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Proposed Budget Process Reforms in the Senate: A Brief Analysis of Senate Resolutions 4, 5, 6, and 8

February 1, 1999

James V. Saturno
Specialist on the Congress
Government Division

ABSTRACT

This report provides a brief description of four resolutions (Senate Resolutions 4, 5, 6, and 8) submitted by Senate Majority Leader Trent Lott on the first day of the 106th Congress. These resolutions concern the Senate's consideration of budgetary legislation. A hearing was held by the Senate Committees on Budget and Governmental Affairs, jointly, on January 27, 1999, that addressed questions of budget process reform generally. This report will be updated to reflect any further action taken by the committees to which these resolutions were referred or by the full Senate.

Proposed Budget Process Reforms in the Senate: A Brief Analysis of Senate Resolutions 4, 5, 6, and 8

Summary

On January 6, 1999, Majority Leader of the Senate Trent Lott submitted a series of resolutions to effect changes in the way the Senate considers budgetary legislation. Specifically, these resolutions concern consideration of appropriations bills (S.Res. 4 and S.Res. 8), consideration of budget resolutions and reconciliation measures (S.Res. 6), and consideration of measures or provisions designated as emergency legislation for purposes of enforcing the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (S.Res. 5).

This report summarizes the provisions in these resolutions, and provides an explanation of how they would change current rules or practices.

S.Res. 4 is intended to overturn Senate precedents in order to make enforceable the prohibition against legislation in appropriations bills that currently exists in Rule XVI.

S.Res. 5 is intended to place qualifications on applying an emergency designation to an item of spending. It does this by requiring that committees reporting provisions designated as emergency spending include a justification in any written report. It also establishes two new points of order, one concerning consideration of provisions designated as emergency spending, and a second concerning the inclusion of nonemergency spending in an emergency spending bill. However, the application of these new points of order is not made explicit in the resolution.

S.Res. 6 is intended to supercede current rules in the Congressional Budget Act regarding the consideration of concurrent resolutions on the budget and reconciliation bills. The most salient change would allow the time for consideration of both types of measures to be changed to 30 hours (currently, concurrent resolutions on the budget are limited to 50 hours of debate and reconciliation bills are limited to 20 hours of debate). The resolution would also impose other restrictions on the amending process during consideration of these measures.

S.Res. 8 is intended to make changes in Senate Rule XVI concerning the consideration of appropriations bills. It would retain the current restrictions on legislation in appropriations bills, limitations, and germaneness of amendments, but would create mechanism to waive these requirement when the Senate wished to do so. The resolution would also add new provisions to Rule XVI, making a motion to proceed to the consideration of an appropriations bill nondebatable, and placing some restrictions on the authority of Senate conferees on appropriations bills.

A hearing was held by the Senate Committees on Budget and Governmental Affairs, jointly, on January 27, 1999, that addressed questions of budget process reform generally. This report will be updated to reflect any further action taken by the committees to which these resolutions were referred or by the full Senate.

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On January 6, 1999, Majority Leader of the Senate Trent Lott submitted a series of resolutions to effect changes in the way the Senate considers budgetary legislation. Specifically, these resolutions concern consideration of appropriations bills (S.Res. 4 and S.Res. 8), consideration of budget resolutions and reconciliation measures (S.Res. 6), and consideration of measures or provisions designated as emergency legislation for purposes of enforcing the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (S.Res. 5). Because these are all Senate resolutions, they would have a direct impact only on Senate consideration of budgetary legislation.

S.Res.4: Prohibiting Legislation in Appropriations Bills

S.Res. 4 was submitted on January 6, 1999, by Senator Lott (for Senator John McCain), and referred to the Senate Committee on Rules and Administration. This resolution provides simply that:

Notwithstanding any precedent to the contrary, the prohibition against legislative proposals contained in Rule 16 shall be enforced by the Chair.

