

continuing appropriations for the current fiscal year but also enacting by reference six general appropriation bills (Oct. 21, 2003, p. —).

Ballot votes

11. In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

§ 1034. Elections by ballot. This rule was first adopted in 1789 and was amended in 1837 (V, 6003). It was renumbered January 3, 1953 (p. 24). The last election by ballot seems to have occurred in 1868 (V, 6003).

RULE XXI

RESTRICTIONS ON CERTAIN BILLS

Reservation of certain points of order

1. At the time a general appropriation bill is reported, all points of order against provisions therein shall be considered as reserved.

§ 1035. Reservation of points of order. This clause was added in the 104th Congress (sec. 215(e), H. Res. 6, Jan. 4, 1995, p. 468), rendering unnecessary the former practice that a Member reserve points of order when a general appropriation bill was referred to the calendar of the Committee of the Whole House on the state of the Union, in order that provisions in violation of rule XXI could be stricken in the Committee of the Whole (see § 1044, *infra*). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 8 of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

General appropriation bills and amendments

2. (a)(1) An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that are already in progress.

§ 1036. Unauthorized appropriations in reported general appropriation bills or amendments thereto.

(2) A reappropriation of unexpended balances of appropriations may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, except to continue appropriations for public works and objects that are already in progress. This subparagraph does not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated that are reported by the Committee on Appropriations.

§ 1037. Reappropriations prohibited.

(b) A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill (which may include those recommended to the Committee on Appropriations by direction of a legislative committee having jurisdiction over the

§ 1038. Legislation in reported general appropriation bills; exceptions.

subject matter) and except rescissions of appropriations contained in appropriation Acts.

(c) An amendment to a general appropriation bill shall not be in order if changing existing law, including an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation. Except as provided in paragraph (d), an amendment proposing a limitation not specifically contained or authorized in existing law for the period of the limitation shall not be in order during consideration of a general appropriation bill.

§ 1039. Legislation or limitations in amendments to general appropriation bills.

(d) After a general appropriation bill has been read for amendment, a motion that the Committee of the Whole House on the state of the Union rise and report the bill to the House with such amendments as may have been adopted shall, if offered by the Majority Leader or a designee, have precedence over motions to amend the bill. If such a motion to rise and report is rejected or not offered, amendments proposing limitations not specifically contained or authorized in existing law for the period of the limitation or proposing germane amendments that retrench expenditures by reductions of amounts of money covered by the bill may be considered.

§ 1040. Motion to rise and report as preferential to amendments.

(e) A provision other than an appropriation designated an emergency under section 251(b)(2) or section 252(e) of the Balanced Budget and Emer-

§ 1041. Designated emergencies in reported appropriation bills.

gency Deficit Control Act, a rescission of budget authority, or a reduction in direct spending or an amount for a designated emergency may not be reported in an appropriation bill or joint resolution containing an emergency designation under section 251(b)(2) or section 252(e) of such Act and may not be in order as an amendment thereto.

(f) During the reading of an appropriation bill for amendment in the Committee of the Whole House on the state of the Union, it shall be in order to consider en bloc amendments proposing only to transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill. When considered en bloc under this paragraph, such amendments may amend portions of the bill not yet read for amendment (following disposition of any points of order against such portions) and are not subject to a demand for division of the question in the House or in the Committee of the Whole.

§ 1042. Offsetting amendments en bloc to appropriation bills.

The 25th Congress in 1837 was the first to adopt a rule prohibiting appropriations in a general appropriation bill or amendment thereto not previously authorized by law, in order to prevent delay of appropriation bills because of contention over propositions of legislation. In 1838 that Congress added the exception to permit unauthorized appropriations for continuation of works in progress and for contingencies for carrying on departments of the Government. The rule remained in that form until the 44th Congress in 1876, when William S. Holman of Indiana persuaded the House to amend the rule to permit germane legislative retrenchments. In 1880, the 46th Congress dropped the exception that permitted unauthorized appropriations for contingencies of Government departments, and modified the "Holman Rule" to define retrenchments as the reduction of the number and salary of officers of the United States, the reduction of compensation of any person paid out of the Treasury of the United States, or the reduction

of the amounts of money covered by the bill. That form of the retrenchment exception remained in place until the 49th Congress in 1885, when it was dropped until the 52d Congress in 1891, and then reinserted through the 53d Congress until 1894. It was again dropped in the 54th Congress from 1895 until reinserted in the 62d Congress in 1911 (IV, 3578; VII, 1125).

The clause remained unamended until January 3, 1983, when the 98th Congress restructured it in the basic form of paragraphs (a)–(d). Clerical and stylistic changes were effected when the House recodified its rules in the 106th Congress, including a change to clause 2(a)(2) to clarify that the point of order lies against the offending provision in the text and not against consideration of the entire bill. At that time former clause 6 was transferred to clause 2(a)(2) and former clause 2(a) became clause 2(a)(1) (H. Res. 5, Jan. 6, 1999, p. 47).

Paragraph (a)(1) (formerly paragraph (a)) retained the prohibition against unauthorized appropriations in general appropriation bills and amendments thereto except in continuation of works in progress.

Paragraph (a)(2) (formerly clause 6), from section 139(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190f(c)), was made part of the standing rules in the 83d Congress (Jan. 3, 1953, p. 24). Previously, a reappropriation of an unexpended balance for an object authorized by law was in order on a general appropriation bill (IV, 3591, 3592; VII, 1156, 1158). This provision was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to permit the Committee on Appropriations to report transfers of unexpended balances within the department or agency for which originally appropriated.

Paragraph (b) narrowed the “Holman Rule” exception from the prohibition against legislation to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. The last exception in paragraph (b), permitting the inclusion of legislation rescinding appropriations in appropriation Acts, was added in the 99th Congress by the Balanced Budget and Emergency Deficit Control Act of 1985 (sec. 228(a), P.L. 99–177). The latter feature of the paragraph does not extend to a rescission of budget authority provided by a law other than an appropriation Act (see, § 1052, *infra*). In the 105th Congress paragraph (b) was amended to treat as legislation a provision reported in a general appropriation bill that makes funding contingent on whether circumstances not made determinative by existing law are “known” (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraph (c) retained the prohibition against amendments changing existing law but permitted limitation amendments during the reading of the bill by paragraph only if specifically authorized by existing law for the period of the limitation. In the 105th Congress paragraph (c) was amended to treat as legislation an amendment to a general appropriation

bill that makes funding contingent on whether circumstances not made determinative by existing law are “known” (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraph (d) provided a new procedure for consideration of retrenchment and other limitation amendments only when the reading of a general appropriation bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House (H. Res. 5, Jan. 3, 1983, p. 34). In the 104th Congress paragraph (d) was amended to limit the availability of the preferential motion to rise and report to the Majority Leader or his designee (sec. 215(a), H. Res. 6, Jan. 4, 1995, p. 468). In the 105th Congress it was further amended to make the motion preferential to any motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. 121).

Paragraphs (e) and (f) were added in the 104th Congress (sec. 215, H. Res. 6, Jan. 4, 1995, p. 468). However, paragraph (e) is no longer effective with respect to discretionary spending because under section 275 of the Balanced Budget and Emergency Deficit Control Act section 251 expired on September 30, 2002. A technical correction to paragraph (f) was effected in the 109th Congress (sec. 2(1), H. Res. 5, Jan. 4, 2005, p. —).

As the rule applies only to general appropriation bills, which are not enumerated or defined in the rules (VII, 1116), bills appropriating only for one purpose have been held not to be “general” within the meaning of this clause (VII, 1122). The following have been held not to be “general appropriation bills” within the purview of this clause:

(1) a joint resolution providing an appropriation for a single Government agency (Jan. 31, 1962, p. 1352); (2) a joint resolution only containing continuing appropriations for diverse agencies to provide funds until regular appropriation bills are enacted (Sept. 21, 1967, p. 26370); (3) a joint resolution providing an appropriation for a single Government agency and permitting a transfer of a portion of those funds to another agency (Oct. 25, 1979, p. 29627); (4) a joint resolution transferring funds already appropriated from one specific agency to another (Mar. 26, 1980, p. 6716); (5) a joint resolution transferring unobligated balances to the President to be available for specified purposes but containing no new budget authority (Mar. 3, 1988, p. 3239).

A point of order under this rule does not apply to a special order reported from the Committee on Rules “self-executing” the adoption in the House of an amendment changing existing law (July 27, 1993, p. 17117). By unanimous consent the Committee of the Whole may vacate proceedings under specified points of order (June 7, 1991, p. 13973). A point of order may be withdrawn as a matter of right (in the Committee of the Whole as well as in the House) before action thereon (May 19, 2000, p. 8600).

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole,

where the Chair, in response to a point of order, may rule out any portion of the bill in conflict with the rule (IV, 3811; Sept. 8, 1965, pp. 23140, 23182). Portions of the bill thus stricken are not reported back to the House. Before the adoption of clause 1 (formerly clause 8) in the 104th Congress (see § 1035, *supra*), it was necessary that a Member reserve points of order when a general appropriation bill was referred to the calendar of the Committee of the Whole House on the state of the Union, in order that provisions in violation of the rule could be stricken in the Committee (V, 6921–6925; VIII, 3450; Feb. 6, 1926, p. 3456). Where points of order had been reserved pending a unanimous-consent request that the committee be permitted to file its report when the House would not be in session, it was not necessary that they be reserved again when the report ultimately was presented as privileged when the House was in session, as the initial reservation carried over to the subsequent filing (Mar. 1, 1983, p. 3241). In an instance where points of order were not reserved against an appropriation bill when it was reported to the House and referred to the Committee of the Whole, points of order in the Committee of the Whole against a proposition in violation of this clause were overruled on the ground that the chairman of the Committee of the Whole lacked authority to pass upon the question (Apr. 8, 1943, p. 3150, 3153).

The enforcement of the rule also occurs in the House in that a motion to recommit a general appropriation bill may not propose an amendment containing legislation (Sept. 1, 1976, p. 28883). Clause 2(c) provides that a limitation not specifically contained in existing law or authorized for the period of the limitation shall not be in order during consideration of a general appropriation bill except as contemplated by clause 2(d), including a requirement that it come at the end of the reading (Speaker Foley, Aug. 1, 1989, p. 17159; Aug. 3, 1989, p. 18546); and such amendment is precluded whether the Committee of the Whole has risen and reported automatically pursuant to a special rule or, instead, by a motion at the end of the reading for amendment (June 22, 1995, p. 16844).

Points of order against unauthorized appropriations or legislation on general appropriation bills may be made as to the whole or only a portion of a paragraph (IV, 3652; V, 6881). The fact that a point of order is made against a portion of a paragraph does not prevent another point of order against the whole paragraph (V, 6882; July 31, 1985, p. 21895), nor does it prevent another Member from demanding that the original point of order be extended to the entire paragraph (*e.g.*, July 16, 1998, p. 15806; Sept. 4, 2003, p. —, p. —; Sept. 14, 2004, p. —; June 29, 2005, p. —). If a portion of a proposed amendment is out of order, it is sufficient for the rejection of the whole amendment (V, 6878–6880). If a point of order is sustained against any portion of a package of amendments considered en bloc, all the amendments are ruled out of order and must be reoffered separately, or those that are not subject to a point of order may be considered en bloc by unanimous consent (Sept. 16, 1981, pp. 20735–38; June 21, 1984, p. 17687; July 26, 2001, pp. 14716, 14721). Where a point of

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order is sustained against the whole of a paragraph the whole must go out, but it is otherwise when the point of order is made only against a portion (V, 6884, 6885).

General appropriation bills are read “scientifically” only by paragraph headings and appropriation amounts, and points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount (Deschler, ch. 26, § 2.26). A point of order against a paragraph under this clause may be made only after that paragraph has been read by the Clerk, and not before its reading pending consideration of an amendment inserting language immediately prior thereto (June 6, 1985, pp. 14605, 14609). Where the reading of a paragraph of a general appropriation bill has been dispensed with by unanimous consent, the Chair inquires whether there are points of order against the paragraph before entertaining amendments or directing the Clerk to read further, but he does not make such an inquiry where the Clerk has actually read the paragraph (May 31, 1984, p. 14608). Where a portion of the bill is considered as having been read and open to amendment by unanimous consent, points of order against provisions in that portion must be made before amendments are offered, and may not be reserved (Dec. 1, 1982, p. 28175; May 19, 2000, p. 8595; July 26, 2003, p. —). Where a chapter is considered as read by unanimous consent and open to amendment at any point, no amendments are offered and the Clerk begins to read the next chapter, it is too late to make a point of order against a paragraph in the preceding chapter (June 11, 1985, p. 15181). It is too late to rule out the entire paragraph after points of order against specific portions have been sustained and an amendment to the paragraph has been offered (June 27, 1974, pp. 21670–72).

The fact that legislative jurisdiction over the subject matter of an amendment may rest with the Committee on Appropriations does not immunize the amendment from the application of clause 2(c) of rule XXI (July 17, 1996, p. 17550; July 24, 1996, p. 18898). The “works in progress” exception under clause 2(a) of rule XXI is a defense to a point of order against an unauthorized appropriation reported in a general appropriation bill and is not a defense to a point of order under clause 2(c) of rule XXI that an amendment to an appropriation bill constitutes legislation (July 24, 1996, p. 18898).

For a discussion of perfecting amendments to unauthorized appropriations or legislation permitted to remain in a general appropriation bill by failure to raise or by waiver of a point of order, see § 1057, *infra*.

