

§ 38. Amendments to Bills Which Incorporate Other Law or Matter

Bill and Amendment as Applying Making Different Provisions of Same Law Applicable to Terms of Emergency Assistance to India

§ 38.1 To a bill authorizing emergency food relief assistance to India on credit terms as provided in one designated section of another act, an amendment making such assistance subject to all provisions of that act “applicable to and consistent with the purposes” of the bill was held to be not germane.

In the 82d Congress, a bill⁽¹²⁾ was under consideration to furnish emergency food relief assistance to India. The following amendment was offered to the bill:⁽¹³⁾

stances where an amendment modifying a provision of law was held not to be germane to a bill repealing such provision. Such a proposed modification of law must, to be germane, bear sufficient relationship to the provision of law being repealed and to the fundamental purpose of the bill.

- 12. H.R. 3791 (Committee on Foreign Affairs).
- 13. 97 CONG. REC. 5832, 82d Cong. 1st Sess., May 24, 1951.

Amendment offered by Mr. Shelley: On page 2, after line 20, insert a new section:

Sec. 3. Assistance provided under this act shall be provided under the provision of the Economic Cooperation Act of 1948, as amended, applicable to and consistent with the purposes of this act.

And amend this title.

Mr. John F. Shelley, of California, explaining the purpose of the amendment, stated:

. . . The purpose I have in offering this amendment at this time is to protect (the) principle . . . that the cargoes carried shall be carried at least 50 percent in vessels of American registry. . . .

Mr. John M. Vorys, of Ohio, made the point of order that the amendment was not germane.⁽¹⁴⁾ He pointed out that the section of the Economic Cooperation Act of 1948 referred to in the bill related to credit terms, whereas the amendment sought to incorporate provisions of such act relating to shipping. The Chairman⁽¹⁵⁾ sustained the point of order,⁽¹⁶⁾ observing that while shipping was a subject covered by the bill, the bill's provisions did not relate to shipping or other operations under the Economic Cooperation

- 14. *Id.* at pp. 5832, 5833.
- 15. Albert A. Gore (Tenn.).
- 16. 97 CONG. REC. 5833, 5834, 82d Cong. 1st Sess., May 24, 1951.

Administration Act of 1948. He further stated:

Upon close examination, the Chair finds that the amendment proposes the injection of new subject matter, not now within the text of the pending bill, by making the assistance which the pending bill would provide subject to the provisions of the Economic Cooperation Act of 1948 which differ from subsection (c), paragraph (2), of section 111 of said act, specifically referred to by the pending bill.

The fundamental test of germaneness being whether a proposed amendment would inject new and different subject matter, though not necessarily unrelated matter, into the legislation, the Chair is constrained to feel that the proposed amendment, even though it proposes to subject the pending bill to certain provisions of an act, a limited part of which act is referred to by the pending bill, does not meet the test of germaneness. . . .

Provision Making Law Inapplicable to One Activity—Amendment (In Form of Motion To Strike) Making Law Inapplicable to Other Activities

§ 38.2 For a perfecting amendment to a subsection striking out one activity from those covered by a provision of existing law, a substitute striking out the entire subsection, thereby eliminating the applicability of existing law to a number of activities, was

held more general in scope and not germane.

On Aug. 18, 1982,⁽¹⁷⁾ during consideration of H.R. 5540, the Defense Industrial Base Revitalization Act, in the Committee of the Whole, the Chair made the following statement:

THE CHAIRMAN:⁽¹⁸⁾ All time has expired.

Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute recommended by the Committee on Banking, Finance and Urban Affairs now printed in the reported bill as an original bill for the purpose of amendment in lieu of the committee amendment in the nature of a substitute recommended by the Committee on Education and Labor.

The Clerk read as follows:

H.R. 5540

. . . Sec. 2. Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091 et seq.) is amended by inserting after section 303 the following:

“Sec. 303A. (a) It is the purpose of this section to strengthen the domestic capability and capacity of the Nation’s defense industrial base. The actions specified in this section are intended to facilitate the carrying out of such purpose.

“(b)(1) The President, utilizing the types of financial assistance specified in sections 301, 302, and 303, and any other authority contained in this Act, shall take immediate action to

17. 128 CONG. REC. 21967, 21968, 97th Cong. 2d Sess.

18. Wyche Fowler, Jr. (Ga.).

assist in the modernization of industries in the United States which are necessary to the manufacture or supply of national defense materials which are required for the national security or are likely to be required in a time of emergency or war. . . .