This resolution is directed at reversing a Senate precedent of March 16, 1995, a precedent that makes enforcement of a point of order against legislation in appropriations bills problematic.¹ On that day, Senator Kay Bailey Hutchison proposed an amendment to H.R. 889 (104th Congress), making supplemental appropriations and rescissions for FY1995. A point of order was raised by Senator Harry Reid against the amendment on the grounds that it constituted legislation, and the point of order was sustained by the presiding officer. Senator Hutchison appealed the ruling of the presiding officer, and on a vote of 57-42, the ruling was overturned.²

¹ For more on this precedent see U.S. Library of Congress, Congressional Research Service, *1995 Senate Decision Concerning Legislating on Appropriations Bills*, by Stanley Bach, CRS congressional distribution memorandum (Washington: Oct. 16, 1996). For a discussion of earlier occasions when the Senate overturned rulings of the presiding officer on questions of legislation in an appropriations bill see: U.S. Congress, Senate, *Riddick's Senate Procedure*, S.Doc. 101-28, 101st Cong., 2nd sess. (Washington: GPO, 1992), pp. 208-209 (hereafter cited as *Riddick's Senate Procedure*).

² Emergency Supplemental Appropriations Act and Rescissions Act, *Congressional Record*, (continued...)

Rule XVI continues to include the prohibition against legislating. Since 1995, however, the presiding officer has not ruled that any provision or amendment was not in order because it was legislation on an appropriations bill. In the words of the resolution's sponsor, Senator Lott:

One of our concerns has been reinstating rule XVI with respect to legislation on appropriations bills. I believe that many of the extraneous items that have been added to appropriations bills over the past few Congress would have been ruled out of order if the Senate still had the ability to raise a point of order against legislation on appropriations bills formerly contained in rule XVI.³

In the 104th Congress, then Senate Majority Leader Robert Dole attempted to overturn the precedent of March 16, 1995. He asked for unanimous consent that the presiding officer not be bound by the precedent, but objection was heard, and the precedent was allowed to stand.⁴

The precedent in question concerns the definition of what constitutes legislation rather than the enforceability of the prohibition. Therefore, a question may remain of whether S.Res. 4 would reverse the precedent.

S.Res. 5: Control of Emergency Spending

S.Res. 5 was submitted on January 6, 1999, by Senator Lott (for Senator Pete V. Domenici), and referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly. This resolution is intended to address concerns that the standard for designating items as emergency spending is too undefined, and thus allows too many items to be exempted from existing budgetary controls. This criticism has been especially pronounced in the wake of \$21.5 billion being designated as emergency spending for FY1999.⁵ The resolution would supplement existing provisions in the Balanced Budget and Emergency Deficit Control Act of 1985⁶ (in particular as amended by the Budget Enforcement Act of 1997⁷), but would not directly amend that statute.

² (...continued)

daily edition, vol. 141, March 16, 1995, pp. S4028-S4035.

³ Senator Trent Lott, "Changing Senate Rules," remarks in the Senate, *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, p. S6.

⁴ *Congressional Record*, daily edition, vol. 141, July 28, 1995, p. S10859.

⁵ U.S. Congressional Budget Office, *Emergency Spending Under the Budget Enforcement Act*, CBO memorandum (Washington: Dec. 1998), p. 4.

⁶ Title II of P.L. 99-177, at 99 *Stat.* 1038.

⁷ Title X of P.L. 105-33, at 111 *Stat.* 677.

Background

Currently, budget enforcement rules do not place any specific limitations on the use of emergency designations for spending, only that Congress and the President must agree to designate an item as emergency spending. Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, provides that:

If, for any fiscal year, appropriations for discretionary accounts are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment [of the appropriate discretionary spending limit] shall be the total of such appropriations

The designation of items as emergency spending has been applied almost exclusively to discretionary spending.⁸

In addition, section 252(e) applies the same criterion for designating “a provision of direct spending or receipts legislation” as an emergency requirement. Under section 252(b)(1)(B), a provision so designated is excluded from any calculation used to enforce the restrictions imposed by the pay-as-you-go process.