To resolve an ambiguity when ruling on a point of order, the Chair may:

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| <p>§ 1044a. Points of order on general appropriation bills, deliberation of.</p> | <p>(1) examine legislative history established during debate on an amendment against which a point of order has been reserved (June 14, 1978, p. 17651); (2) inquire after its author’s intent (Oct. 29, 1991, p. 28818); or (3) examine the accompanying report to determine the intent of the section (June 25, 2004, p. —).</p> |
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In the administration of the rule, it is the practice that those upholding an item of appropriation should have the burden of showing the law authorizing it (IV, 3597; VII, 1179, 1233, 1276; June 23, 2000, p. 12123). Thus, the burden of proving the authorization for appropriations carried in a bill, or that the language in the bill constitutes a valid limitation that does not change existing law, falls on the proponents and managers of the bill (May 28, 1968, p. 15357; Nov. 30, 1982, p. 28062; June 25, 2004, p. —). By the same token, the proponent of an amendment has the burden of proof to show that an appropriation contained in an amendment is authorized by law (*e.g.*, May 11, 1971, p. 14471; Oct. 29, 1991, p. 28791; July 26, 1995, p. 20567; July 27, 1995, pp. 20808, 20811; July 31, 1995, p. 21207) or that the amendment constitutes a valid limitation (July 17, 1975, p. 23239; June 16, 1976, p. 18666; July 18, 1995, p. 19357; June 24, 2003, p. —). For example, the proponent of a provision in the bill or of an amendment, as the case may be, has the burden to show the following: (1) that any duties imposed by a limitation are merely ministerial or already required under existing law (July 16, 1998, p. 15829); (2) in the case of language proposing a double-negative, that the object of the double-negative is specifically contemplated by existing law (July 23, 2003, p. —, p. —; see § 1053, *infra*); (3) that the amendment does not increase levels of budget authority or outlays within the meaning of clause 2(f) (*e.g.*, Oct. 11, 2001, pp. 19368, 19369; see also July 13, 2004, p. —, p. — and May 25, 2006, p. —, where the Chair sustained the point of order in part because the manager's averment that the amendment increased outlays went unchallenged); (4) if the language is susceptible to more than one interpretation, that it merits the construction that it does not violate the rule (Deschler, ch. 26, § 22.26), although that burden may be met by a showing that only the requirements of existing law, and not any new requirements, are recited in the language (Sept. 23, 1993, p. 22206).

The mere recitation in an amendment that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, is not sufficient proof by the proponent of an amendment to overcome a point of order that the amendment constitutes legislation (Sept. 16, 1980, p. 25606).

The Chair may overrule a point of order that appropriations for a certain agency are unauthorized upon citation to an organic statute creating the agency, absent any showing that the organic law has been overtaken by a scheme of periodic reauthorization; the Chair may hear further argument and reverse his ruling, however, where existing law not previously called to the Chair's attention would require the ruling to be reversed (VIII, 3435; June 8, 1983, p. 14854, where a law amending the statute creating the Bureau of the Mint with the express purpose of requiring annual authorizations was subsequently called to the Chair's attention). Reported provisions in a general appropriation bill described in the accompanying report as

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directly or indirectly changing the application of existing law are presumably legislation, absent rebuttal by the committee (May 31, 1984, p. 14591).

Where the reading of a general appropriation bill for amendment has been completed (or dispensed with), including the last paragraph of the bill containing the citation to the short title (July 30, 1986, p. 18214), the Chair (under the former form of the rule, which made the preferential motion available to any Member) might first inquire whether any Member sought to offer an amendment (formerly, one not prohibited by clauses 2(a) or (c)) before recognizing Members to offer limitation or retrenchment amendments (June 2, 1983, p. 14317; Sept. 22, 1983, p. 25406; Oct. 27, 1983, p. 29630), including pro forma amendments (Aug. 2, 1989, p. 18126). Pursuant to clause 2(d), a motion that the Committee rise and report the bill to the House with such amendments as may have been adopted is not debatable (Apr. 23, 1987, p. 9613) and takes precedence over any amendment (formerly only over a limitation or retrenchment amendment) (July 30, 1985, p. 21534; July 23, 1986, p. 17431; Apr. 23, 1987, p. 9613), but only after completion of the reading and disposition of amendments not otherwise precluded (June 30, 1992, p. 17135). Thus a motion that the Committee rise and report the bill to the House with the recommendation that it be recommitted, with instructions to report back to the House (forthwith or otherwise) with an amendment proposing a limitation, does not take precedence over the motion to rise and report the bill to the House with such amendments as may have been adopted (Sept. 19, 1983, p. 24647 (sustained on appeal)). An amendment not only reducing an amount in a paragraph of an appropriation bill but also limiting expenditure of those funds on a particular project (*i.e.*, a limitation not contained in existing law) was held not in order during the reading of that paragraph but only at the end of the bill under clause 2(d) (July 23, 1986, p. 17431; June 15, 1988, p. 14719). Where language of limitation was stricken from a general appropriation bill on a point of order that it changed existing law, an amendment proposing to reinsert the limitation without its former legislative content was held not in order before completion of the reading for amendment (June 18, 1991, p. 15214; Sept. 23, 1993, p. 22214). A motion that the Committee of the Whole rise and report to the House with the recommendation that the enacting clause be stricken takes precedence over the motion to amend under clause 9 of rule XVIII (formerly clause 7 of rule XXIII) and also over the motion to rise and report under clause 2(d) (July 24, 1986, p. 17641).

The 109th Congress adopted a resolution creating a point of order against the motion to rise and report an appropriation bill to the House where the bill, as proposed to be amended, exceeded an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, and setting forth procedures in the Committee of the Whole in the event that the point of order was sustained (sec. 2, H. Res. 248, Apr. 28, 2005, p. —). The 110th Congress adopted the same procedure

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(sec. 511(a)(5), H. Res. 6, Jan. 4, 2007, p. — (adopted Jan. 5, 2007)),
to wit:

SEC. 511. (a)(5)(A) During the One Hundred Tenth Congress, except as provided in subsection (C), a motion that the Committee of the Whole rise and report a bill to the House shall not be in order if the bill, as amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, as estimated by the Committee on the Budget.

(B) If a point of order under subsection (A) is sustained, the Chair shall put the question: ‘Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974?’. Such question shall be debatable for 10 minutes equally divided and controlled by a proponent of the question and an opponent but shall be decided without intervening motion.

(C) Subsection (A) shall not apply—

(i) to a motion offered under clause 2(d) of rule XXI; or

(ii) after disposition of a question under subsection (B) on a given bill.

(D) If a question under subsection (B) is decided in the negative, no further amendment shall be in order except—

(i) one proper amendment, which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole; and

(ii) pro forma amendments, if offered by the chairman or ranking minority member of the Committee on Appropriations or their designees, for the purpose of debate.

A treaty may provide the authorization by existing law required in the rule to justify appropriations if it has been ratified by the contracting parties (IV, 3587); however, where existing law authorizes appropriations for the U.S. share of facilities to be recommended in an agreement with another country containing specified elements, an agreement in principle with that country predating the authorization law and lacking the required elements is insufficient authorization (June 28, 1993, p. 14421). An Executive Order does not constitute sufficient authorization in law absent proof of its derivation from a statute enacted by Congress authorizing the order and expenditure of funds (June 15, 1973, p. 19855; June 25, 1974, p. 21036). Thus a Reorganization Plan submitted by the President pursuant to 5 U.S.C. 906 has the status of statutory law when it becomes effective and is sufficient authorization to support an appropriation for an office created by Executive Order issued pursuant to the Reorganization Plan (June 21, 1974, p. 20595). A constitutional guarantee of just compensation for a gov-

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ernmental taking of private property for public use does not itself constitute sufficient authorization by law for appropriations in a general appropriation bill for compensation of particular private property owners (July 18, 2001, pp. 13662–65; *cf.* VII, 1144).

A resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (IV, 3656–3658) even though the resolution may have been agreed to only by a preceding House (IV, 3660). Previous enactment of items of appropriation unauthorized by law does not justify similar appropriations in subsequent bills (VII, 1145, 1150, 1151) unless, if through appropriations previously made, a function of the Government has been established that would bring it into the category of continuation of works in progress (VII, 1280), or unless legislation in a previous appropriation act has become permanent law (May 20, 1964, p. 11422). The omission to appropriate during a series of years for an object authorized by law does not repeal the law, and consequently an appropriation when proposed is not subject to the point of order (IV, 3595).

The law authorizing each head of a department to employ such numbers of clerks, messengers, copyists, watchmen, laborers, and other employees as may be appropriated for by Congress from year to year is held to authorize appropriations for those positions not otherwise authorized by law (IV, 3669, 3675, 4739); but this law does not apply to offices not within departments or not at the seat of Government (IV, 3670–3674). A permanent law authorizing the President to appoint certain staff, together with legislative provisions authorizing additional employment contained in an appropriation bill enacted for that fiscal year, constituted sufficient authorization for a lump sum supplemental appropriation for the White House for the same fiscal year (Nov. 30, 1973, p. 38854). By a general provision of law, appropriations for investigations and the acquisition and diffusion of information by the Agriculture Department on subjects related to agriculture are generally in order in the agricultural appropriation bill (IV, 3649). It has once been held that this law would also authorize appropriations for the instrumentalities of such investigations (IV, 3615); but these would not include the organization of a bureau to conduct the work (IV, 3651). The law does not authorize general investigations by the department (IV, 3652), cooperation with State investigations (IV, 3650; VII, 1301, 1302), the investigation of foods in relation to commerce (IV, 3647, 3648; VII, 1298), or the compiling of tests at an exposition (IV, 3653).

A paragraph appropriating funds for matching grants to States was held unauthorized where the authorizing law did not require State matching funds (June 28, 1993, p. 14418). A paragraph funding a project from the Highway Trust Fund was held unauthorized where such funding was authorized only from the general fund (Sept. 23, 1993, p. 22175; June 26, 2001, p. 11936; Nov. 28, 2001, pp. 23239, 23240) or from the Airport and Airway Trust Fund (*e.g.*, Sept. 14, 2004, p. —; June 29, 2005, p. —). A paragraph providing funds for the President to meet “unanticipated

needs” was held unauthorized (July 16, 1998, p. 15808). The authorization must be enacted before the appropriation may be included in an appropriation bill; thus delaying the availability of an appropriation pending enactment of an authorization does not protect the item of appropriation against a point of order under this clause (Apr. 26, 1972, p. 14455). Similarly, an amendment limiting funds to the extent provided in authorizing legislation on or after the date of enactment of the pending appropriation bill is not in order (May 19, 2005, p. —).

The failure of Congress to enact into law separate legislation specifically modifying eligibility requirements for grant programs under existing law does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for all of the programs proposed to be modified by new legislation pending before Congress (June 8, 1978, p. 16778). However, whether organic statutes or general grants of authority in law constitute sufficient authorization to support appropriations depends on whether the general laws applicable to the function or department in question require specific or annual authorizations (June 14, 1978, pp. 17616, 17622, 17626, 17630) or on whether a periodic authorization scheme has subsequently occupied the field (Sept. 9, 1997, p. 18197). An authorization of “such sums as may be necessary” is sufficient to support any dollar amount, but has no tendency to relieve other conditions of the authorization law (June 28, 1993, p. 1442). Where existing law authorizes certain appropriations from a particular trust fund without fiscal year limitation, language that such an appropriation remain available until expended does not constitute legislation (July 15, 1993, p. 15848).

An amendment to a general appropriation bill providing that “not less than” (or “not to exceed”) a certain amount be made available to a program requires an authorization (June 21, 1988, p. 15440; July 12, 2000, p. 14070; July 13, 2000, p. 14084).

Pursuant to clause 11(i) of rule X (formerly clause 9 of rule XLVIII), no funds may be appropriated to certain agencies carrying out intelligence and intelligence-related activities, unless such funds have been authorized by law for the fiscal year in question.

Judgments of courts certified to Congress in accordance with law or authorized by treaty (IV, 3634, 3635, 3644) and audited under authority of law have been held to be authorization for appropriations for the payment of claims (IV, 3634, 3635). However, unadjudicated claims (IV, 3628), even though ascertained and transmitted by an executive officer (IV, 3625–3640), and findings filed under the Bowman Act do not constitute authorization (IV, 3643).

An appropriation for an object not otherwise authorized does not constitute authorization to justify a continuance of the appropriation another year (IV, 3588, 3589; VII, 1128, 1145, 1149, 1191), and the mere appropriation for a salary does not create an office so as to justify appropriations

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in succeeding years (IV, 3590, 3672, 3697), it being a general rule that propositions to appropriate for salaries not established by law or to increase salaries fixed by law are out of order (IV, 3664-3667, 3676-3679). An exception to these general principles is found in the established practice that in the absence of a general law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary (IV, 3687-3696). A law having established an office and fixed a salary, it is not in order to provide for an unauthorized office and salary in lieu of it (IV, 3680).

An appropriation for a public work in excess of a fixed limit of cost (IV, 3583, 3584; VII, 1133), or for extending a service beyond the limits assigned by an executive officer exercising a lawful discretion (IV, 3598), or by actual law (IV, 3582, 3585), or for purposes prohibited by law are out of order (IV, 3580, 3581, 3702), as is an appropriation from the Highway Trust Fund where the project is specifically authorized from the general fund (Sept. 23, 1993, p. 22175). However, the mere appropriation of a sum to complete a work does not fix a limit of cost such as would exclude future appropriations (IV, 3761). A declaration of policy in an act followed by specific provisions conferring authority upon a governmental agency to perform certain functions was construed not to authorize appropriations for purposes germane to the policy but not specifically authorized by the act (VII, 1200). A point of order will not lie against an amendment proposing to increase a lump sum for public works projects where language in the bill limits use of the lump sum appropriation to projects as authorized by law (Deschler, ch. 26, § 19.6), but where language in the bill limits use of the lump sum both to projects "authorized by law" and "subject, where appropriate, to enactment of authorizing legislation," that paragraph constitutes an appropriation in part for some unauthorized projects and is not in order (June 6, 1985, p. 14617). Language in an appropriation bill precluding funds for projects not authorized by law or beyond the amount authorized was held to limit expenditures to authorized projects and was not legislation (Deschler, ch. 25, § 2.18).

