

RULE XXI

RESTRICTIONS ON CERTAIN BILL

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. —).

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

§ 1037. Reappropriations prohibited.

originally appropriated that are reported by the Committee on Appropriations.

(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 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.

(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 limitation or retrenchment 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 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.

§ 1041. Designated emergencies in reported appropriation bills.

(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

§ 1042. Offsetting amendments en bloc to appropriation bills.

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 is not subject to a demand for division of the question in the House or in the Committee of the Whole.

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 which 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. —).

Paragraph (a)(1) (former 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) (former clause 6), from section 139(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190f(c)), was made part of the stand-

ing 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, Dec. 12, 1985) 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 contract authority provided by a law other than an appropriation Act (Sept. 22, 1993, p. 22138; May 15, 1997, p. —; July 23, 1997, p. —). 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. —).

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. —). The exception for limitations is strictly construed to apply 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). Although the Committee on Appropriations may include a limitation in its reported bill, if it is stricken with other legislative language on a point of order it may be reinserted during the reading only if in compliance with clause 2(c) or in accordance with clause 2(d) (June 18, 1991, p. 15199).

Paragraph (d) provided a new procedure for consideration of retrenchment and other limitation amendments only when 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 its 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

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XXI, clause 2

§ 1044

the motion preferential to any motion to amend at that stage (H. Res. 5, Jan. 7, 1997, p. —). 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)) prior to 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 (sustained on appeal, Sept. 19, 1983, p. 24647). 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 (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 out takes precedence over the motion to amend under clause 9 of rule XVIII (former clause 7 of rule XXIII) and thus over the motion to rise and report under clause 2(d) (July 24, 1986, p. 17641).

Paragraphs (e) and (f) were added in the 104th Congress (sec. 215, H. Res. 6, Jan. 4, 1995, p. 468).

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 rule (VII, 1122). Neither a resolution providing an appropriation for a single Government agency (Jan. 31, 1962, p. 1352), nor a joint resolution only containing continuing appropriations for diverse agencies to pro-

§ 1044. Points of order on general appropriation bills.

RULES OF THE HOUSE OF REPRESENTATIVES

§ 1044

Rule XXI, clause 2

vide funds until regular appropriation bills are enacted (Sept. 21, 1967, p. 26370), nor 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), nor a joint resolution transferring funds already appropriated from one specific agency to another (Mar. 26, 1980, p. 6716), nor 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), are “general appropriation bills” within the purview of this clause. 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).

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.

Prior to the adoption of clause 1 (former clause 8) in the 104th Congress (see § 1035, *supra*), it was necessary that some 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) or a limitation not considered in the Committee of the Whole (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).

By unanimous consent the Committee of the Whole may vacate proceedings under specified points of order (June 7, 1991, p. 13973).

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 is made against a portion of a paragraph does not prevent another point 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 (July 16, 1998, 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); and 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 which 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). Where a point is sustained against the whole of a paragraph the whole must go out, but it is otherwise when the point 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’s Precedents, vol. 8, ch. 26, sec. 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 prior to 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 the bill is considered as having been read and open to amendment by unanimous consent, points of order against provisions in the bill must be made before amendments are offered, and cannot be reserved pending subsequent action on amendments (Dec. 1, 1982, p. 28175). 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).

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). Thus the burden of proving the authorization for language carried in an appropriation bill, or that the language in the bill constitutes a valid limitation which does not change existing law, falls on the proponents and managers of the bill (May 28,

1968, p. 15357; Nov. 30, 1982, p. 28062). Where a provision is susceptible to more than one interpretation, 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 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 directly or indirectly changing the application of existing law are presumably legislation, absent rebuttal by the committee (May 31, 1984, p. 14591). The burden of proof to show that an appropriation contained in an amendment is authorized by law is on the proponent of the amendment (May 11, 1971, p. 14471; Oct. 29, 1991, p. 28791; July 26, 1995, p. —; July 27, 1995, pp. —, —; July 31, 1995, p. —; May 15, 1997, p. —) and the burden is on the proponent of an amendment to a general appropriation bill to prove that language offered under the guise of a limitation does not change existing law (July 17, 1975, p. 23239; June 16, 1976, p. 18666; July 18, 1995, p. —) including the burden to prove that the duties imposed are merely ministerial or already required under existing law (July 26, 1998, p. —). If the amendment is susceptible to more than one interpretation, it is incumbent upon the proponent to show that it is not in violation of the rule (Procedure, ch. 25, sec. 6.3; July 28, 1980, p. 19924). 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 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).