The issue of limiting the use of an emergency designation to allow spending to be exempt from the restrictions imposed by the Budget Enforcement Act has been debated almost since the act was first passed in 1990. “Sense of the House” language was adopted as part of the concurrent resolutions on the budget in 1995 (H.Con.Res. 67, 104th Congress) and 1996 (H.Con.Res. 178, 104th Congress), stating that Congress should consider changing its approach to budgeting for emergencies, but no further action has been taken.⁹

Provisions of S.Res. 5

S.Res. 5 is intended to place limits on applying an emergency designation to an item of spending or a revenue change. It consists of two major divisions: (1) a set of criteria for justifying the use of a designation as an emergency provision; and (2) two points of order (along with provisions for their waiver, and consideration of related appeals).

Criteria for Justifying an Item as Emergency Spending. Section 1(a)(2) of S.Res. 5 provides a set of criteria for applying an emergency designation to a proposed expenditure or tax change. These criteria require that a provision be:

- (i) necessary, essential, or vital (not merely useful or beneficial);
- (ii) sudden, quickly coming into being, and not building up over time;
- (iii) an urgent, pressing, and compelling need requiring immediate action;

⁸ *Ibid.*, p. 3.

⁹ For more discussion of options for changing the budget treatment of spending and revenues designated as emergency requirements see *Ibid.*, pp. 14-21.

- (iv) subject to subparagraph (B) [that is, it would cause emergency spending to exceed the aggregate level for anticipated emergencies, as well as be], unforeseen, unpredictable, and unanticipated; and
- (v) not permanent, temporary in nature.

Section 1(a)(1) requires any committee that reports a provision designated as emergency to include in any written report an explanation of how that provision meets all the criteria or, alternately, section 1(a)(3) requires any written report to include an explanation of why the criteria should not apply.

Point of Order Against Consideration of Provisions Designated as Emergency Spending. Section 1(b) would establish two points of order. Section 1(b)(1) contains the first point of order, and states:

When the Senate is considering a bill, resolution, amendment, motion, or conference report, upon a point of order being made by a Senator against any provision in that measure designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 and the Presiding Officer sustains that point of order, that provision along with the language making the designation shall be stricken from the measure and may not be offered as an amendment from the floor.

The language in this section does not explicitly prohibit the Senate from considering any specific bill, resolution, amendment, motion, or conference report in any specific circumstance. Although it provides for the *effect* of the point of order, it does not describe what the point of order is or how it is to be applied. A connection between the point of order and the criteria in section 1(a)(2) is not explicit in the resolution. Without this connection, it is not clear under what circumstances the point of order may be raised.

The absence of the connection between the point of order and the criteria for justifying an item as an emergency provision also leaves open the question of how narrowly or broadly the point of order would be construed. A narrow construction could allow the point of order to be made only when a committee fails to adhere to the requirement that a written justification be included in a committee report. The argument for a narrow construction is suggested by language in this section that provides only for the point of order being made “against any provision in that measure.” A broader application could allow the point of order to be made to challenge the designation of any provision as an emergency requirement based on the criteria in section 1(a)(2). The argument for a broad construction is suggested by language in this section that states the effect of a point of order, “When the Senate is considering a bill, resolution, amendment, motion, or conference report”

If a narrow construction of the point of order is intended so that the only requirement is that committees include a justification for their use of the emergency designation in a written report, then requiring the presiding officer to rule on points of order would be straightforward. However, if a broad construction is intended, the resolution potentially requires the presiding officer to make a substantive determination concerning whether a provision satisfies the criteria for emergency spending. This latter interpretation raises the question of how Senators could demonstrate that provisions satisfy the criteria for emergency designation, especially

provisions reported from committees without a written report or offered amendments from the floor.¹⁰