The provision excepting public works and objects that are already in progress from the requirement that appropriations be authorized by existing law (IV, 3578) has historically been applied only in cases of general revenue funding (Sept. 22, 1993, p. 22140; Sept. 23, 1993, p. 22173). An appropriation in violation of existing law or to extend a service beyond a fixed limit is not in order as the continuance of a public work (IV, 3585, 3702-3724; VII, 1332; Sept. 23, 1993, p. 22173; Deschler, ch. 26, § 8.9). The "works in progress" exception may not be invoked to fund a project governed by a lapsed authorization and may not be invoked to fund a project that is not yet under construction (July 31, 1995, p. 21207). Where existing law (40 U.S.C. 606) specifically prohibits the making of an appropriation to construct or alter any public building involving more than

\$500,000 unless approved by the House and Senate Public Works Committees, an appropriation for such purposes not authorized by both committees is out of order notwithstanding the “works in progress” exemption, since the law specifically precludes the appropriation from being made (June 8, 1983, p. 14855). An appropriation from the Highway Trust Fund for an ongoing project was held not in order under the “works in progress” exception where the Internal Revenue Code “occupied the field” with a comprehensive authorization scheme not embracing the specified project (Sept. 22, 1993, p. 22140; Sept. 23, 1993, p. 22173). Interruption of a work does not necessarily remove it from the privileges of the rule (IV, 3705–3708); but the continuation of the work must not be so conditioned in relation to place as to become a new work (IV, 3704). It has been held that a work has not begun within the meaning of the rule when an appropriation has been made for a site for a public building (IV, 3785), or when a commission has been created to select a site or when a site has actually been selected for a work (IV, 3762, 3763), or when a survey has been made (IV, 3782–3784). “Public works and objects already in progress” include tangible matters like buildings, roads, etc., but not duties of officials in executive departments (IV, 3709–3713), or the continuance of a work indefinite as to completion and intangible in nature like the gauging of streams (IV, 3714, 3715). A general system of roads on which some work has been done, or an extension of an existing road (Sept. 22, 1993, p. 22140), may not be admitted as a work in progress (VII, 1333). Concerning reappropriation for continuation of public works in progress, see § 1031, *supra*.

Thus the continuation of the following works has been admitted: a topographical survey (IV, 3796, 3797; VII, 1382), a geological map (IV, 3795), marking of a boundary line (IV, 3717), marking graves of soldiers (IV, 3788), a list of claims (IV, 3717), and recoinage of coins in the Treasury (IV, 3807); but the following works have not been admitted: Investigation of materials, like coal (IV, 3721), scientific investigations (IV, 3719; VII, 1345), duties of a commission (IV, 3720; VII, 1344), extension of foreign markets for goods (IV, 3722), printing of a series of opinions indefinite in continuance (IV, 3718), free evening lectures in the District of Columbia (IV, 3789), certain ongoing projects from the Highway Trust Fund (Sept. 22, 1993, pp. 22140; Sept. 23, 1993, p. 22173), extension of an existing road (Sept. 22, 1993, p. 22140), continuation of an extra compensation for ordinary facility for carrying the mails (IV, 3808), although the continuation of certain special mail facilities has been admitted (IV, 3804–3806). However, appropriations for rent and repairs of buildings or Government roads (IV, 3793, 3798) and bridges (IV, 3803) have been admitted as in continuation of a work (IV, 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (IV, 3606). It is not in order to repair paving adjacent to a public building but in a city street, although it may have been laid originally by the Government (IV, 3779). The purchase of adjoining land for a work already estab-

§ 1049. Examples illustrating the continuation of a public work.

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lished has been admitted under this principle (IV, 3766-3773) as have additions to existing buildings in cases where no limits of cost have been shown (IV, 3774, 3775). However, the purchase of a separate and detached lot of land is not admitted (IV, 3776). The continuation of construction at the Kennedy Library, a project owned by the United States and funded by a prior year's appropriation, has been admitted notwithstanding the absence of any current authorization (June 14, 1988, p. 14335). A provision of law authorizing Commissioners of the District of Columbia to take over and operate the fish wharves of the city of Washington was held insufficient authority to admit an appropriation for reconstructing the fish wharf (VII, 1187).

Appropriations for new buildings at Government institutions have sometimes been admitted (IV, 3741-3750) when intended for the purposes of the institution (IV, 3747); but later decisions, in view of the indefinite extent of the practice made possible by the early decisions, have ruled out propositions to appropriate for new buildings in navy yards (IV, 3755-3759) and other establishments (IV, 3751-3754). Appropriations for new schoolhouses in the District of Columbia (IV, 3750; VII, 1358), for new Army hospitals (IV, 3740), for new lighthouses (IV, 3728), armor-plate factories (IV, 3737-3739), and for additional playgrounds for children in the District of Columbia (IV, 3792) have also been held not to be in continuation of a public work.

By a former broad construction of the rule an appropriation of a new and not otherwise authorized vessel of the Navy had been held to be a continuance of a public work (IV, 3723, 3724); but this line of decisions has been overruled (VII, 1351; Jan. 22, 1926, p. 2621). While appropriations for new construction and procurement of aircraft and equipment for the Navy are not in order, appropriations for continuing experiments and development work on all types of aircraft are in order (Jan. 22, 1926, p. 2623). This former interpretation was confined to naval vessels, and did not apply to vessels in other services, like the Coast and Geodetic Survey or Lighthouse Service (IV, 3725, 3726), or to floating or stationary drydocks (IV, 3729-3736). The construction of a submarine cable in extension of one already laid was held not to be the continuation of a public work (IV, 3716), but an appropriation for the Washington-Alaska military cable has been held in order (VII, 1348).

A provision changing existing law is construed to mean the enactment of law where none exists (IV, 3812, 3813). For example, the following provisions have been held out of order:
 (1) permitting funds to remain available until expended or beyond the fiscal year covered by the bill where existing law does not permit such availability (Aug. 1, 1973, p. 27288; June 9, 2006, p. —);
 (2) permitting funds to be available immediately upon enactment before

the fiscal year covered by the bill (July 29, 1986, p. 17981; June 28, 1988, p. 16255); (3) permitting funds to be available to the extent provided in advance in appropriation Acts but not explicitly beyond the fiscal year in question (July 21, 1981, p. 16687); or (4) setting a floor on spending that is not established by existing law (July 23, 2003, p. —).

Although clause 2(b) permits the Committee on Appropriations to report rescissions of appropriations, an amendment proposing a rescission constitutes legislation under clause 2(c) (May 26, 1993, p. 11319), as does a provision proposing a rescission of budget authority provided in law other than appropriations acts, such as contract authority (*e.g.*, Sept. 22, 1993, p. 22138; May 15, 1997, p. 8510; July 23, 1997, p. 15353; July 29, 1998, p. 17956) or a loan guarantee program (July 13, 2004, p. —). Similarly, a provision canceling funds under the Farm Security and Rural Investment Act of 2002 was held to be legislation (June 16, 2004, p. —). A provision constituting congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act of 1974 is not in order if included in a general appropriation bill rather than in a separate resolution of disapproval under that Act (July 29, 1982, pp. 18625, 18626).

A proposal to amend existing law to provide for automatic continuation of appropriations in the absence of timely enactment of a regular appropriation bill constitutes legislation in contravention of clause 2(c) (July 17, 1996, p. 17550; July 24, 1996, p. 18898). A proposal to designate an appropriation as “emergency spending” within the meaning of the budget-enforcement laws (or so designated under provisions of a budget resolution) is fundamentally legislative in character (*e.g.*, Sept. 8, 1999, pp. 20900; June 19, 2000, pp. 11294–97 (sustained on appeal); June 20, 2001, p. 11224; Oct. 16, 2003, p. —; Mar. 15, 2005, p. — (sustained on appeal)). Similarly, a provision containing an averment necessary to qualify for certain scorekeeping under the Budget Act was conceded to be legislation (July 20, 1989, p. 15374), even though the Budget Act contemplates that expenditures may be mandated to occur before or following a fiscal period if the law making those expenditures specifies that the timing is the result of a “significant” policy change (July 20, 1989, p. 15374).

Language in an appropriation bill precluding funds for projects not authorized by law or beyond the amount authorized has been held in order as simply limiting expenditures to authorized projects (Deschler, ch. 25, § 2.18). However, an amendment limiting funds to the extent provided for in authorizing legislation on or after the date of enactment of the pending appropriation bill is not in order (May 19, 2005, p. —).

Although the object to be appropriated for may be described without violating the rule (IV, 3864), an amendment proposing an appropriation under a heading that indicates an unauthorized purpose as its object has been ruled out (Oct. 29, 1991, p. 28814). For example, an amendment proposing to make certain funds available for a specified report not contemplated by existing law was held to constitute legislation in violation

of clause 2(c) (June 13, 2000, p. 10509). The fact that a legislative item has been carried in appropriation bills for many years does not exempt it from a point of order (VII, 1445, 1656). The reenactment from year to year of a law intended to apply during the year of its enactment only is not relieved, however, from the point that it is legislation (IV, 3822). Limits of cost for public works may not be made or changed (IV, 3761, 3865–3867; VII, 1446), nor contracts authorized (IV, 3868–3870; May 14, 1937, p. 4595).

An amendment to a general appropriation bill stating a legislative position constitutes legislation (July 24, 2001, pp. 14349, 14351) as does one establishing a select committee (Mar. 16, 2006, p. —) or a trust fund in the Treasury (June 9, 2006, p. —).

Although the rule forbids a provision “changing existing law,” the House, by practice, has established the principle that certain “limitations” may be admitted. Just as the House may decline to appropriate for a purpose authorized by law, so may it by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it (IV, 3936; VII, 1595). Paragraph (c) prohibits consideration of limitation amendments during the reading of the bill by paragraph unless specifically authorized by existing law for the period of the limitation, even if the amendment is expanding a limitation already in the bill (July 23, 2003, p. —).

A limitation may provide that some or all of the appropriation under consideration may not be used for a certain designated purpose (IV, 3917–3926; VII, 1580). This designated purpose may reach the question of qualifications, for while it is not in order to legislate as to the qualifications of the recipients of an appropriation (Deschler, ch. 26, §§ 53, 57.15), the House may specify that no part of the appropriation may go to recipients lacking certain qualifications (IV, 3942–3952; VII, 1655; June 4, 1970, p. 18412; June 27, 1974, p. 21662; Oct. 9, 1974, p. 34712; June 9, 1978, p. 16990).

A limitation amendment prohibiting the use of funds for the construction of certain facilities unless such construction were subject to a project agreement was held not in order during the reading of the bill, even though existing law directed Federal officials to enter into such project agreements, on the ground that limitation amendments are in order during the reading only where existing law requires or permits the inclusion of limiting language in an appropriation Act, and not merely where the limitation is alleged to be “consistent with existing law” (June 28, 1988, p. 16267).

A limitation may place some minimal, incidental duties on Federal officials, who must determine the effect of such a limitation on appropriated funds. However, a provision may not impose additional duties not required by law, either explicitly or implicitly, or make the appropriation contingent upon the performance of such duties (VII, 1676; June 11, 1968, p. 16712; July 31, 1969, pp. 21631–33; May 28, 1968, p. 15350; July 26, 1985, p. 20807; see § 1054, *infra*). The fact that a limitation may indirectly interfere

with an executive official's discretionary authority by denying the use of funds (June 24, 1976, p. 20408) or may impose certain incidental burdens on executive officials (Aug. 25, 1976, p. 27737) does not destroy the character of the limitation as long as it does not otherwise amend existing law and is descriptive of functions and findings already required to be undertaken by existing law. For example, a limitation precluding funds for specified Federal departments to file certain motions in specified civil actions (all matters of public record in the litigation and therefore available to responsible intervening Federal officials) was held to be a proper limitation (July 18, 2001, pp. 13683, 13684).

The limitation must apply solely to the money of the appropriation under consideration (VII, 1597, 1600, 1720; Feb. 26, 1958, p. 2895). For example, a limitation on funds: (1) may not apply to money appropriated in other Acts (IV, 3927, 3928; VII, 1495, 1525; June 28, 1971, p. 22442; June 27, 1974, pp. 21670–72; May 13, 1981, p. 9663); (2) may not require funds available to an agency in any future fiscal year for a certain purpose to be subject to limitations specified in advance in appropriations Acts (May 8, 1986, p. 10156). The tendency of a limitation to change existing law is measured against the state of existing law “for the period of the limitation,” such that the presence of the same limitation in the annual bill for the previous fiscal year does not justify its inclusion in the pending annual bill (Sept. 22, 1983, p. 25406, June 26, 2000, p. 12355).

A restriction on authority to incur obligations is legislative in nature and not a limitation on funds (July 13, 1987, p. 19507; Sept. 23, 1993, p. 22204; July 15, 2004, p. —). For example, a limitation on the authority of the Commodity Credit Corporation to purchase sugar is legislative in nature and not a limitation on funds (June 29, 2000, p. 13109).

In construing a proposed limitation, the Chair may examine whether the purpose of the limitation is legislative. For example, a limitation accompanied by language stating a legislative motive or purpose is not in order (Aug. 8, 1978, p. 24969; July 22, 1980, p. 19087; Sept. 16, 1980, p. 25604; Sept. 22, 1981, p. 21577). Similarly, where existing law and the Constitution require a census to be taken of all persons, an amendment that seeks to preclude the use of funds to exclude another class “known” to the Secretary is not in order (Aug. 1, 1989, p. 17156). However, language may, by negatively refusing to include funds for all or part of an authorized executive function, thereby affect policy and restrict executive discretion to the extent of its denial of availability of funds (IV, 3968–3972; VII, 1583, 1653, 1694; Sept. 14, 1972, p. 30749; June 21, 1974, p. 20601; Oct. 9, 1974, p. 34716). For example, an appropriation may be withheld from a designated object by a negative limitation on the use of funds, notwithstanding that contracts may be left unsatisfied thereby (IV, 3987; July 10, 1975, pp. 22006–07).

The Chair has stated that a limitation amendment that comprises a textual “double-negative” (the coupling of a denial of an appropriation with a negative restriction on official duties) is suspect and may result in an

affirmative direction or an affirmative statement of intent that constitutes legislation and is therefore not in order (VII, 1690–1692; Deschler, ch. 26, § 51.15 (note); July 23, 2003, p. —). In order to carry the burden of proof on an amendment proposing a double-negative, a Member must be able to show that the object of the double-negative is specifically contemplated by existing law (July 23, 2003, p. —, p. —). For example, the following have been held out of order for using a double-negative: (1) a provision to limit funds to prohibit the obligation of funds up to a specified amount for an unauthorized transportation project (effectively authorizing an unauthorized project) (Sept. 23, 1993, p. 22209); (2) an amendment to limit funds to prohibit projects that promote the participation of women in international peace efforts, such promotion not specifically contemplated by law (July 23, 2003, p. —); (3) an amendment to limit funds to prohibit the establishment of an independent commission not contemplated by existing law (July 23, 2003, p. —).