The inclusion of funds in a general appropriation bill in the form of a "not to exceed" limitation does not obviate a point of order that the funds are not authorized by law (June 21, 1988, p. 15440). 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*.

The authorization by existing law required in the rule to justify appropriations may be made also by a treaty if it has been ratified by both the contracting parties (IV, 3587); however, where existing law authorizes appropriations for the U.S. share of facilities to be recommended in an

§ 1045. Authorization of law for appropriations.

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 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 which 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), or cooperation with State investigations (IV, 3650; VII, 1301, 1302), or 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 of a general appropriation bill both establishing and funding a commission was ruled out as constituting legislation and carrying unauthorized appropriations (June 29, 1988, p. 16470). 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). A paragraph providing funds for the President to meet “unanticipated needs” was held unauthorized (July 16, 1998, 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). But 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. —). 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).

Pursuant to clause 11(i) of rule X (former 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). But unadjudicated claims (IV, 3628), even though ascertained and transmitted by an executive officer (IV, 3625–

§ 1046. Authorization
for claims and
salaries.

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XXI, clause 2

§ 1047-§ 1048

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 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). But 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 is not construed 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 (Procedure, ch. 25, sec. 5.5), 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).

The rule requiring appropriations to be authorized by existing law except those "in continuance of appropriations for such public works and objects as are already in progress" (IV, 3578); and the "works in progress" exception has historically been applied only in cases of general revenue funding (Sept. 22, 1993, p. 22140; Sept. 23, 1993, p. 22173). But 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, pp. 22173; Deschler's Precedents, vol. 8, ch. 26, sec. 8.9). The "works in progress" exception may not be invoked to fund

§ 1047. Authorizations for public works.

§ 1048. Continuation of a public work by appropriations.

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. —). 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 been 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). By “public works and objects already in progress” are meant tangible matters like buildings, roads, etc., and 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 cannot be admitted as a work in progress (VII, 1333), nor can an extension of an existing road (Sept. 22, 1993, p. 22140). 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, pp. 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). But appropriations for rent and repairs of buildings or Government roads (IV, 3793, 3798) and bridges (IV, 3803) have been admit-

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

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XXI, clause 2

§ 1050-§ 1051

ted 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). Nor is it 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 established has been admitted under this principle (IV, 3766-3773) and also additions to existing buildings in cases where no limits of cost have been shown (IV, 3774, 3775). But 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).

RULES OF THE HOUSE OF REPRESENTATIVES

§ 1052

Rule XXI, clause 2

The provision of the rule forbidding in any general appropriation bill a provision changing existing law is construed to mean the enactment of law where none exists (IV, 3812, 3813), such as permitting funds to remain available until expended or beyond the fiscal year covered by the bill, where existing law permits no such availability (Aug. 1, 1973, p. 27288), or immediately upon enactment (July 29, 1986, p. 17981; June 28, 1988, p. 16255) or merely permits availability to the extent provided in advance in appropriation Acts but not explicitly beyond the fiscal year in question (July 21, 1981, p. 16687). Language waiving the provisions of existing law that did not specifically permit inclusion of such a waiver in an appropriation bill (Nov. 13, 1975, p. 36271; June 20, 1996, p. 14847), has been ruled out, 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). 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 contract authority (July 29, 1998, p. —). 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 is fundamentally legislative in character (Sept. 8, 1999, pp. —, —, —, —, —, —, —, —, —).