Point of Order Against Inclusion of Nonemergency Spending in Emergency Spending Bills. Section 1(b)(2) establishes the second point of order. It uses language similar to the point of order in section 1(b)(1) to require a provision *not designated as emergency* to be stricken from an *emergency supplemental appropriations bill* if a point of order is sustained against it. This section provides that:

When the Senate is considering an emergency supplemental appropriations bill [as defined in section 1(e) of S.Res. 5], an amendment thereto, a motion thereto, or a conference report therefrom, upon a point of order being made by a Senator against any provision in that measure that is not designated as an emergency requirement pursuant to section 251(b)(2)(A) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 and the Presiding Officer sustains that point of order, that provision shall be stricken from the measure and may not be offered as an amendment from the floor.

This point of order is intended to prevent nonemergency provisions from being considered as part of emergency legislation, and limit the contents of an emergency spending bill to emergency spending. In the case of emergency legislation, the concern is not that the application of the emergency designation is too vague, but rather that legislation to provide funding for emergency purposes should not be impeded because of time spent on the consideration of nonemergency issues.

The House has a similarly intended provision in its rules. House Rule XXI, clause 4(e) provides that:

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

Currently, the Senate may use a motion to strike to remove a nonemergency provision from an emergency spending bill. By establishing this new point of order, however, a three-fifths vote in favor of a waiver motion would be required to retain or consider a nonemergency provision, rather than a majority vote to strike it or prevent its consideration. Such a point of order could thus have the effect of easing

¹⁰ In describing language in S. 93 similar to that in S.Res. 5, Senator Domenici stated that the intent of the language in S. 93 is to make “any emergency spending in any bill subject to a 60 vote point of order in the Senate,” and that “if something is truly an emergency, it should have the support of 60 Senators.” In other words, the language of S. 93, and possibly also S.Res. 5, is intended to establish a point of order against consideration of an item designated as an emergency provision, and that the consideration of such an item may occur only if the Senate votes in favor of a waiver. Senator Pete V. Domenici, remarks in the Senate, *Congressional Record*, daily edition, vol. 145, January 19, 1999, pp. S529, S524.

the removal of provisions that the Senate might potentially find meritorious, but that they do not feel are justified as emergency spending.¹¹

This section of S.Res. 5 provides for the effect of a point of order that is sustained, but does not explicitly establish a point of order based on a failure of a provision to carry a designation of emergency or describe how the point of order would be applied. As with the language of the first point of order, a specific prohibition is not explicit, and the language in this section of S.Res. 5 leaves some questions unanswered.

Waivers of Points of Order. Sections 1(c) and (d) establish a waiver mechanism for sections (b)(1) and (b)(2). Section 1(c) allows for the operation of sections (b)(1) and (b)(2) to be waived by an affirmative vote of three-fifths of the Senate, and section 1(d) provides that a three-fifths majority also is required to overturn a ruling of the chair concerning sections (b)(1) and (b)(2).¹²

Application of Points of Order to Conference Reports. A concern if these points of order are intended to apply during consideration of a conference report, is that the point of order could potentially have an indirect impact on the use of emergency designations and consideration of emergency spending legislation by the House. Like the Byrd rule prohibition against extraneous matters in reconciliation bills (under section 313 of the Congressional Budget Act), a point of order that limited what the Senate could consider as part of a conference report would have an impact not only on the consideration of measures or provisions designated as emergency by the Senate, but also on the consideration of those designated as emergency by the House as well.

S.Res. 6: Limitation on Consideration of Budget Measures

S.Res. 6 was submitted on January 6, 1999, by Senator Lott (for Senator Domenici), and referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly. This resolution is intended to address concerns with

¹¹ The rules of the Senate do not normally limit the subjects that may be addressed in a measure. Senate rules do, however, impose a germaneness requirement under certain, specific conditions such as cloture, and the Byrd rule (section 313 of the Congressional Budget Act) prohibits provisions extraneous to the purposes of reconciliation from being included in reconciliation bills.