It is not in order, even by language in the form of a limitation, to restrict the discretionary authority conferred by law to administer the expenditure of appropriated funds, such as by limiting the percentage of funds that may be apportioned for expenditure within a certain period of time (Deschler, ch. 26, § 51.23), or by precluding the obligation of certain funds until funds provided by another Act have been obligated (Deschler, ch. 26, § 48.8). The burden is on the proponent to show that such a proposal does not change existing law by restricting the timing of the expenditure of funds rather than their availability for specified objects (Deschler, ch. 26, §§ 64.23, 80.5).

As long as a limitation merely restricts the expenditure of Federal funds carried in the bill without changing existing law, the limitation is in order, even if the Federal funds in question are commingled with non-Federal funds that would have to be accounted for separately in carrying out the limitation (Aug. 20, 1980, p. 22171).

The fact that existing law authorizes funds to be available until expended or without regard to fiscal year limitation does not prevent the Committee on Appropriations from limiting their availability to the fiscal year covered by the bill unless existing law mandates availability beyond the fiscal year (June 25, 1974, p. 21040; see also Deschler, ch. 26, § 32). The fact that a provision would constitute legislation for only a year does not make it a limitation in order under the rule (IV, 3936).

A proposition to construe a law may not be admitted (IV, 3936–3938, see § 1055, *infra*). Care also should be taken that the language of limitation be not such as, when fairly construed, would change existing law (IV, 3976–3983) or justify an executive officer in assuming an intent to change existing law (IV, 3984; VII, 1706).

Although the Committee on Appropriations may include in a general appropriation bill language not in existing law limiting the use of funds in the bill, if such language also constitutes an appropriation it must be authorized by law (June 21, 1988, p. 15439). An amendment placing a

limitation on funds for activities unrelated to the functions of departments and agencies addressed by the bill is not germane under clause 7 of rule XVI (July 10, 2000, p. 13605).

Propositions to establish affirmative directions for executive officers (IV, 3854–3859; VII, 1443; July 31, 1969, p. 21675; June 18, 1979, p. 15286; July 1, 1987, pp. 18654, 18655; June 27, 1994, p. 14572), even in cases where they may have discretion under the law so to do (IV, 3853; June 4, 1970, p. 18401; Aug. 8, 1978, p. 24959), or to affirmatively take away an authority or discretion conferred by law (IV, 3862, 3863; VII, 1975; Mar. 30, 1955, p. 4065; June 21, 1974, p. 20600; July 31, 1985, p. 21909), are subject to a point of order.

A limitation may not: (1) be applied directly to the official functions of executive officers (IV, 3957–3966; VII, 1673, 1678, 1685), (2) directly interfere with discretionary authority in law by establishing a level of funding below which expenditures may not be made (VII, 1704; July 20, 1978, p. 21856), (3) require a judgment as to whether racial imbalance had been overcome (July 31, 1969, pp. 21653, 21675); (4) condition the availability of funds or the exercise of contract authority upon an interpretation of local law where that interpretation is not required by existing law (July 17, 1981, p. 16327); (5) require new determinations of full Federal compliance with mandates imposed upon States (July 22, 1981, p. 16829); (6) require the evaluation of the theoretical basis of a program (July 22, 1981, p. 16822); (7) require new determinations of propriety or effectiveness (Oct. 6, 1981, p. 23361; May 25, 1988, p. 12275), or satisfactory quality (Aug. 1, 1986, p. 18647); (8) incorporate by reference determinations already made in administrative processes not affecting programs funded by the bill (Oct. 6, 1981, p. 23361); (9) require new determinations of rates of interest payable (July 29, 1982, p. 18624; Dec. 9, 1982, p. 29691); (10) require a determination of whether the Office of Management and Budget interfered with the rulemaking authority of a regulatory agency (Nov. 30, 1982, p. 28062); (11) authorize the President to reduce each appropriation in the bill by not more than 10 percent (May 31, 1984, p. 14617; June 6, 1984, p. 15120); (12) apply standards of conduct to foreign entities where existing law requires such conduct only by domestic entities (July 17, 1986, p. 16951); (13) require the enforcement of a standard where existing law only requires inspection of an area (July 30, 1986, p. 18189); (14) prohibit the availability of funds for the purchase of “nondomestic” goods and services (Sept. 12, 1986, p. 23178); (15) mandate contractual provisions (May 18, 1988, p. 11389); (16) authorize the adjustment of wages of Government employees (June 21, 1988, p. 15451; Apr. 26, 1989, p. 7525) or permit an increase in Members’ office allowances only “if requested in writing” (Oct. 21, 1990, p. 31708); (17) convert an existing legal prerequisite for the issuance of a regulatory permit into a prerequisite for even the preliminary processing of such a permit (July 22, 1992, p. 18825); (18) mandate reductions in various appropriations by a variable percentage calculated in rela-

tion to “overhead” (Deschler, ch. 26, § 5.6; June 24, 1992, p. 16110); (19) require an agency to investigate and determine whether private airports are collecting certain fees for each enplaning passenger (Sept. 23, 1993, p. 22213); (20) require an agency to investigate and determine whether a person or entity entering into a contract with funds under the pending bill is subject to a legal proceeding commenced by the Federal Government and alleging fraud (Sept. 17, 1997, p. 19045); (21) require an agency to determine whether building services are “usually” provided through the Federal Building Fund to an agency not paying a level of assessment specified elsewhere (and not necessarily applicable) (July 16, 1998, p. 15816); (22) require a determination of “successor agency” status (Sept. 26, 1997, p. 20347); (23) require a determination whether a delegate or envoy to the United Nations has “advocated” the adoption of a certain convention (June 26, 2000, p. 12355); (24) require tests or reports not required under existing law (May 19, 2000, p. 8616) or require all quarterly and annual reports required by law in accordance with standards for reports under a specified law not otherwise applicable (Sept. 9, 2003, p. —); (25) impose a new duty to tally violations of law by contractors where existing law required information on violations but not on the number thereof (June 7, 2000, p. 9849); (26) require an investigation of the conscription requirements of other nations (July 13, 2000, p. 14121); (27) require a determination whether “efforts” have been made to change any nation’s laws regarding abortion, family planning, or population control (July 13, 2000, p. 14130); (28) impose a new duty to calculate the “total amount” of payments under a Federal program paid to a husband and wife (to determine whether an exception to an otherwise valid limitation would apply) (July 11, 2001, pp. 13001–03); (29) require an investigation into the extent to which World Trade Organization challenges against foreign laws and policies promote access to certain pharmaceuticals (July 18, 2001, pp. 13693, 13694); (30) require an investigation into whether an applicant for immigration has been involved in the harvesting of organs (July 18, 2001, pp. 13702–05); (31) require the Inspector General to opine on audited financial statements of certain components of the Department of Defense where the issuance of such opinion was not shown to be required by existing law (June 27, 2002, pp. 11788, 11789); (32) require the examination of certain legislative reports to determine whether an entity is specifically identified by name (July 17, 2002, pp. 13365, 13366); (33) require several agencies to process certain information where current law required only one specific agency to process that information (June 24, 2003, p.); (34) in the case of a limitation with respect to certain roads on public land, require a determination of the precise nature of those roads including their ownership and the types of vehicles allowed to travel on them (July 17, 2003, p. —); (35) require a determination that certain trade agreements achieved generic undefined policy goals that were not set forth in existing law (July 23, 2003, p. —); (36) require a determination that a drug has been prescribed “for the purpose of relieving or managing pain” (July 7, 2004, p. —);

(37) require a determination as to the date on which various road construction projects in a National Forest were commenced within the periods in which they were authorized to commence (May 19, 2005, p. —); (38) require the Food and Drug Administration to examine a registry of clinical trials maintained by the National Institutes of Health, a different entity (June 8, 2005, p. —) or require the administrator of the Low-Income Home Energy Assistance Program to determine whether a federal prohibition on certain mineral exploration (administered by a different federal entity) remained in effect (Mar. 15, 2006, p. —); (39) require a determination regarding a specific type of employment behavior before initiating an employment investigation (June 8, 2005, p. —); (40) require a determination as to whether a local educational agency had obtained parental consent before providing military recruiters student information (June 24, 2004, p. —); (41) in the case of a limitation on the enforcement of a regulation against a specified class, require a determination as to whether a person is a member of that class (June 30, 2005, p. —); (42) prescribe a policy for an agency in the distribution of grants (June 6, 2006, p. —); (43) require determinations of citizenship based on birth (June 6, 2006, p. —). The fact that an executive official may have been directed by an Executive Order to consult another executive official before taking an action does not permit inclusion of language directing the official being consulted to make determinations not specifically required by law (July 22, 1980, p. 19087).

On the other hand, the following limitations have been held in order as not placing new duties on Federal officials: (1) denying the use of funds to pay the salaries of Federal officials who perform certain functions under existing law if the description of those duties precisely follows existing law and does not require them to perform new duties (June 24, 1976, p. 20373); (2) denying the use of funds to a Federal official not in compliance with an existing law that he is charged with enforcing (Sept. 10, 1981, p. 20110); (3) reducing the availability of funds for trade adjustment assistance by amounts of unemployment insurance entitlements where the law establishing trade adjustment assistance already required the disbursing agency to take into consideration levels of unemployment insurance in determining payment levels (June 18, 1980, p. 15355); (4) denying the use of funds to carry out (or pay the salaries of persons who carry out) tobacco crop and insurance programs (July 20, 1995, p. 19798); (5) denying the use of funds for any transit project exceeding a specified cost-effectiveness index where the Chair was persuaded that the limitation applied to projects for which indexes were already required by law (Sept. 23, 1993, p. 22206); (6) denying the use of funds to enforce FAA regulations to require domestic air carriers to surrender more than a specified number of “slots” at a given airport in preference of international air carriers where the Chair was persuaded that existing regulations already required the FAA to determine the origin of withdrawn slots (Sept. 23, 1993, p. 22212); (7) denying the use of funds for troops “except in time of war” (Deschler, ch. 26, § 70.1)

or “except in time of emergency” (VII, 1657, which was the basis for the preceding ruling); (8) denying the use of funds to implement any sanction imposed by the United States on private commercial sales of agricultural commodities, medicine, or medical supplies to Cuba except for a sanction imposed pursuant to agreement with one or more other countries (July 20, 2000, p. 15751); (9) denying the use of funds by the Forest Service to construct roads or prepare timber sales in certain roadless areas where the executive was already charged by law with ongoing responsibility to maintain a comprehensive and detailed inventory of all land and renewable resources of the National Forest System (July 18, 1995, p. 19357); (10) denying the use of funds to eliminate an existing legal requirement for sureties on custom bonds (June 27, 1984, p. 19101); (11) denying the use of funds by any Federal official in any manner that would prevent a provision of existing law (relating to import restrictions) from being enforced (June 27, 1984, p. 19101); (12) denying the use of funds for any reduction in the number of Customs Service regions or for any consolidation of Customs Service offices (June 27, 1984, p. 19102); (13) denying the use of funds for specified Federal departments to file certain motions in specified civil actions (all matters of public record in the litigation and therefore available to responsible intervening Federal officials) (July 18, 2001, pp. 13683, 13684); (14) denying the use of funds in contravention of a cited statute (May 17, 2005, p. —; June 6, 2006, p. —).

A paragraph prohibiting the use of funds to perform abortions except where the mother’s life would be endangered if the fetus were carried to term (or where the pregnancy was a result of rape or incest) is legislation, since requiring Federal officials to make new determinations and judgments not required of them by law, regardless of whether private or State officials administering the funds in question commonly make such determinations (June 17, 1977, p. 1969; June 30, 1993, p. 14871; July 16, 1998, p. 15828). The fact that such a provision relating to abortion funding may have been included in appropriation Acts in prior years applicable to funds in those laws does not permit the inclusion of similar language requiring such determinations, not required by law, with respect to funds for the fiscal year in question (Sept. 22, 1983, p. 25406); and where the provision, applicable to Federal funds, was permitted to remain in a bill (no point of order having been made), an amendment striking the word “Federal,” and thereby broadening the provision to include District of Columbia funds as well, was ruled out (Nov. 15, 1989, p. 29004). However, to such a provision permitted to remain in a general appropriation bill, an amendment “merely perfecting” the exemption to address cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation by requiring a different or more onerous determinations (June 27, 1984, p. 19113). An amendment providing that no Federal funds provided in the District of Columbia general appropriation bill be used to perform abortions is not legislation, since Federal officials have the responsibility to account for all appropriations

for the annual Federal payment and for disbursement of all taxes collected by the District of Columbia, pursuant to the D.C. Code (July 17, 1979, p. 19066).

An exception to a limitation on funds for the Office of Personnel Management to enter contracts for health benefit plans that required determinations of “equivalence” of benefits was held to impose new duties (July 16, 1998, p. 15829). However, an exception to a similar limitation that merely excepted certain specified coverage and plans was held not to impose new duties (July 16, 1998, p. 15841). Similarly, a limitation denying the use of funds in an appropriation bill for the General Services Administration to dispose of Federally owned “agricultural” land declared surplus was held to impose new duties since the determination whether surplus lands are “agricultural” was not required by law (Aug. 20, 1980, pp. 22156–58). However, a limitation denying the use of funds for any transit project exceeding a specified cost-effectiveness index was held not to impose new duties where the Chair was persuaded that the limitation applied to projects for which indexes were already required by law (Sept. 23, 1993, p. 22206).

Over a period dating from 1908, the House had developed a line of precedent to the effect that language restricting the availability of funds in a general appropriation bill could be a valid limitation if, rather than imposing new duties on a disbursing official or requiring new determinations of that official, it passively addressed the state of knowledge of the official (VII, 1695; *cf.* Aug. 1, 1989, p. 17156, and June 22, 1995, p. 16844 (limitations in recommittal ruled out on basis of form rather than of legislative content)). This reasoning culminated in a ruling in the 104th Congress admitting as a valid limitation an amendment prohibiting the use of funds in the bill to execute certain accounting transactions when specified conditions were “made known” to the disbursing official (July 17, 1996, p. 17542). In the 105th Congress this entire line of precedent was overtaken by changes in paragraphs (b) and (c) of this clause that treat as legislation a provision that makes funding contingent on whether circumstances not determinative under existing law are “known” (H. Res. 5, Jan. 7, 1997, p. 121; July 15, 1997, p. 14493; July 24, 1997, p. 15758).