Existing law may be repeated verbatim in an appropriation bill (IV, 3814, 3815), but the slightest change of the text causes it to be ruled out (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); and while language merely reciting the applicability of current law to the use of earmarked funds is permitted, an amendment that elevates existing guidelines to mandates for spending has been ruled out (July 12, 1989, p. 14432).

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). The fact that an item has been carried in appropriation bills for many years does not exempt it from a point of order as being legislation (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), or contracts authorized (IV, 3868–3870; May 14, 1937, p. 4595).

The Chair may examine legislative history established during debate on an amendment against which a point of order has been reserved to resolve any ambiguity therein when ruling on the eventual point of order (June 14, 1978, p. 17651), and may inquire after its author’s intent when attempting to construe an ambiguous amendment (Oct. 29, 1991, p. 28818).

An amendment making an appropriation contingent upon a recommendation (June 27, 1979, p. 17054) or action not specifically required by law (July 23, 1980, pp. 19295–97; July 29, 1980, pp. 20098–20100) is legislation. For example, a provision limiting the use of funds in a bill “unless” or “until” an action contrary to existing law is taken constitutes legislation (Deschler’s Precedents, vol. 8, ch. 26, sec. 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 on an appropriation bill 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 on a general appropriation bill to condition funds on legal determinations to be made by a Federal court and an executive department (June 28, 1988, p. 16261; see Deschler’s Precedents, vol. 8, ch. 26, sec. 47.2).

Amendments making the availability of funds in a general appropriation bill contingent upon subsequent congressional action have, under the most recent precedents, been ruled out as legislation. An amendment prohibiting the availability of funds to enforce certain Executive orders, unless those orders were approved by concurrent resolutions of the Congress, was held to be legislation imposing new requirements of further legislative action (June 30, 1942, p. 5826). An amendment providing that a certain appropriation did not grant authority for a certain use of funds unless specific approval of Congress was subsequently granted was held to be legislation (May 15, 1947, p. 5378). Two subsequent rulings upholding the admissibility of amendments making the availability of funds in a general appropriation bill contingent upon subsequent congressional action (June 11, 1968, p. 16692; Sept. 6, 1979, p. 23360) have, in turn, been superseded by four more recent rulings. A provision making the availability of certain funds contingent upon subsequent congressional action on legislative proposals resolving the policy issue was held to constitute legislation (Nov. 18, 1981, p. 28064); an amendment making the availability of funds therein contingent upon subsequent enactment of legislation containing specified findings was ruled out as legislation requiring new legislative and executive branch policy determinations not required by law (Nov. 2, 1983, p. 30503); an amendment changing a permanent appropriation in existing

law to restrict its availability until all general appropriation bills are presented to the President was held to constitute legislation (June 29, 1987, p. 18083); and an amendment limiting funds in the bill for certain peace-keeping operations unless authorized by Congress was held to constitute legislation (June 27, 1994, p. 14613). 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 (D.C.) funds deriving from interest accounts were available to the Financial Control Board without subsequent congressional approval (Aug. 6, 1998, p. —).

It is not in order on a general appropriation bill to require 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, pp. 16087); nor is it in order to direct the Selective Service Administration to issue regulations to bring its classifications into conformance with a Supreme Court decision (July 20, 1989, p. 15405). Also a proposition to change a rule of the House is subject to the point of order (IV, 3819). A provision constituting congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act 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). An amendment making the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law has been ruled out as legislation (July 25, 1985, p. 20569).

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 affirmative direction not required by law, does not destroy the validity of the 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 paragraph of a general appropriation bill chang-

ing existing law concerning Federal diversity jurisdiction is legislation (July 1, 1987, p. 18638).

A provision in an appropriation bill prescribing a rule of construction is legislation (Deschler's Precedents, vol. 8, ch. 26, sec. 25.15), as is a provision construing a limitation in a bill by affirmatively declaring the meaning of the prohibition (May 17, 1988, p. 11305). Similarly, a limitation that prescribes definitions for terms contained in the limitation may be legislation (Deschler's Precedents, vol. 8, ch. 26, secs. 25.7, 25.11). On the other hand, language excepting certain appropriations from the sweep of a broader limitation may be in order (Deschler's Precedents, vol. 8, ch. 26, sec. 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's Precedents, vol. 8, ch. 26, sec. 25.10; June 18, 1991, p. 15218).