¹² The only existing mechanisms for waiving Senate rules are connected with provisions of the Congressional Budget Act of 1974 (P.L. 93-344, 88 *Stat.* 297) Senate rules do, however, provide for a motion to suspend any rule by a two-thirds vote with one day's notice, but this presumably is distinct from the waiver motions provided by S.Res. 5. For a discussion of points of order in the congressional budget process and their waiver mechanism, see U.S. Library of Congress, Congressional Research Service, *Points of Order in the Congressional Budget Process*, by James V. Saturno, CRS Report 97-865 GOV (Washington: Oct. 1, 1997).

the consideration of budget resolutions and reconciliation bills, particularly the allocation of time and what actions can be taken after the expiration of time.

S.Res. 6 would supersede the provisions of the Congressional Budget Act concerning the consideration of budget resolutions and reconciliation bills, but would not directly amend that statute.

Background

Congressional Budget Act Limitations on Total Time for Consideration.

Currently, the Congressional Budget Act specifies a number of limitations on the consideration of concurrent resolutions on the budget (in section 305) and reconciliation bills (in sections, 305, 310, and 313). In particular, section 305(b)(1) provides 50 hours for debate on a budget resolution, and section 310(e)(2) provides 20 hours for debate on a reconciliation bill. These limitations are on debate only, and have sometimes put the Senate in a situation during consideration of reconciliation bills in which it was possible to offer amendments, but not debate them, because the time for debate had expired. For example, during consideration of the revenue reconciliation bill in 1997, Senator Robert C. Byrd proposed that the Senate:

... do away with this situation in which pandemonium reigns supreme and where scores of amendments remain to be acted upon after the expiration of the time on the reconciliation bill and people want to call those up—and they have a right to call them up and get a vote thereon.¹³

The Budget Act places other time limits on consideration of budgetary measures as well. Section 305(b)(3) provides for up to four hours to be set aside during consideration of budget resolutions for debate on economic goals and policies, and section 305(c) limits debate on conference reports on budget resolutions and reconciliation measures to 10 hours.

In the 105th Congress, the Senate approved a proposal to increase the time allocated to the consideration of a reconciliation measure, and to model that consideration after the terms imposed by cloture under Senate Rule XXII. During consideration of the revenue reconciliation bill in 1997 (S. 949/H.R. 2014, P.L. 105-34), Senator Byrd offered an amendment (572) to amend the Budget Act to increase the time for considering a reconciliation measure to 30 hours. The amendment would also have reduced the time for consideration of any amendments to no more than 30 minutes each, required first-degree amendments offered after the 15th hour to be prefiled before the 15th hour (and second-degree amendments offered after the 20th hour to be prefiled before the 20th hour), and limited action after the expiration of 30 hours. Senator Byrd's amendment was approved by the Senate 92-8 (rollcall vote 148), but was not included in the conference report.¹⁴

¹³ Senator Robert C. Byrd, remarks in the Senate, *Congressional Record*, daily edition, vol. 143, June 27 1997, p. S6680.

¹⁴ *Ibid.*, pp. S6680-S6681.

Congressional Budget Act Limitations on Consideration of Amendments.

The Congressional Budget Act places a number of limitations and conditions on the consideration of amendments to budgetary measures. Section 305(b)(2) limits time for consideration of first-degree amendments (amendments to the measure) to two hours each, and similarly limits time for consideration of second-degree amendments (amendments to amendments), debatable motions, and appeals to one hour each. Amendments to both budget resolutions and reconciliation measures also are required to be germane under section 305(b)(2) of the Budget Act.

Provisions of S.Res. 6

Limitations on Time for Consideration. Section 2 of S.Res. 6 reduces the time for debate of budget resolutions from 50 hours to 30 hours, and increases time for debate of reconciliation legislation from 20 hours to 30 hours.