An amendment making an appropriation contingent upon a recommendation (June 27, 1979, p. 17054) or action not specifically required by law is legislation; such as a provision limiting the use of funds in a bill “unless” or “until” an action contrary to existing law is taken (Deschler, ch. 26, § 47.1; July 24, 1996, p. 18888). Where existing law requires an agency to furnish certain information to congressional committees upon request, without a subpoena, it is not in order to make funding for that agency contingent upon its furnishing information to subcommittees upon request (July 29–30, 1980, p. 20475), or contingent upon submission of an agreement by a Federal official to Congress and congressional review thereof (July 31, 1986, p. 18370). Similarly, it is not in order to

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condition funds on legal determinations to be made by a Federal court and an executive department (June 28, 1988, p. 16261; see Deschler, ch. 26, § 47.2).

Provisions making the availability of funds contingent upon subsequent congressional action have, under the most recent precedents, been ruled out as legislation (June 30, 1942, p. 5826; May 15, 1947, p. 5378; June 27, 1994, p. 14613). However, a limitation on the use of funds to buy real estate or establish new offices except where Congress had approved and funded such activity (June 18, 1991, p. 15218) was held in order.

The following provisions have been ruled out as legislation: (1) making the availability of certain funds contingent upon subsequent congressional action on legislative proposals resolving the policy issue (Nov. 18, 1981, p. 28064); (2) making the availability of funds contingent upon subsequent enactment of legislation containing specified findings (Nov. 2, 1983, p. 30503); (3) making the availability of funding in the bill contingent on the funding of a separate provision of law (Mar. 15, 2006, p. —); and (4) changing a permanent appropriation in existing law to restrict its availability until all general appropriation bills are presented to the President (June 29, 1987, p. 18083). A section in a general appropriation bill directly contravening existing law to subject the use of local funds to congressional approval was held to constitute legislation where it was shown that some local (District of Columbia) funds deriving from interest accounts were available to the Financial Control Board without subsequent congressional approval (Aug. 6, 1998, p. 19079).

Two rulings upholding the admissibility of amendments making the availability of funds contingent upon subsequent congressional action have been superseded by the precedents cited above (June 11, 1968, p. 16692; Sept. 6, 1979, p. 23360).

The following provisions also have been held to be legislation as they required: (1) a congressional committee to promulgate regulations to limit the use of an appropriation (June 13, 1979, p. 14670), or otherwise to direct the activities of a committee (June 24, 1992, p. 16087); (2) a substantive determination by a State or local government official or agency that is not otherwise required by existing law (July 25, 1985, p. 20569); (3) the Selective Service Administration to issue regulations to bring its classifications into conformance with a Supreme Court decision (July 20, 1989, p. 15405); (4) a change in a rule of the House (IV, 3819); (5) an agency to submit all quarterly and annual reports required by law in accordance with standards for reports under a specified law not otherwise applicable (Sept. 9, 2003, p. —); (6) compliance with a law not otherwise applicable (Sept. 4, 2003, p. —).

A provision proposing to construe existing law is itself legislative and therefore not in order (IV, 3936–3938; May 2, 1951, p. 4747; July 26, 1951, p. 8982). However, an official's general responsibility to construe the language of a limitation on the use of funds, absent imposition of an affirm-

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ative direction not required by law, does not destroy the validity of a limitation (June 27, 1974, pp. 21687–94).

Where it is asserted that duties ostensibly occasioned by a limitation are already imposed by existing law, the Chair may take cognizance of judicial decisions and rule the limitation out on the basis that the case law is not uniform, current, or finally dispositive (June 16, 1977, pp. 19365–74; June 7, 1978, p. 16676). For example, a limitation prohibiting the use of funds for an inspection conducted by a regulatory agency without a search warrant has been held out of order as imposing a new duty not uniformly required by case law (June 16, 1977, pp. 19365–74). Similarly, an amendment denying the use of funds for an agency to apply certain provisions of law under court decisions in effect on a prior date has been held out of order as requiring the official to apply noncurrent case law (June 7, 1978, p. 16655).

A provision prescribing a rule of construction is legislation (Deschler, ch. 26, § 25.15). For example, a provision prescribing a prospective rule of construction for possible (future) tax enactments was held to constitute legislation (June 21, 2000, p. 11773). Similarly, a provision construing a limitation in a bill by affirmatively declaring the meaning of the prohibition is legislation (May 17, 1988, p. 11305); and a provision prescribing definitions for terms contained in a limitation may be legislation (Deschler, ch. 26, §§ 25.7, 25.11). Language excepting certain appropriations from the sweep of a broader limitation may be in order (Deschler, ch. 26, § 25.2). It also has been held in order to except from the operation of a specific limitation on expenditures certain of those expenditures that are authorized by law by prohibiting a construction of the limitation in a way that would prevent compliance with that law (Deschler, ch. 26, § 25.10; June 18, 1991, p. 15218). Similarly, a limitation on certain payments to persons in “excess of \$500,” but stating that the limitation would not be “construed to deprive any share renter of payments” to which he might otherwise be entitled was held in order (Deschler, ch. 26, § 66.1).

The mere recitation in an amendment that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, is not sufficient proof by the proponent of an amendment to overcome a point of order that the amendment constitutes legislation (Sept. 16, 1980, p. 25606; May 8, 1986, p. 10156). A limitation denying the use of funds to apply certain provisions of the Internal Revenue Code other than under regulations in effect on a prior date is legislation as it would require an official to apply regulations no longer current in order to render an appropriation available (June 7, 1978, p. 16655; Aug. 19, 1980, pp. 21978–80). However, an exception to a limitation on the use of funds for designated Federal activities that were already authorized by law in more general terms, was held in order as not containing legislation (June 27, 1979, pp. 17033–35).

Language waiving provisions of an existing law that did not specifically permit inclusion of such a waiver in an appropriation bill has been ruled

out (*e.g.*, Nov. 13, 1975, p. 36271; June 20, 1996, p. 14847; May 19, 2000, p. 8600), as has language identical to that contained in an authorization bill previously passed by the House but not yet signed into law (Aug. 4, 1978, p. 24436), or a proposition for repeal of existing law (VII, 1403; Mar. 16, 2006, p. — (sustained on appeal)).

Existing law may be repeated verbatim without violating the rule (IV, 3814, 3815), but the slightest change of the text renders it liable to a point of order (IV, 3817; VII, 1391, 1394; June 4, 1970, p. 18405). It is in order to include language descriptive of authority provided in law for the operation of Government agencies and corporations so long as the description is precise and does not change that authority in any respect (June 15, 1973, p. 19843; Aug. 3, 1978, p. 24249); although language merely reciting the applicability of current law to the use of earmarked funds is permitted, a provision that elevates existing guidelines to mandates for spending has been ruled out (July 12, 1989, p. 14432).

It is in order by way of limitation to deny the use of funds for implementation of the following: (1) an Executive Order, which was precisely described in the amendment (Mar. 16, 1977, p. 7748); (2) a regulation, which was promulgated pursuant to court order and constitutional provisions—the authority for the regulation being an argument on the merits of the amendment and not rendering it legislative in nature (Aug. 19, 1980, pp. 21981–84); (3) a ruling of the Internal Revenue Service that taxpayers are not entitled to certain charitable deductions because merely descriptive of an existing ruling already promulgated and not requiring any new determinations as to the applicability of the limitation to other categories of taxpayers (July 16, 1979, pp. 18808–10); (4) changes to a set of overtime compensation regulations in existence on a given date (with a certain nonlegislative exception) because they did not require the Department to administer superseded regulations (Sept. 4, 2004, p. —).

An amendment proposing to increase budget authority and to offset that increase by proposing a change in the application of the Internal Revenue Code of 1986 was held to constitute legislation (*see, e.g.*, Sept. 8, 1999, pp. 20896–98; June 24, 2003, p. — (sustained on appeal); July 10, 2003, pp. —, —).

A provision that mandates a distribution of funds in contravention of an allocation formula in existing law is legislation (July 29, 1982, pp. 18637, 18638; Oct. 5, 1983, p. 27335; Aug. 2, 1989, p. 18123; July 24, 1995, p. 20141), as is an amendment that by such a mandate interferes with an executive official's discretionary authority (Mar. 12, 1975, p. 6338), or requires not less than a certain sum to be used for a particular purpose where existing law does not mandate such expenditure (June 18, 1976, p. 19297; July 29, 1982, p. 18623) (including by stating that not less than a certain sum "should be allocated" (June 9, 2006, p. —)), or earmarks appropriated funds to the arts and requires their expenditure pursuant to standards otherwise applicable only as guidelines (July 12, 1989, p. 14432). Where existing

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law directed a Federal official to provide for sale of certain Government property to a private organization in “necessary” amounts, an amendment providing that no such property be withheld from distribution from qualifying purchasers was legislation, since requiring disposal of all property and restricting discretionary authority to determine “necessary” amounts (Aug. 7, 1978, p. 24707). An amendment directing the use of funds to assure compliance with an existing law, where existing law does not so mandate, also is legislation (June 24, 1976, p. 20370). So-called “hold-harmless” provisions that mandate a certain level of expenditure for certain purposes or recipients, where existing law confers discretion or makes ratable reductions in such expenditures, also constitute legislation (Apr. 16, 1975, p. 10357; June 25, 1976, p. 20557). A transfer of available funds from one department to another with directions as to the use to which those funds must be put is legislation (and also a reappropriation in violation of clause 2(a)(2) of this rule) (Dec. 8, 1982, p. 29449). A provision requiring States to match funds provided in an appropriation bill was held to constitute legislation where existing law contained no such requirement (June 28, 1993, p. 14418). Where existing law prescribes a formula for the allocation of funds among several categories, an amendment merely reducing the amount earmarked for one of the categories is not legislation, so long as it does not textually change the statutory formula (July 24, 1995, p. 20133).

The House may, by agreeing to a report from the Committee on Rules or by adopting an order under suspension of the rules, § 1058. Waivers; amending legislation permitted to remain. allow legislation on general appropriation bills (IV, 3260–3263, 3839–3845). Where an unauthorized appropriation or legislation is permitted to remain in a general appropriation bill by waiver or by failure to raise a point of order, an amendment merely changing that amount and not adding legislative language or earmarking separate funds for another unauthorized purpose is in order (IV, 3823–3835, 3838; VII, 1405, 1413–1415; June 9, 1954, p. 5963; July 27, 1954, p. 12287; Oct. 1, 1975, p. 31058; June 8, 1977, p. 17941; July 17, 1985, p. 19435; Sept. 11, 1985, p. 23398; June 14, 1988, p. 14341). However, this does not permit an amendment that adds additional legislation (IV, 3836, 3837, 3862; VII, 1402–1436; Dec. 9, 1971, p. 4595; Aug. 1, 1973, p. 27291; June 10, 1977, p. 1802; July 30, 1985, p. 21532; July 23, 1986, p. 17446; June 26, 1987, p. 17655; June 28, 1988, pp. 16203, 16213; Aug. 2, 1989, p. 18172; Nov. 15, 1989, p. 29004; June 23, 1998, p. 13475; July 13, 2000, p. 14093), proposes a new unauthorized purpose (Dec. 8, 1971, p. 45487; Aug. 7, 1978, pp. 24710–12; May 25, 1988, p. 12256), earmarks for unauthorized purposes (July 17, 1985, p. 19435; July 17, 1986, p. 16918; July 26, 1995, p. 20528; June 5, 1996, p. 13120), earmarks by directing a new use of funds not required by law (July 26, 1985, pp. 20811, 20813), or increases an authorized amount above the authorized ceiling (Aug. 4, 1999, p. 19513).

An amendment adding a new paragraph indirectly increasing an unauthorized amount contained in a prior paragraph permitted to remain is

subject to a point of order because the new paragraph is adding a further unauthorized amount not merely perfecting (July 12, 1995, p. 18628; July 16, 1997, pp. 14746; Sept. 9, 1997, p. 19121; Sept. 17, 1998, p. 20818). However, a new paragraph indirectly reducing an unauthorized amount permitted to remain in a prior paragraph passed in the reading is not subject to a point of order because it is not adding a further unauthorized amount (July 16, 1997, p. 14747). Where by unanimous consent an amendment is offered en bloc to a paragraph containing an unauthorized amount not yet read for amendment, the amendment increasing that unauthorized figure is subject to a point of order since at that point it is not being offered to a paragraph that has been read and permitted to remain (June 21, 1984, p. 17687). As required by clause 2(f), the Chair will query for points of order against the provisions of an appropriation bill not yet reached in the reading but addressed by an amendment offered en bloc under that clause as budget authority and outlay neutral (July 22, 1997, p. 15250).

The Chair examined an entire legislative provision permitted to remain when ruling that an amendment to a portion of the provision was merely perfecting (July 15, 1999, pp. 16284, 16291). An amendment to a general appropriation bill is not subject to a point of order as adding legislation for restating, verbatim, a legislative provision already contained in the bill and permitted to remain (Aug. 27, 1980, p. 23519).

To a legislative provision permitted to remain conferring assistance on a certain class of recipients, an amendment adding another class is further legislation and is not merely perfecting (June 22, 1983, p. 16851). The following amendments to legislative provisions permitted to remain have been held to propose additional legislation: (1) an amendment striking text that resulted in extending the legislative reach of the pending bill (July 17, 1996, p. 17533); (2) an amendment extending a legislative provision that placed certain restrictions on recipients of a defined set of Federal payments and benefits to persons benefiting from a certain tax status determined on wholly unrelated criteria (Aug. 3, 1995, p. 21967); (3) an amendment adding an additional nation to a legislative provision addressing sanctions against one nation (July 13, 2000, p. 14092); (4) an amendment to a legislative provision extending the availability of certain housing assistance to certain recipients (June 13, 2006, p. —).