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 since requiring 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).

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 and 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 the point of order. While any limitation in an appropriation bill (see § 483, *supra*) places some minimal duties on Federal officials, who must determine the effect of such a limitation on appropriated funds, an amendment or language in an appropriation bill may not impose additional duties, not required by law, or make the appropriation contingent upon the performance of such duties (May 28, 1968, p. 15350). Language in the form of a conditional limitation requiring determinations by Federal officials will be held to change existing law unless the proponent can show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations (July 26, 1985, p. 20807).

Where an amendment to or language in a general appropriation bill implicitly places new duties on officers of the Government or implicitly

requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, such as to judge intent or motives, then it assumes the character of legislation and is subject to a point of order (July 31, 1969, pp. 21653, 21675, where the words “in order to overcome racial imbalance” were held to impose additional duties, and Nov. 30, 1982, p. 28062, where the words “to interfere with” the rulemaking authority of any regulatory agency were held to implicitly require the Office of Management and Budget to make determinations not discernibly required by law in evaluating and executing its responsibilities). An amendment limiting funds for an agency or any “successor agency” requires a determination of “successor agency” status (Sept. 26, 1997, p. —).

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). A limitation on the use of funds, or an exception therefrom, may not be accompanied by language stating or requiring a finding of a motive or purpose in carrying out the limitation (Aug. 8, 1978, p. 24969; July 22, 1980, p. 19087; Sept. 16, 1980, p. 25604; Sept. 22, 1981, p. 21577). 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 whether private or State officials administering the funds in question routinely make such determinations (June 17, 1977, p. 1969; June 30, 1993, p. 14871; July 16, 1998, p. —). 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). But to such a provision permitted to remain in a general appropriation bill, an amendment exempting 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 by requiring any different or more onerous determinations (June 27, 1984, p. 19113). An amendment prohibiting the use of funds in an appropriation bill for the General Services Administration to dispose of U.S.-owned “agricultural” land declared surplus was ruled out as legislation, since the determination whether surplus lands are “agricultural” was not required by law (Aug. 20, 1980, pp. 22156–58); but a limitation precluding 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 limita-

tion applied to projects for which indexes were already required by law (Sept. 23, 1993, p. 22206). The fact that an executive official may have been directed by an Executive order to consult another executive official prior to 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). 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. —). However, an exception to the same limitation that merely excepted certain specified coverage and plans was held not to impose new duties (July 16, 1998, p. —).

An amendment limiting use of funds in a bill may not 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); may not require new determinations of full Federal compliance with mandates imposed upon States (July 22, 1981, p. 16829); may not require the evaluation of the theoretical basis of a program (July 22, 1981, p. 16822); may not 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) or incorporate by reference determinations already made in administrative processes not affecting programs funded by the bill (Oct. 6, 1981, p. 23361); may not require new determinations of rates of interest payable (July 29, 1982, p. 18624; Dec. 9, 1982, p. 29691); may not apply standards of conduct to foreign entities where existing law requires such conduct only by domestic entities (July 17, 1986, p. 16951); may not require the enforcement of a standard where existing law only requires inspection of an area (July 30, 1986, p. 18189); may not prohibit the availability of funds for the purchase of “nondomestic” goods and services (Sept. 12, 1986, p. 23178); may not mandate contractual provisions (May 18, 1988, p. 11389); may not 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); may not 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); may not mandate reductions in various appropriations by a variable percentage calculated in relation to “overhead” (Deschler’s Precedents, vol. 8, ch. 26, sec. 5.6; June 24, 1992, p. 16110); may not require an agency to investigate and determine whether private airports are collecting certain fees for each enplaning passenger (Sept. 23, 1993, p. 22213); may not 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. —); and may not 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. —).

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 simply and 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. —; July 15, 1997, p. —; July 24, 1997, p. —).