S.Res. 6 also establishes limitations on actions that may occur after 30 hours have expired. Currently, the expiration of time applies to debate only, and does not restrict offering and voting on amendments or other motions without debate. Section 1(b)(2)(C) is intended to prevent such “votaramas” by allowing votes (and motions to waive and table) only to dispose of any questions already pending at the end of the 30 hours, and section 1(b)(2)(C) also allows one quorum call, but it disallows any new amendments or motions (other than motions to reconsider).

In addition, time within the 30-hour limit would be allocated somewhat differently from current practice. S.Res. 6 provides for 10 hours to be reserved for general debate, including any debate on economic goals and policies. In contrast, the current practice allows unrestricted general debate within the overall limit of 50 hours, with up to four hours (of these 50 hours) set aside for debate on economic goals and policies.

The limitation on consideration of conference reports on budget resolutions and reconciliation measures to 10 hours is reiterated in section 1(c) of S.Res. 6. New language in section 1(c) specifies what actions may occur after the expiration of 10 hours to promote final disposition of the conference report.

Section 1(b)(4) also changes the status of a motion to further limit debate from nondebatable, under section 305(b)(5) of the Budget Act, to debatable for 30 minutes (within the total 30 hours provided).

Limitations on Consideration of Amendments. S.Res. 6 makes significant changes in the time for the consideration of amendments. In section 1(b)(3)(A), time for consideration of first-degree amendments is reduced to one hour each, and time for consideration of second-degree amendments, debatable motions, and appeals is reduced to 30 minutes each.

This section of S.Res. 6 also reiterates the germaneness requirement in the Budget Act, but establishes that “precatory language” shall not be considered germane. Under current practice the Senate considers any non-binding language (such as findings, “sense of the Senate,” or “sense of Congress” language) within the

jurisdiction of the committee that reported a measure to be germane to that measure.¹⁵ It is not clear if a class of “sense” amendments would remain that would not be considered precatory, and, thus, could be offered to a budget resolution or reconciliation bill. Therefore, this provision could have the effect of prohibiting any “sense” amendments.

The resolution would also make several other changes in the amending process:

- amendments to the bill could not be offered after 15 hours of debate unless they had been prefiled before the 15th hour, and no second-degree amendment could be offered after 20 hours of debate unless it had been prefiled before the 20th hour;
- as under the cloture rule, Senators would be limited to offering two amendments until every other Senator has the opportunity to do likewise; and
- no more than two consecutive amendments to any amendment could be offered by the majority or minority.

An additional change to the amending process involves the application of the “mathematical consistency” exception. Section 305(b)(6) of the Budget Act currently provides that:

Notwithstanding any other rule, an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate *shall always be in order* [emphasis added] if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

This exception runs contrary to the general practice of the Senate, which does not allow amendments that would solely amend material that the Senate has previously amended.¹⁶ Section 1(b)(5) of S.Res. 6 would restrict the application of this exception so that, if a second-degree amendment that is a complete substitute for the underlying amendment is adopted, no further amendments would be in order even if they maintained mathematical consistency and would otherwise be permissible under section 305(b)(6) of the Budget Act. (This limitation only applies to budget resolutions. Section 305(b)(6) (as reiterated in section 1(b)(5)(a) of S.Res. 6) would still be controlling for consideration of reconciliation measures.)

It should be noted that section 305(d) of the Budget Act prohibits a vote on a budget resolution unless the figures contained in the resolution are mathematically consistent. S.Res. 6 does not address this section of the Budget Act; so, presumably,

¹⁵ *Riddick’s Senate Procedure*, p. 855.

¹⁶ The precedents of September 18, 1979, and May 20, 1982, support the premise that this section protects amendments to figures already agreed to (which would otherwise not be in order) if the amendments make or maintain mathematical consistency. *Ibid.*, p. 600.

this point of order would still be enforceable, although it potentially is in conflict with section 1(b)(5)(B) of S.Res. 6.