On the other hand, to a legislative provision permitted to remain, an amendment particularizing a definition in the language was held not to constitute additional legislation where it was shown that the definition being amended already contemplated inclusion of the covered class (Aug. 5, 1998, p. 18934). To a legislative provision permitted to remain that excepted from a denial of funds for abortions cases where the life of the mother would be endangered if a fetus were carried to term, an amendment excepting instead cases where the health of the mother would be endangered if the fetus were carried to term was held not to constitute further legislation, since determinations on the endangerment of life necessarily subsume determinations on the endangerment of health; and the amend-

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ment did not therefore require any different or more onerous determinations (June 27, 1984, p. 19113).

To a paragraph permitted to remain despite containing a legislative proviso restricting the obligation of funds until a date within the fiscal year, an amendment striking the delimiting date, thus applying the restriction for the entire year, was held to be perfecting (July 30, 1990, p. 20442); but striking the date and inserting a new trigger (the enactment of other legislation), was held to be additional legislation (July 30, 1990, p. 20442).

The principle seems to be generally well accepted that the House proposing legislation on a general appropriation bill should recede if the other House persists in its objection (IV, 3904–3908), and clause 5 of rule XXII (§ 1076, *infra*) prohibits House conferees from agreeing to a Senate amendment that proposes legislation on an appropriation bill without specific authority from the House. However, where a Senate amendment proposing legislation on a general appropriation bill is, pursuant to the edict of clause 5 of rule XXII, reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment is in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement (IV, 3909; VIII, 3188, 3189; Speaker McCormack, Dec. 15, 1970, p. 41504; Aug. 1, 1979, pp. 22007–11; Speaker O’Neill, Dec. 12, 1979, p. 35520; June 30, 1987, p. 18308).

“HOLMAN RULE” ON RETRENCHING EXPENDITURES

Decisions under the so-called “Holman Rule” in clause 2 of rule XXI have been rare in the modern practice of the House. The trend in construing language in general appropriation bills or amendments thereto has been to minimize the importance of the “Holman Rule” in those cases where the decision can be made on other grounds. The practice of using limitations in appropriation bills has been perfected in recent years so that most modern decisions by the Chair deal with distinctions between such limitations and matters that are considered to be legislation (see §§ 1053–1057, *supra*). Under the modern practice, the “Holman Rule” only applies where an obvious reduction is achieved by the provision in question and does not apply to limiting language unaccompanied by a reduction of funds in the bill (July 16, 1979, pp. 18808–10). It has no application to an amendment to an appropriation bill that does not legislate but is merely a negative limitation citing but not changing existing law (June 18, 1980, p. 15355).

A paragraph containing legislation reported in an appropriation bill to be in order must on its face show a retrenchment of a type that conforms to the requirements of the rule (Mar. 17, 1926, p. 5804).

The reduction of expenditure must appear as a necessary result, in order to bring an amendment or provision within the exception to the rule. It is not sufficient that such reduction would probably, or would in the opinion of the Chair, result therefrom (IV, 3887; VII, 1530–1534). Thus, an amendment to a general appropriation bill providing that appropriations made in that act are hereby reduced by \$7 billion, though legislative in form, was held in order under the “Holman Rule” exception (Apr. 5, 1966, p. 7689), but an amendment providing for certain reductions of appropriations carried in the bill based on the President’s budget estimates was held not to show a reduction on its face and to provide merely speculative reductions (Deschler, ch. 26, § 5.6; June 24, 1992, p. 16110). An amendment authorizing the President to reduce each appropriation in the bill by not more than 10 percent was ruled out as legislation conferring new authority on the President (May 31, 1984, p. 14617; June 6, 1984, p. 15120). An amendment reducing an unauthorized amount permitted to remain in a general appropriation bill is in order as a retrenchment under this clause (Oct. 1, 1975, p. 31058). An amendment to a general appropriation bill denying the availability of funds to certain recipients but requiring Federal officials to make additional determinations as to the qualifications of recipients is legislation and is not a retrenchment of expenditures where it is not apparent that the prohibition will reduce the amounts covered by the bill (June 26, 1973, p. 21389).

The amendment must not only show on its face an attempt to retrench but also must be germane to some provision in the bill even though offered by direction of the committee having jurisdiction of the subject matter of the amendment (VII, 1549; Dec. 16, 1911, p. 442). An amendment providing that appropriations “herein and heretofore made” shall be reduced by \$70 million through the reduction of Federal employees as the President determines was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the “Holman Rule” exception (Oct. 18, 1966, p. 27425).

An amendment reducing an amount in an appropriation bill for the Postal Service and prohibiting the use of funds therein to implement special bulk third-class rates for political committees was held in order since not specifically requiring a new determination and since constituting a retrenchment of expenditures even if assumed to be legislative (July 13, 1979, pp. 18453–55).

As long as an amendment calls for an obvious reduction at some point in time during the fiscal year, the amendment is in order under the “Holman Rule” even if the reduction takes place in the future in an amount actually determined when the reduction takes place (for example, by formula) (VII, 1491, 1505; July 30, 1980, pp. 20499–20503). To an amendment that is in order under the “Holman Rule,” containing legislation but retrenching expenditures by formula for every agency funded by the bill, an amendment exempting from that reduction several specific programs

does not add further legislation and is in order (July 30, 1980, pp. 20499–20503).

A motion to recommit the District of Columbia appropriation bill with instructions to reduce the proportion of the fund appropriated from the Federal Treasury from one-half, as provided in the bill, to one-fourth of the entire appropriation is in order, since the effect of the amendment if adopted would reduce the expenditure of public money although not reducing the amount of the appropriation (VII, 1518).

The term “retrenchment” means the reduction of the amount of money to be taken out of the Federal Treasury by the bill, and therefore a reduction of the amount of money to be contributed toward the expenses of the District of Columbia is in order as a retrenchment (VII, 1502).

An amendment proposed to an item for the recoinage of uncurrent fractional silver, which amendment struck out the amount appropriated and added a provision for the coinage of all the bullion in the Treasury into standard silver dollars, the cost of such coinage and recoinage to be paid out of the Government’s seigniorage, was held not to be in order under the rule; first, because not germane to the subject matter of the bill (the sundry civil); second, because it did not appear that any retrenchment of expenditure would result, the seigniorage being the property of the Government as other funds in the Treasury (VII, 1547).

To an item of appropriation for inland transportation of mails by star routes an amendment was offered requiring the Postmaster General to provide routes and make contracts in certain cases, with the further provision “and the amount of appropriation herein for star routes is hereby reduced to \$500.” A point of order made against the first or legislative part of the amendment was sustained, which decision was, on appeal, affirmed by the committee (VII, 1555).

To a clause appropriating for the foreign mail service an amendment reducing the appropriation, and in addition repealing the act known as the “subsidy act,” was held not in order because the repealing of this act was not germane to the appropriation bill; and that to be in order both branches of the amendment must be germane to the bill (VII, 1548).

A provision in the agricultural appropriation bill transferring the supervision of the importation of animals from the Treasury to the Department of Agriculture is out of order, being a provision changing law and not retrenching expenditure (IV, 3886).

Where a paragraph containing new legislation provides in one part for a discharge of employees, which means a retrenchment, and in another part embodies legislation to bring about the particular retrenchment that in turn shows on its face an expenditure the amount of which is not apparent, the Chair is unable to hold that the net result will retrench expenditures. However, where the additional legislation does not show on its face an additional expenditure, the Chair will not speculate as to a possible expenditure under the additional legislation (VII, 1500).

As explained in the annotation in § 1043, *supra*, the amendment of clause 2(b) in the 98th Congress narrowed the “Holman Rule” exception to the general prohibition against legislation to cover only retrenchments reducing amounts of money covered by the bill, and not retrenchments resulting from reduction of the number and salary of officers of the United States or of the compensation of any person paid out of the U.S. Treasury. Accordingly, the Chair held out of order an amendment mandating the reduction of certain Federal salaries and expenses as not confined to a reduction of funds in the bill (June 17, 1994, p. 13422). Paragraph (b) also eliminated separate authority conferred upon legislative committees or commissions with proper jurisdiction to report amendments retrenching expenditures, and permitted legislative committees to recommend such retrenchments by reduction of amounts covered by the bill to the Appropriations Committee for discretionary inclusion in the reported bill. Paragraph (d) as added in the 98th Congress provides a new procedure for consideration of all retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House. Other decisions that involved interpretation of the “Holman Rule,” but which do not reflect the current form or interpretation of that rule, are found in IV, 3846, 3885–3892; VII, 1484, 1486–1492, 1498, 1500, 1515, 1563, 1564, 1569; June 1, 1892, p. 4920.

This provision from section 139(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190f(c)) was made part of the standing rules in the 83d Congress (Jan. 3, 1953, p. 24). Previously, a reappropriation of an unexpended balance for an object authorized by law was in order on a general appropriation bill (IV, 3591, 3592; VII, 1156, 1158). This clause was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99–177) to permit the Committee on Appropriations to report certain transfers of unexpended balances. Consistent with clause 2 of rule XXI, and as codified in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47), violations of this clause are enforced only against specific provisions in general appropriation bills containing reappropriations rather than against consideration of the bill (see Deschler, ch. 25, § 3).

A provision in a general appropriation bill, or an amendment thereto, providing that funds for a certain purpose are to be derived by continuing the availability of funds previously appropriated for a prior fiscal year is in violation of clause 2(a)(2) (formerly clause 6 of rule XXI) (Aug. 20, 1951, p. 10393; Mar. 29, 1960, p. 6862; June 17, 1960, p. 13138; June 20, 1973, p. 20530; July 29, 1982, p. 18625; June 28, 1988, p. 16255), and a reappropriation of unexpended prior year balances prohibited by this clause is not in order under the guise of a “Holman Rule” exception to clause 2 of rule XXI (Oct. 18, 1966, p. 27424). An amendment to a general appropriation bill making any appropriations that are available for the current fiscal

year available for certain new purposes was held out of order under clause 2(a)(2) since it was not confined to the funds in the bill and would permit reappropriation of unexpended balances (Oct. 1, 1975, p. 31090). That appropriations may be authorized in law for a specified object does not permit an amendment to a general appropriation bill to include legislative language mandating the reappropriation of funds from other Acts (July 28, 1992, p. 19652).

This rule, however, is not applicable when the reappropriation language is identical to legislative authorization language enacted subsequent to the adoption of the rule, since the law is a more recent expression of the will of the House (Sept. 5, 1961, p. 18133), nor when a measure transferring unobligated balances of previously appropriated funds contains legislative provisions and rules changes but no appropriation of new budget authority and is neither in the form of an appropriation bill nor the subject of a privileged report by the Committee on Appropriations under rule XIII (Mar. 3, 1988, p. 3239).

The return of an unexpended balance to the Treasury is in order (IV, 3594).

A provision in a general appropriation bill that authorizes an official to transfer funds among appropriation accounts in the bill changes existing law in violation of clause 2 of rule XXI by including language conferring new authority (Deschler, ch 26, § 29.2; June 9, 2006, p. —). However, direct transfers of appropriations within the confines of the same bill normally are considered in order (VII, 1468) as a “within-bill” transfer rather than a transfer of unexpended balances of the kind addressed by clause 2(a)(2).

To invoke the protection of clause 2(f), an amendment must not increase the levels of budget authority or outlays carried in the bill (Aug. 4, 1999, p. 19513; July 12, 2000, p. 14071; July 13, 2004, pp. —, —); and the proponent of an amendment carries the burden of so proving (see § 1044a, *supra*). An amendment otherwise in order under this paragraph may nevertheless be in violation of clause 2(a)(1) if increasing an appropriation above the authorized amount contained in the bill (Aug. 4, 1999, p. 19513). The Chair will query for points of order against provisions of a bill not yet read when they are addressed by an offsetting amendment under this paragraph (*e.g.*, May 17, 2005, p. —).

Transportation obligation limitations

3. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that would cause obligation limitations to be below the level for any fiscal year set forth in section 8003 of the Safe,

§ 1063a. Offsetting en bloc amendments.
 § 1064. Transportation obligation limitations.

Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as adjusted, for the highway category or the mass transit category, as applicable. For purposes of this clause, any obligation limitation relating to surface transportation projects under section 1602 of the Transportation Equity Act for the 21st Century and section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within State program allocations.

The Transportation Equity Act for the 21st Century (sec. 8101(e), P.L. 105–178; 2 U.S.C. 901 note) added this provision as a new clause 9 of rule XXI. In the 106th Congress, this provision was transferred to clause 3 (H. Res. 5, Jan. 6, 1999, p. 47). In the 109th Congress the first sentence of this clause was amended to conform the rule to the current law authorizing funds for highway and transit programs, and a second sentence was added (sec. 8004, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), P.L. 109–59; 2 U.S.C. 901 note). The second sentence was derived from the following provision of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (sec. 108, div. C, P.L. 105–277; 112 Stat. 2681–586): “Sec. 108. For the purpose of any Rule of the House of Representatives, notwithstanding any other provision of law, any obligation limitation relating to surface transportation projects under section 1602 of P.L. 105–178 shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within state program allocations.” Section 8005 of SAFETEA–LU states as follows: “For purposes of clauses 2 and 3 of rule XXI of the House of Representatives, it shall be in order to transfer funds, in amounts specified in annual appropriation Acts to carry out the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (including the amendments made by that Act), from the Federal Transit Administration’s administrative expenses account to other mass transit budget accounts under section 250(c)(4)(C) of the Balanced Budget and Emergency Deficit Control Act

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§ 1064a

Rule XXI, clause 3

of 1985.” An amendment limiting funds for a transportation project (1) that was part of an aggregate, annual level of obligation limitations set forth in section 8003 of SAFETEA-LU, (2) that was not covered by the “past practice” assumption, and (3) the funding for which could not be redirected elsewhere in the program, was held to cause an obligation limitation to be below the funding level required by this clause (June 14, 2006, p. —).

Section 48114 of title 49 (a provision first added by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (sec. 106, P.L. 106–181), and extended to 2007 by its reenactment in title 49 (sec. 104, P.L. 108–176)) provides a point of order to enforce guarantees of total budget resources in a fiscal year for certain aviation investment programs as follows:

SEC. 48114. FUNDING FOR AVIATION PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) AIRPORT AND AIRWAY TRUST FUND GUARANTEE.—

(A) IN GENERAL.—The total budget resources made available from the Airport and Airway Trust Fund each fiscal year through fiscal year 2007 pursuant to sections 48101, 48102, 48103, and 106(k) of title 49, United States Code, shall be equal to the level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year. Such amounts may be used only for aviation investment programs listed in subsection (b).