A provision which 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. —), as is an amendment which by such a mandate interferes with an executive official’s discretionary authority (Mar. 12, 1975, p. 6338), as in an amendment requiring 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), or where an amendment earmarks appropriated funds to the arts to require their expenditure pursuant to standards otherwise applicable only as guidelines (July 12, 1989, p. 14432). Where existing 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 is 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 which 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. —).

The House may, by agreeing to a report from the Committee on Rules or by adopting an order under suspension of the rules, § 1057. 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 failure to raise or by waiver of 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 which 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. —), 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. —; June 5, 1996, p. 13120), earmarks by directing a new use of funds not required by law (July 26, 1985, pp. 20811, 20813), increases an unauthorized amount indirectly by inserting new language at another portion of the bill (July 12, 1995, p. —; Sept. 17, 1998, p. —), or increases an authorized amount above the authorized ceiling (Aug. 4, 1999, p. —). An amendment adding a new paragraph indirectly increasing an unauthorized amount contained in a prior paragraph passed in the reading is subject to a point of order because the new paragraph is adding a further unauthorized amount not textually protected by the waiver (July 12, 1995, p. —; July 16, 1997, p. —, p. —; Sept. 9, 1997, p. —). 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. —).

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 which 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 ad-

dressed by an amendment offered en bloc under that clause as budget authority and outlay neutral (July 22, 1997, p. —).

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 in nature (June 22, 1983, p. 16851). 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. —). An amendment to a general appropriation bill is not subject to a point of order as adding legislation if containing, verbatim, a legislative provision already contained in the bill and permitted to remain (Aug. 27, 1980, p. 23519).

To a legislative provision in a general appropriation bill permitted to remain, exempting cases where the life of the mother would be endangered if a fetus were carried to term from a denial of funds for abortions, an amendment exempting 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 amendment did not therefore require any different or more onerous determinations (June 27, 1984, p. 19113).

To a paragraph permitted to remain though 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). An amendment in the form of a motion to strike that would extend the legislative reach of the pending text was held to propose additional legislation (July 17, 1996, p. 17533). To a legislative title permitted to remain, which placed certain restrictions on recipients of a defined set of Federal payments and benefits, an amendment extending the restrictions to persons benefiting from a certain tax status determined on wholly unrelated criteria was held to add further legislation (Aug. 3, 1995, p. —). 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, p. —).

The principle seems to be generally well accepted that the House proposing legislation on a general appropriation bill should

§ 1058. Senate amendments. 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 which proposes legislation on an appropriation bill without specific authority from the House. But 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).

Although the rule forbids on any general appropriation bill a provision “changing existing law,” which is construed to mean legislation generally, the practice of the House 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). The language of the limitation provides that no part of the appropriation under consideration shall 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’s Precedents, vol. 8, ch. 26, secs. 53, 57.15), the House may specify that no part of the appropriation shall 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). The limitation must apply solely to the money of the appropriation under consideration (VII, 1597, 1600, 1720; Feb. 26, 1958, p. 2895), and may not be made applicable 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), and may not require funds available to an agency in any future fiscal year for a certain purpose be subject to limitations specified in advance in appropriations Acts (May 8, 1986, p. 10156). 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).

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 Procedure, ch. 25, secs. 9–17). 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). Nor may a proposition to construe a law be admitted (IV, 3936–3938). Care should also 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). A provision limiting the use of funds in a bill “unless” or “until” a specified action not required by existing law has been taken constitutes legislation (Deschler’s Precedents, vol. 8, ch. 26, sec. 47.1; July 24, 1996, p. 18888).

The limitation may not be applied directly to the official functions of executive officers (IV, 3957–3966; VII, 1673, 1678, 1685), but it may restrict executive discretion so far as this may be done by a simple negative on the use of the appropriation (IV, 3968–3972; VII, 1583, 1653, 1694; Sept. 14, 1972, p. 30749; June 21, 1974, p. 20601; Oct. 9, 1974, p. 34716). An appropriation may be withheld from a designated object by a negative limitation on the use of funds, although contracts may be left unsatisfied thereby (IV, 3987; July 10, 1975, p. 22005); but coupling a denial of an appropriation with a negative restriction on official duties constitutes by reason of the use of a double negative an affirmative direction and is not in order (VII, 1690–1692). Similarly, using a double negative to limit the availability of funds to prohibit the obligation of funds for an unauthorized project (effectively authorizing an unauthorized project) is not in order (Sept. 23, 1993, p. 22209).