Layover Requirement. Section 1(b)(1) of S.Res. 6 establishes a one-day layover requirement for budget resolutions and reconciliation bills. Currently, “A concurrent resolution on the budget pursuant to the Congressional Budget Act of 1974 is a privileged matter which need not lie over one legislative day for consideration.”¹⁷

S.Res. 8: Prohibiting Legislation in Appropriations Bills

S.Res. 8 was submitted on January 6, 1999, by Senator Lott (for Senator Ted Stevens and Senator Byrd), and referred to the Committee on Rules and Administration. This resolution, like S.Res. 4, is intended to address concerns with the consideration of appropriations bills, particularly with regard to legislation on appropriations bills (see discussion of S.Res. 4, above, for background on this issue).

This resolution would rewrite Senate Rule XVI, repeating the language in paragraphs 1, 3, 5, 6, 7, and 8 of the existing rule (dealing primarily with questions about the relationship between authorizations and appropriations), amending current paragraphs 2 and 4 (dealing primarily with the issue of legislation in appropriations bills), and adding two new paragraphs (9, dealing with motions to proceed, and 10, dealing with consideration of appropriations conference reports).

Provisions of S.Res. 8

Legislation in Appropriations Bills as Reported. Paragraph 2 is substantially similar to the existing paragraph 2, except that it also recognizes that the current practice of the Senate includes instances where the Senate Appropriations Committee reports original Senate appropriations bills as well as instances where it reports amendments to appropriations bills as passed by the House.¹⁸ Paragraph 2 reiterates the Senate’s current prohibition against the Appropriations Committee reporting legislation in appropriations bills, whether as provisions of or as amendments to appropriations bills. Paragraph 2 also provides a waiver mechanism (discussed below) so that the Senate may decide by majority vote to allow consideration of general legislation reported by the Appropriations Committee.

Amendments to Appropriations Bills. Paragraph 4 of Rule XVI concerns limitations on the consideration of amendments to appropriations bills. As it is currently constituted, paragraph 4 provides that:

On a point of order made by any Senator, no amendment offered by any other Senator which proposes general legislation shall be received to any general

¹⁷ Precedent of May 12, 1981, cited in *Ibid.*, p. 600.

¹⁸ The former practice of the Senate Appropriations Committee had been, almost exclusively, to report House-passed appropriations bills, with amendments recommended by committee.

appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received; nor shall any amendment to any item or clause of such bill be received which does not directly relate thereto; nor shall any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law be received if such restriction is to take effect or cease to be effective upon the happening of a contingency; and all questions of relevancy of amendments under this rule, when raised, shall be submitted to the Senate and be decided without debate; and any such amendment or restriction to a general appropriation bill may be laid on the table without prejudice to the bill.

S.Res. 8 proposes to divide these limitations into two subparagraphs. A point of order established under paragraph 4(a) would apply against any amendment to an appropriations bill if that amendment contains legislation. A separate point of order established under paragraph 4(b) would apply to the other restrictions in the current paragraph 4 (germaneness and limitations based on a contingency). In addition, both subparagraphs would be enforced through rulings of the presiding officer (rather than being submitted to the Senate, as questions concerning germaneness are currently decided). Both subparagraphs include a waiver mechanism.

Waiver Mechanisms. Presumably, the waiver motions in paragraphs 2, 4, and 10 are proposed in order to encourage the Senate not to use the opportunity to overturn a ruling of the presiding officer concerning the applicability of the rule as a *de facto* waiver of the rule. Such practice has in the past led to precedents making it difficult to determine to what the prohibitions in Rule XVI apply (see discussions of S.Res. 4 and paragraph 10 of S.Res. 8 in this report). Under the waiver mechanism, the Senate would be able to include a provision in an appropriations bill, even though it was legislative in nature, by making an explicit decision to do so by waiving the rule. Except in connection with enforcing budgetary discipline under the Congressional Budget Act and the Balanced Budget and Emergency Deficit Control Act, the provision for a waiver mechanism in Senate rules is uncommon.