(B) GUARANTEE.—No funds may be appropriated or limited for aviation investment programs listed in subsection (b) unless the amount described in subparagraph (A) has been provided.

(2) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FROM THE GENERAL FUND.—In any fiscal year through fiscal year 2007, if the amount described in paragraph (1) is appropriated, there is further authorized to be appropriated from the general fund of the Treasury such sums as may be necessary for the Federal Aviation Administration Operations account.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) TOTAL BUDGET RESOURCES.—The term “total budget resources” means the total amount made available from the Airport and Airway Trust Fund for the sum of obligation limitations and budget authority made available for a fiscal year for the following budget accounts that are subject to the obligation limitation on contract authority provided in this title and for which appropriations are provided pursuant to authorizations contained in this title:

- (A) 69–8106–0–7–402 (Grants in Aid for Airports).
- (B) 69–8107–0–7–402 (Facilities and Equipment).
- (C) 69–8108–0–7–402 (Research and Development).
- (D) 69–8104–0–7–402 (Trust Fund Share of Operations).

(2) LEVEL OF RECEIPTS PLUS INTEREST.—The term “level of receipts plus interest” means the level of excise taxes and interest credited to the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 for a fiscal year as set forth in the President’s budget baseline projection as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) (Treasury identification code 20–8103–0–7–402) for that fiscal year submitted pursuant to section 1105 of title 31, United States Code.

(c) ENFORCEMENT OF GUARANTEES.—

(1) TOTAL AIRPORT AND AIRWAY TRUST FUND FUNDING.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause total budget resources in a fiscal year for aviation investment programs described in subsection (b) to be less than the amount required by subsection (a)(1)(A) for such fiscal year.

(2) CAPITAL PRIORITY.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that provides an appropriation (or any amendment thereto) for any fiscal year through fiscal year 2007 for Research and Development or Operations if the sum of the obligation limitation for Grants-in-Aid for Airports and the appropriation for Facilities and Equipment for such fiscal year is below the sum of the authorized levels for Grants-in-Aid for Airports and for Facilities and Equipment for such fiscal year.

The chairmen of the Committee on Rules and the Committee on Transportation and Infrastructure inserted in the Record correspondence concerning points of order established in this section (Mar. 15, 2000, p. 2805).

Appropriations on legislative bills

4. A bill or joint resolution carrying an appropriation may not be reported by a committee not having jurisdiction to report appropriations, and an amendment proposing an appropriation shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against an appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time

§ 1065. Restriction of power to report appropriations.

during pendency of that measure for amendment.

This portion of the rule was adopted June 1, 1920 (VII, 2133). When the House recodified its rules in the 106th Congress (H. Res. 5, Jan. 6, 1999, p. 47), this clause was returned to clause 4 where it had been until moved to former clause 5(a) of rule XXI in the 93d Congress (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470).

A point of order under this rule cannot be raised against a motion to suspend the rules (VIII, 3426), against a motion to discharge a nonappropriating committee from consideration of a bill carrying an appropriation (VII, 2144), or against a Senate amendment (except as applied through clause 5 of rule XXII) (VII, 1572). However, it may be directed against an item of appropriation in a Senate bill (VII, 2136, 2147; July 30, 1957, pp. 13056, 13181). If the House deletes a provision in a Senate bill under this rule, the bill is messaged to the Senate with the deletion in the form of an amendment. The point of order may be made against an appropriation in a Senate bill that, although not reported in the House, is considered in lieu of a reported House “companion bill” (VII, 2137; Mar. 29, 1933, p. 988). This clause applies to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations (Oct. 1, 1980, pp. 28638–42). The rule does not apply to private bills since the committees having jurisdiction over bills for the payment of private claims may report bills making appropriations within the limits of their jurisdiction (VII, 2135; Dec. 12, 1924, p. 538). The point of order under this rule does not apply to an appropriation in a bill that has been taken away from a nonappropriating committee by a motion to discharge (VII, 1019a). The point of order under this rule does not apply to a special order reported from the Committee on Rules “self-executing” the adoption in the House of an amendment containing an appropriation, since the amendment is not separately before the House during consideration of the special order (Feb. 24, 1993, p. 3542).

The provision in this clause that a point of order against an amendment containing an appropriation to a legislative bill may be made “at any time” has been interpreted to require that the point of order be raised during the pendency of the amendment under the five-minute rule (Mar. 18, 1946, p. 2365; Apr. 28, 1975, p. 12043), and a point of order will lie against an amendment during its pendency, even in its amended form, although the point of order is against the amendment as amended by a substitute and no point of order was raised against the substitute before its adoption (Apr. 23, 1975, pp. 11512–13). However, the point of order must be raised during the initial consideration of the bill or amendment under the five-minute rule, and a point of order against similar language permitted to remain in the House version and included in a conference report on a bill will not lie, since the only rule prohibiting such inclusion (clause 5 of rule XXII) is limited to language originally contained in a Senate amend-

ment where the House conferees have not been specifically authorized to agree thereto (May 1, 1975, p. 12752). Where the House has adopted a resolution waiving points of order against certain appropriations in a legislative bill, a point of order may nevertheless be raised against an amendment to the bill containing an identical provision, since under this rule a point of order may be raised against the amendment "at any time" (Apr. 23, 1975, p. 11512). A point of order against a direct appropriation in a bill initially reported from a legislative committee and then sequentially referred to and reported adversely by the Committee on Appropriations was conceded and sustained as in violation of this clause (Nov. 10, 1975, p. 35611). The point of order should be directed to the item of appropriation in the bill and not to the act of reporting the bill (VII, 2143), and cannot be directed to the entire bill (VII, 2142; Apr. 28, 1975, p. 12043).

The term "appropriation" in the rule means the payment of funds from the Treasury, and the words "warranted and make available for expenditure for payments" are equivalent to "is hereby appropriated" and therefore not in order (VII, 2150). The words "available until expended," making an appropriation already made for one year available for ensuing years, are not in order (VII, 2145).

The point of order provided for in this clause is not applicable to the following provisions: (1) authorizing the Secretary of the Treasury to use proceeds from the sale of bonds under the Second Liberty Bond Act (public debt transactions) for the purpose of making loans, since such loans do not constitute "appropriations" within the purview of the rule (June 28, 1949, pp. 8536–38; Aug. 2, 1950, p. 11599); (2) exempting loan guarantees in a legislative bill from statutory limitations on expenditures (July 16, 1974, p. 23344); (3) authorizing the availability of certain loan receipts where it can be shown that the actual availability of those receipts remains contingent upon subsequent enactment of an appropriation act (Sept. 10, 1975, p. 28300); (4) increasing the duties of a commission (VII, 1578); (5) authorizing payment from an appropriation to be made (Jan. 31, 1923, p. 2794).

Language reappropriating, making available, or diverting an appropriation or a portion of an appropriation already made for one purpose to another (VII, 2146; Mar. 29, 1933, p. 988; Aug. 10, 1988, p. 21719), or for one fiscal year to another (Mar. 26, 1992, p. 7223), is not in order. For example, the following provisions have been held out of order: (1) expanding the definition in existing law of recipients under a Federal subsidy program as permitting a new use of funds already appropriated (May 11, 1976, pp. 13409–11); (2) authorizing the use, without a subsequent appropriation, of funds directly appropriated by a previous statute for a new purpose (Oct. 1, 1980, pp. 28637–40). However, a modification of such a provision making payments for such new purposes "effective only to the extent and in such amounts as are provided in advance in appropriation acts" does not violate this clause (Oct. 1, 1980, pp. 28638–42).

The following provisions have also been held to be in violation of this clause: (1) directing a departmental officer to pay a certain sum out of unexpended balances (VII, 2154); (2) authorizing the use of funds of the Shipping Board (VII, 2147); (3) directing payments out of Indian trust funds (VII, 2149); (4) making excess foreign currencies immediately available for a new purpose (Aug. 3, 1971, p. 29109); (5) authorizing the collection of fees or user charges by Federal agencies and making the revenues collected therefrom available without further appropriation (June 17, 1937, pp. 5915–18; Mar. 29, 1972, pp. 10749–51); (6) transferring existing Federal funds into a new Treasury trust fund to be immediately available for a new purpose (June 20, 1974, pp. 20273–75); (7) transferring unexpended balances of appropriations from an existing agency to a new agency created therein (Apr. 9, 1979, p. 7774); (8) making a direct appropriation to carry out a part of the Energy Security Act (Oct. 24, 1985, p. 28812); (9) requiring the diversion of previously appropriated funds in lieu of the enactment of new budget authority if a maximum deficit amount under the Deficit Control Act of 1985 is exceeded, though its stated purpose may be to avoid the sequestration of funds (Aug. 10, 1988, p. 21719).

Section 401(a) of the Congressional Budget Act of 1974 (88 Stat. 317) prohibits consideration in the House of any bill, resolution, or amendment that provides new spending authority (as that term is defined in that section) unless that measure also provides that such new spending authority is to be available only to the extent provided in appropriation acts (see § 1127, *supra*). See also Deschler, ch. 25, § 4 for a discussion of appropriations on legislative bills generally.

Tax and tariff measures and amendments

5. (a)(1) A bill or joint resolution carrying a tax or tariff measure may not be reported by a committee not having jurisdiction to report tax or tariff measures, and an amendment in the House or proposed by the Senate carrying a tax or tariff measure shall not be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A point of order against a tax or tariff measure in such a bill, joint resolution, or amendment thereto may be raised at any time during pendency of that measure for amendment.

§ 1066. Restriction on bills and amendments carrying taxes or tariffs.

(2) For purposes of paragraph (1), a tax or tariff measure includes an amendment proposing a limitation on funds in a general appropriation bill for the administration of a tax or tariff.

Subparagraph (1) was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). Subparagraph (2) was added in the 108th Congress (sec. 2(o), H. Res. 5, Jan. 7, 2003, p. 7). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(b) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

A point of order under this paragraph against a provision in a bill is in order at any time during consideration of the bill for amendment in Committee of the Whole (Aug. 1, 1986, p. 18649). On October 4, 1989, the chairman of the Committee of the Whole, before ruling on several points of order under this paragraph, enunciated several guidelines to distinguish taxes and tariffs on the one hand and user or regulatory fees and other forms of revenue on the other (p. 23260). On the opening day of the 102d Congress, Speaker Foley inserted in the Congressional Record the following statement of jurisdictional concepts underlying those same distinctions and indicated his intention to exercise his referral authority under rule X in a manner consistent with this paragraph (Jan. 3, 1991, p. 64 (reiterated at the beginning of each Congress, *e.g.*, Jan. 4, 1995, p. 551; Jan. 3, 2001, p. 39)):

Clause 5(b) (current clause 5(a)) of rule XXI prohibits the reporting of a tax or tariff matter by any committee not having that jurisdiction. Most of the questions of order arising under this clause since its adoption in 1983 have related to provisions that clearly affected the operation of the Internal Revenue Code or the customs laws. From time to time, however, such a question has related to a provision drafted as a user or regulatory fee levied on members of a class that occasions or avails itself of a particular governmental activity, typically to generate revenue in support of that activity. In order to provide guidance concerning the referral of bills, to assist committees in staying within their appropriate jurisdictions under rule X, to assist committees without jurisdiction over tax or tariff measures in complying with clause 5(b) of rule XXI, and to protect the constitutional prerogative of the House to originate revenue bills, the Speaker will make the following statement: Standing committees of the House (other than the Committees on Appropriations and Budget) have jurisdiction to consider user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to support, subject to annual appropriations, the service, program, or activity (including agency functions associated therewith) for which such

fees, charges, and assessments are established and collected and not to finance the costs of Government generally. The fee must be paid by a class benefiting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee. The fund that receives the amounts collected is not itself determinative of the existence of a fee or a tax. The Committee on Ways and Means has jurisdiction over “revenue measures generally” under rule X. That committee is entitled to an appropriate referral of broad-based fees and could choose to recast such fees as excise taxes. A provision only reauthorizing or amending an existing fee without fundamental change, or creating a new fee generating only a *de minimis* aggregate amount of revenues, does not necessarily require a sequential referral to the Committee on Ways and Means. The Chair intends to coordinate these principles with the Committee on the Budget and the Congressional Budget Office, especially in the reconciliation process, so that budget scorekeeping does not determine, and reconciliation directives and their implementation will not be inconsistent with, committee jurisdiction. Further, it should be emphasized that the constitutional prerogative of the House to originate revenue measures will continue to be viewed broadly to include any meaningful revenue proposal that the Senate may attempt to originate.

The adoption of subparagraph (2) in the 108th Congress established a different standard for determining a violation of this clause by an amendment to a reported general appropriation bill than for a provision in the appropriation bill itself. Before its adoption, a Member raising a point of order under this paragraph against a provision in, *or an amendment to*, a general appropriation bill affecting the use of funds therein (otherwise traditionally in order if admissible under clause 2 of rule XXI), carried the burden of showing a necessary, certain, and inevitable change in revenue collections or tax statuses or liabilities (Sept. 12, 1984, pp. 25108, 25109, 25120; July 26, 1985, p. 20806; Aug. 1, 1986, p. 18649; July 13, 1990, p. 17473; June 18, 1991, p. 15189). The intent of the rules change, as expressed during debate on the change, was “to ease the burden on the maker of a point of order [*against an amendment*] from having to show a necessary, certain and inevitable change in revenue collections, tax statuses, or liability as previous precedents required, to one of showing a textual relationship between the amendment and the administration of the Internal Revenue or tariff laws” (Jan. 7, 2003, p. 12). Under that standard the following amendments to a general appropriation bill have been held to impose a limitation on funds in violation of this clause: (1) a limitation on funds to assess or collect any tax liability attributable to the inclusion of certain economic assistance in the taxpayer’s gross income (Sept. 9, 2003, p. —); (2) a limitation on funds to process the importation of any product from Iran (June 18, 2004, p. —); (3) a limitation on funds

for the accession of the Russian Federation into the World Trade Organization, thereby effecting changes to that country's products under domestic tariff law (June 28, 2006, p. —).