“(c) The Secretary of Defense, in consultation with the Secretary of Commerce, shall—

“(1) determine immediately, and semiannually thereafter, those industries which should be given priority in the awarding of financial assistance under subsection (b);

“(2) determine the type and extent of financial assistance which should be made available to each such industry; and

“(3) with respect to the industries specified pursuant to paragraph (1), indicate those proposals, received under subsection (e), which should be given preference in the awarding of financial assistance under subsection (b) based on a determination that such proposals offer the greatest prospect for improving productivity and quality, and for providing materials which will reduce the Nation’s reliance on imports. . . .

“(m)(1) All laborers and mechanics employed for the construction, repair, or alteration of any project, or the installation of equipment, funded, in whole or in part, by a guarantee, loan, or grant entered into pursuant to this section shall be paid wages at rates not less than those prevailing on projects of similar character in the locality as determined by the Secretary of Labor in accordance with the Act entitled ‘An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes’, approved March 3, 1931 (40 U.S.C. 276a et seq.), and commonly known as the Davis-Bacon Act.

When consideration of H.R. 5540 resumed on Sept. 23, 1982,⁽¹⁹⁾ an amendment was offered by Mr. Bruce F. Vento, of Minnesota, and proceedings ensued as follows:

MR. VENTO: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Vento:
Page 41, line 24, strike out “, or the installation of equipment,”.

Page 42, beginning on line 15, strike out “, or the installation of equipment,”. . . .

MR. [JOHN N.] ERLBORN [of Illinois]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Erlborn as a substitute for the amendment offered by Mr. Vento: Beginning on page 41, line 22, strike all of subsection (m) through page 43, line 2.

MR. VENTO: Mr. Chairman, I make a point of order against the amendment offered as a substitute by the gentleman from Illinois (Mr. Erlborn). . . .

Mr. Chairman, the substitute offered by the gentleman is clearly not in order. Under rule 19, Cannon’s Procedure VIII, section 2879, the precedents provide that “to qualify as a substitute an amendment must treat in the same manner the same subject carried by the amendment for which it is offered.”

My amendment would remove language from the committee bill and

19. 128 CONG. REC. 24963, 24964, 97th Cong. 2d Sess.

limit the applicability of the Davis-Bacon Act in terms of one type of activity. The gentleman's substitute would strike the entire section of the committee bill which my amendment seeks to perfect and thereby eliminate the Davis-Bacon provisions of this legislation.

In this case, the amendment offered by the gentleman clearly does not treat the subject in the same manner which my amendment does. Also, under Deschler's Procedure, chapter 27, section 14.1, decisions made by the Chair on August 12, 1963, December 16, 1963, and June 5, 1974, a motion to strike out a section or paragraph is not in order while a perfecting amendment is pending. In addition, the decisions of the Chair of December 16, 1963, and June 5, 1974, and contained in Deschler's Procedure, chapter 27, section 14.4, provides that a provision must be perfected before the question is put on striking it out. A motion to strike out a paragraph or section may not be offered as a substitute for pending motion to perfect a paragraph or section by a motion to strike and insert. The gentleman's amendment attempts to accomplish indirectly something that he is precluded from doing directly. . . .

MR. ERLNBORN: . . . It does appear to me from what the gentleman has said in support of his point of order that he is claiming that my substitute would treat a different matter or in a different manner the same matter as the amendment offered by the gentleman.

The language to which both amendments are directed is language in the bill that is applying the Davis-Bacon Act to activities under the bill in ques-

tion. The amendment offered by the gentleman is reducing the extent of that coverage by taking out the installation of equipment.

My substitute also reduces that by eliminating the language so there would be no extension of Davis-Bacon to the activities beyond the present coverage of Davis-Bacon.

So the amendment that has been offered by the gentleman from Minnesota (Mr. Vento) is affecting Davis-Bacon by reducing its coverage. Mine also would affect the reduction of Davis-Bacon, only in a broader manner; and I, therefore, believe the amendment is in order.

THE CHAIRMAN: The Chair is prepared to rule.

The Chair sustains the point of order of the gentleman from Minnesota (Mr. Vento) for the reasons advocated by the gentleman from Minnesota that the substitute is too broad in its scope in its striking the whole of subsection (m).

The Chair would say to the gentleman from Illinois (Mr. Erlenborn) it would be appropriate as a separate amendment but it is not in order as a substitute because of the scope of the amendment.

The point of order of the gentleman from Minnesota is sustained.

Parliamentarian's Note: As the above proceedings indicate, a motion to strike out an entire subsection of a bill is not, in any event, a proper substitute for a perfecting amendment to the subsection, since it is broader in scope, but may be offered after disposition of the perfecting amendment.