The waivers provided in paragraphs 2 and 4(a) may be made by “the affirmative vote of those Senators present and voting”; the waiver in paragraph 4(b) must be made by “a majority of the Senate”; and the waiver in paragraph 10 must be made by “affirmative vote of three-fifths of the Senators duly chosen and sworn.”

Furthermore, paragraphs 2, 4(a), and 10 all provide for the effect of any appeal to be limited and not set any precedent to “negate its future application unless the Senate specifically amends [the] paragraph.” This feature of S.Res. 8 would be unique in Senate rules.

Nondebatable Motion to Proceed. Paragraph 9 provides that a motion to proceed to consideration of an appropriations bill shall be nondebatable. This provision would be a change from current Senate practice, although it would treat appropriations bills in the same manner as budget resolutions and reconciliation bills.¹⁹

Consideration of Appropriations Conference Reports. The other major change proposed by S.Res. 8 is in paragraph 10, concerning the consideration of

¹⁹ Precedent of May 12, 1981, cited in *Ibid.*, p. 600.

appropriations conference reports. As with S.Res. 4 above, this paragraph seems intended to reverse a Senate precedent that has had the effect of preventing points of order against conference reports. In this case, it is the precedent of October 3, 1996.²⁰ Under Senate Rule XXVIII, paragraph 3(a), Senators are prohibited from including in conference reports matter not committed to the conference by either house. On October 3, 1996, the Senate voted not to accept a ruling of the presiding officer that a pending conference report was not in order under this requirement. Although this precedent did not involve the consideration of an appropriations bill, the issue of conferees exceeding the scope of the differences between the House and Senate versions of a bill has been perceived as a significant problem for appropriations bills, particularly because they are regarded as “must pass legislation,” and frequently are considered in haste at the end of a session.

Paragraph 10 would implicitly reverse this precedent in a limited manner. It would do this by establishing a new point of order against the inclusion of “any legislative provision or provisions extraneous to the provisions that were committed to conference” for appropriations bills. To clarify the limited effect of this prohibition, paragraph 10(b) reiterates that a provision would be extraneous if it involved “any significant legislative provision not addressed in either version of the bill committed to the conference,” but that the definition of extraneous would not include:

- provisions to qualify or limit spending;
- provisions authorizing spending in the bill;
- provisions to provide spending pursuant to an authorization passed subsequent to passage of the appropriations bill in question; or
- provisions previously contained in (or modifying) an appropriations bill vetoed by the President.

Paragraph 10(d) provides that this restriction on conference reports on appropriations bills could be waived by an affirmative vote of three-fifths of the full Senate. It further specifies that debate on such a motion would be limited to two hours and that any appeal from a ruling of the presiding officer would likewise require a three-fifths vote to overturn the ruling.

The effects of a successful point of order under section 10(a) are elaborated on in paragraph 10(c). This paragraph establishes a mechanism, similar to that in House Rule XXII, clause 10 (formerly in Rule XXVIII, clauses 4 and 5) that provides for further consideration of the recommendations of the conferees minus the provision or provisions stricken by a point of order. This mechanism provides that, after one or more points of order are sustained, a motion would be considered as pending before the Senate to approve the conference language minus the stricken provision or provisions. Furthermore, if a point of order is sustained against a conference report,

²⁰ For more on this precedent, see U.S. Library of Congress, Congressional Research Service, *Recent Senate Decision Concerning Conference Reports*, by Stanley Bach, CRS congressional distribution memorandum (Washington: Oct. 16, 1996).

this motion would not be subject to further amendment by the Senate. In this way, such a point of order could not be used to open the recommendations of conferees to amendment to a greater extent than the Senate already possessed, except with regard to questions of extraneousness. If the point of order were sustained against an amendment between the houses, that amendment's amendability would be unaffected.