The precedents developed under this clause before its change in the 108th Congress still apply to the Chair's determination whether a limitation in a general appropriation bill (rather than an amendment thereto) constitutes a tax or tariff measure proscribed by this paragraph. Prior precedents addressing amendments are still viable for that determination. The Chair will consider argument as to whether the limitation effectively and inevitably changes revenue collections and tax status or liability (Aug. 1, 1986, p. 18649). For example, in determining whether an amendment to a general appropriation bill proposing a change in IRS funding priorities constituted a tax measure proscribed by this paragraph, the Chair considered argument as to whether the change would necessarily or inevitably result in a loss or gain in tax liability and in tax collection (June 18, 1991, p. 15189).

A limitation on the use of funds contained in a general appropriation bill was held to violate this paragraph by denying the use of funds by the Customs Service to enforce duty-free entry laws with respect to certain imported commodities, thereby requiring the collection of revenues not otherwise provided for by law (Oct. 27, 1983, p. 29611). Similar rulings were issued: (1) where it was shown that the imposition of the restriction on IRS funding for the fiscal year would effectively and inevitably preclude the IRS or the Customs Service from collecting revenues otherwise due and owing by law or require collection of revenue not legally due or owing (July 26, 1985, p. 20806; Aug. 1, 1986, pp. 18649, 18650; July 17, 1996, p. 17563); and (2) where a provision in a general appropriation bill prohibited the use of funds to impose or assess certain taxes due under specified portions of the Internal Revenue Code (July 13, 1990, p. 17473). In the 98th Congress, the Chair sustained points of order under this paragraph against motions to concur in three Senate amendments to a general appropriation bill (not reported by the Committee on Ways and Means): (1) an amendment denying the use of funds in that or any other Act by the IRS to impose or assess any tax due under a designated provision of the Internal Revenue Code, thereby rendering the tax uncollectable through the use of any funds available to the agency (Sept. 12, 1984, p. 25108); (2) an amendment directing the Secretary of the Treasury to admit free of duty certain articles imported by a designated organization (Sept. 12, 1984, p. 25109); and (3) an amendment to the Tariff Act of 1930 to expand the authority of the Customs Service to seize and use the proceeds from the sale of contraband imports to defray operational expenses, and to offset owed customs duties under one section of that law (Sept. 12, 1984, p. 25120). An amendment to a general appropriation bill proposing to divert an increase in funding for the IRS from spot-checks to targeted audits was held not to constitute a tax within the meaning of this paragraph

because it did not necessarily affect revenue collection levels or tax liabilities (June 18, 1991, p. 15189).

In the 99th Congress, the following provisions in a reconciliation bill reported from the Budget Committee were ruled out as tax measures not reported from the Committee on Ways and Means: (1) a recommendation from the Committee on Education and Labor excluding certain interest on obligations from the Student Loan Marketing Association from application of the Internal Revenue Code, affecting interest deductions against income taxes (Oct. 24, 1985, pp. 28776, 28827); and (2) a recommendation from the Committee on Merchant Marine and Fisheries expanding tax benefits available to shipowners through a capital construction fund (Oct. 24, 1985, pp. 28802, 28827). In the 101st Congress, the following provisions in an omnibus budget reconciliation bill were ruled out: (1) a fee per passenger on cruise vessels, with revenues credited as proprietary receipts of the Coast Guard to be used for port safety, security, navigation, and antiterrorism activities (Oct. 4, 1989, p. 23260); (2) a per acre “ocean protection fee” on oil and gas leaseholdings in the Outer Continental Shelf, with receipts to be used to offset costs of various ocean protection programs (Oct. 4, 1989, p. 23261); (3) an amendment to the Internal Revenue Code relating to the tax deductibility of pension fund contributions (Oct. 4, 1989, p. 23262); (4) a fee incident to termination of employee benefit plans, with receipts to be applied to enforcement and administration of plans remaining with the system (Oct. 4, 1989, p. 23262); and (5) a fee incident to the filing of various pension benefit plan reports required by law, with revenues to be transferred to the Department of Labor for the enforcement of that law (Oct. 5, 1989, p. 23328).

To a bill reported from the Committee on Education and Labor authorizing financial assistance to unemployed individuals for employment opportunities, an amendment providing instead for tax incentives to stimulate employment was held to be a tax measure in violation of this paragraph (Sept. 21, 1983, p. 25145). A provision in a bill reported from the Committee on Foreign Affairs imposing a uniform fee at ports of entry to be collected by the Customs Service as a condition of importation of a commodity was held to constitute a tariff within the meaning of this paragraph (June 4, 1985, p. 14009), as was an amendment to a bill reported from that committee amending the tariff schedules to deny “most favored nation” trade treatment to a certain nation (July 11, 1985, p. 18590). A provision in a general appropriation bill creating a new tariff classification was held to constitute a tariff under this paragraph (June 15, 1994, p. 13103). A motion to concur in a Senate amendment constituting a tariff measure (imposing an import ban on certain dutiable goods) to a bill reported by a committee not having tariff jurisdiction was ruled out under this paragraph (Sept. 30, 1988, p. 27316). A proposal to increase a fee incident to the filing of a securities registration statement, with the proceeds to be deposited in the general fund of the Treasury as offsetting receipts, was held to constitute a tax within the meaning of this paragraph because

the amount of revenue derived and the manner of its deposit indicated a purpose to defray costs of Government, generally (Oct. 23, 1990, p. 32650). To a bill reported by the Committee on Transportation and Infrastructure, an amendment increasing a user fee was ruled out as a tax measure where the fee overcollected to offset a reduction in another fee, thus attenuating the relationship between the amount of the fee and the cost of the Government activity for which it was assessed (May 9, 1995, p. 12180). To a bill reported by the Committee on Science, Space, and Technology (now Science and Technology), an amendment proposing sundry changes in the Federal income tax by direct amendments to the Internal Revenue Code of 1986 was ruled out of order as carrying a tax measure in violation of this paragraph (Sept. 16, 1992, p. 25205), as were amendments to a general appropriation bill proposing in part to temper recently enacted reductions in rates of tax on income (July 10, 2003, pp. — and —).

Passage of tax rate increases

(b) A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. In this paragraph the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.

This provision was added in the 104th Congress (sec. 106(a), H. Res. 6, Jan. 4, 1995, p. 463), and in the 105th Congress it was amended to clarify the definition of “Federal income tax rate increase” as limited to a specific amendment to one of the named subsections (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(c) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47). On one occasion the Chair held that a provision repealing a ceiling on total tax liability attributable to a net capital gain was not subject to the original version of this paragraph (Apr. 5, 1995, p. 10614). The modified version of this paragraph comprises three elements (an

§ 1067. Three-fifths
vote to increase
income tax rates.

amendment to a pertinent section of the Internal Revenue Code of 1986, the imposition of a new rate of tax thereunder, and an increase in the amount of tax thereby imposed) and a measure that does not fulfill even the first element does not carry a Federal income tax rate increase (Jan. 18, 2007, p. — (sustained by tabling of appeal)). This paragraph does not apply to a concurrent resolution (Speaker Gingrich, May 18, 1995, p. 13499). A resolution reported from the Committee on Rules rendering this paragraph inapplicable may be adopted by majority vote (Oct. 26, 1995, p. 29477). The Speaker rules on the applicability of this paragraph only pending the question of final passage of a measure alleged to carry a Federal income tax rate increase, and not in advance upon adoption of a special order rendering this paragraph inapplicable (Oct. 26, 1995, p. 29477).

Consideration of retroactive tax rate increases

(c) It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase. In this paragraph—

§ 1068. Prohibition against retroactive income tax rate increase.

(1) the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section; and

(2) a Federal income tax rate increase is retroactive if it applies to a period beginning before the enactment of the provision.

This paragraph was added in the 104th Congress (sec. 106(b), H. Res. 6, Jan. 4, 1995, p. 463), and it was amended in the 105th Congress to clarify the definition of “Federal income tax rate increase” (H. Res. 5, Jan. 7, 1997, p. 121). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 5(d) of rule XXI (H. Res. 5, Jan. 6, 1999, p. 47).

Designation of public works

6. It shall not be in order to consider a bill, joint resolution, amendment, or conference report that provides for the designation or redesignation of a public work in honor of an individual then serving as a Member, Delegate, Resident Commissioner, or Senator.

§ 1068a. Restriction on designation of public works.

This clause was adopted in the 107th Congress (sec. 2(q), H. Res. 5, Jan. 3, 2001, p. 25).

7. It shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the Congressional Budget Act of 1974 that specify changes in law reducing the surplus or increasing the deficit for either the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year or the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year. In determining whether reconciliation directives specify changes in law reducing the surplus or increasing the deficit, the sum of the directives for each reconciliation bill (under section 310 of the Congressional Budget Act of 1974) envisioned by that measure shall be evaluated.

§ 1068b. Restriction on reconciliation directives.

This clause was added in the 110th Congress (sec. 402, H. Res. 5, Jan. 4, 2007, p. — (adopted Jan. 5, 2007)).

8. With respect to measures considered pursuant to a special order of business, points of order under title III of the Congressional Budget Act of 1974 shall operate without regard to whether the measure concerned has been reported from committee. Such points of order shall operate with respect to (as the case may be)—

§ 1068c. Budget Act points of order.

(a) the form of a measure recommended by the reporting committee where the statute uses the term “as reported” (in the case of a measure that has been so reported);

(b) the form of the measure made in order as an original bill or joint resolution for the purpose of amendment; or

(c) the form of the measure on which the previous question is ordered directly to passage.

This clause was added in the 110th Congress (sec. 403, H. Res. 5, Jan. 4, 2007, p. — (adopted Jan. 5, 2007)).

9. (a) It shall not be in order to consider—

(1) a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks,

§ 1068d. Congressional earmarks.

limited tax benefits, and limited tariff benefits in the bill or in the report (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits;

(2) a bill or joint resolution not reported by a committee unless the chairman of each committee of initial referral has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration;

(3) an amendment to a bill or joint resolution to be offered at the outset of its consideration for amendment by a member of a committee of initial referral as designated in a report of the Committee on Rules to accompany a resolution prescribing a special order of business unless the proponent has caused a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the amendment (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the proponent for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits to be printed in the Congressional Record prior to its consideration; or

(4) a conference report to accompany a bill or joint resolution unless the joint explanatory statement prepared by the managers on the

part of the House and the managers on the part of the Senate includes a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the conference report or joint statement (and the name of any Member, Delegate, Resident Commissioner, or Senator who submitted a request to the House or Senate committees of jurisdiction for each respective item included in such list) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(b) It shall not be in order to consider a rule or order that waives the application of paragraph (a). As disposition of a point of order under this paragraph, the Chair shall put the question of consideration with respect to the rule or order that waives the application of paragraph (a). The question of consideration shall be debatable for 10 minutes by the Member initiating the point of order and for 10 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(c) In order to be cognizable by the Chair, a point of order raised under paragraph (a) may be based only on the failure of a report, submission to the Congressional Record, or joint explanatory statement to include a list required by paragraph (a) or a statement that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

(d) For the purpose of this clause, the term “congressional earmark” means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(e) For the purpose of this clause, the term “limited tax benefit” means—

(1) any revenue-losing provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or

(2) any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

(f) For the purpose of this clause, the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

RULES OF THE HOUSE OF REPRESENTATIVES

§ 1068e

Rule XXI, clause 10

This clause was added in the 110th Congress (sec. 404, H. Res. 6, Jan. 4, 2007, p. — (adopted Jan. 5, 2007)). A similar point of order operated during part of the 109th Congress (H. Res. 1000, Sep. 14, 2006, p. —). A point of order under this clause does not lie against an unreported measure where the chairman of the committee of initial referral has printed in the Record a statement that the measure contains no congressional earmarks, limited tax benefits, or limited tariff benefits (Jan. 31, 2007, p. — (sustained by tabling of appeal)), or against a reported measure where the committee report contains such a statement (May 10, 2007, p. —; May 23, 2007, p. —). Paragraph (c) requires that a point of order under this clause be predicated only on the absence of a complying statement, and does not contemplate a question of order relating to the content of such statement (May 10, 2007, p. —) A point of order under this clause is untimely after consideration has begun (Mar. 23, 2007, p. —).

The House adopted an order during the 110th Congress establishing a point of order against the consideration of a conference report to accompany a regular general appropriation bill unless its joint explanatory statement contains a list of earmarks (within the meaning of paragraph (d)) that were not committed to the conference and were not in the House or Senate committee report on such measure. It further provided a point of order against a rule or order waiving such provision. Points of order against such rule or order or against such conference reports are decided by the question of consideration under paragraph (b) (H. Res. 491, June 18, 2007, p. —).

10. It shall not be in order to consider any bill,
§ 1068e. Pay-as-you-go point of order. joint resolution, amendment, or conference report if the provisions of such measure affecting direct spending and revenues have the net effect of increasing the deficit or reducing the surplus for either the period comprising the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year or the period comprising the current fiscal year and the ten fiscal years beginning with the fiscal year that ends in the following calendar year. The effect of such measure on the deficit or surplus shall be determined on the basis of estimates made by the Committee on the Budget relative to—

(a) the most recent baseline estimates supplied by the Congressional Budget Office consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 used in considering a concurrent resolution on the budget; or

(b) after the beginning of a new calendar year and before consideration of a concurrent resolution on the budget, the most recent baseline estimates supplied by the Congressional Budget Office consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

This clause was added in the 110th Congress (sec. 405, H. Res. 6, Jan. 4, 2007, p. — (adopted Jan. 5, 2007)).

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

1. A motion to disagree to Senate amendments to a House proposition and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate proposition and to request or agree to a conference with the Senate, shall be privileged in the discretion of the Speaker if offered by direction of the primary committee and of all reporting committees that had initial referral of the proposition.

This provision (proviso in former clause 1 of rule XX), added by the 89th Congress (H. Res. 8, Jan. 4, 1965, p. 21), provides a method whereby bills can be sent to conference by majority vote. As contained in section 126(a) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and adopted