 7, inclusive.

(29) Page 14, strike out lines 17 to 21, inclusive.

MR. THOMAS (interrupting reading of the House concurrent resolution): Mr. Speaker, I ask unanimous consent that further reading of the resolution be dispensed with, I shall attempt to explain what it is.

THE SPEAKER:[12] Is there objection to the request of the gentleman from Texas?

10. H.R. 7349.

11. 108 CONG. REC. 14400–03, 87th Cong. 2d Sess.

12. John W. McCormack (Mass.).

There was no objection.

MR. THOMAS: Mr. Speaker, it will be recalled this deals with what we call the second supplemental appropriation bill for 1962 When the supplemental left the House it had 55 items carrying about $447 million, which was a reduction, in round figures, of $100 million under the budget, a reduction of about 20 percent.

It went to the other body and that body added some 29 items, increasing the amount over the House by $112 million, which made a round figure of about $560 million.

We bring to you two items, one a concurrent resolution and the other a conference report. First, why the concurrent resolution? We put in the concurrent resolution some 29 items which were originally in the supplemental, but those 29 items are a reduction—follow me now—below the figure that was in the supplemental when it left the House and the figure when it left the Senate.

It is a complete reduction and a change. It is in the concurrent resolution because it could not be in the conference report, and the reason it could not be in the conference report is because it is a reduction in those amounts. . . .

THE SPEAKER: The question is on the resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.[13]

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13. *Parliamentarian's Note:* The second supplemental appropriation bill, H.R. 11038, was passed by the House on Mar. 30, 1962; by the Senate, amended, on Apr. 6. The conference report was not filed until July 20. Since fiscal year 1962 expired on June 30, the need for some of the funds in the bill had dissipated. To eliminate the sums no longer required and not in disagreement, the concurrent resolution was agreed to.