But such limitations must not give affirmative directions (IV, 3854–3859, 3975; VII, 1637), and must not impose new duties upon an executive officer (VII, 1676; June 11, 1968, p. 16712; July 31, 1969, pp. 21631–33); and may not 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).

In construing a proposed limitation, if the Chair finds the purpose to be legislative, in that the intent is to restrict executive discretion to a degree that may be fairly termed a change in policy rather than a matter of administrative detail, he should sustain the point of order, as where a limitation is accompanied by language stating a legislative motive or purpose in carrying out the limitation (Aug. 8, 1978, p. 24969), or where existing law and the Constitution require a census to be taken of all persons and an amendment seeks to preclude the use of funds to exclude another class “known” to the secretary (Aug. 1, 1989, p. 17156). However, language in a general appropriation bill may, by negatively refusing to include funds for all or part of an authorized executive function, thereby affect policy to the extent of its denial of availability of funds (VII, 1694; Oct. 9, 1974, p. 34716).

It is not in order, even by language in the form of a limitation, to restrict not the use or amount of appropriated funds but the discretionary authority conferred by law to administer their expenditure, such as by limiting the percentage of funds that may be apportioned for expenditure within a certain period of time (Deschler’s Precedents, vol. 8, ch. 26, sec. 51.23), or by precluding the obligation of certain funds in the bill until funds provided by another Act have been obligated (Deschler’s Precedents, vol. 8, ch. 26,

sec. 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's Precedents, vol. 8, ch. 26, secs. 64.23 and 80.5).

As long as a limitation on the use of funds 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 which would have to be accounted for separately in carrying out the limitation (Aug. 20, 1980, p. 22171). 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 amendment denying the use of funds in the bill to pay the salaries of Federal officials who perform certain functions under existing law is a proper limitation if the description of those duties precisely follows existing law and does not require them to perform new duties (June 24, 1976, p. 20373), just as an amendment denying such funds to a Federal official not in compliance with an existing law which he is charged with enforcing is a valid limitation placing no new duties on that Federal official (Sept. 10, 1981, p. 20110). The fact that a limitation on the use of funds 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 directly amend existing law and is descriptive of functions and findings already required to be undertaken by existing law. As it is in order by way of a limitation to deny the use of funds for implementation of an Executive order, an amendment precisely describing the contents of the Executive order does not constitute legislation solely for that reason (Mar. 16, 1977, p. 7748). And the fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature (Aug. 19, 1980, pp. 21981-84). An amendment prohibiting the use of funds to carry out any ruling of the Internal Revenue Service which rules that taxpayers are not entitled to certain charitable deductions was held in order as a limitation, since 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). An amendment reducing the availability of funds for trade adjustment assistance by amounts of unemployment insurance entitlements was held in order where the law establishing trade adjustment assistance already required the disbursing

§ 1061. Limitations consistent with existing law.

agency to take into consideration levels of unemployment insurance in determining payment levels (June 18, 1980, p. 15355). A limitation precluding 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). A limitation precluding 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 was held not to impose new duties on FAA officials because existing regulations already required the FAA to determine the origin of withdrawn slots (Sept. 23, 1993, p. 22212). An exception stating that the limitation does not prohibit the use of funds for designated Federal activities which are already authorized by law in more general terms, was held in order as not containing legislation (June 27, 1979, pp. 17033–35), as was an exception from a valid limitation prohibiting construction of that limitation in such a way as to prevent funding of a particular authorized activity (Mar. 24, 1944, p. 3095; June 18, 1991, p. 15218). An amendment prohibiting the use of funds in the bill by the Forest Service to construct roads or prepare timber sales in certain roadless areas was held not to impose new duties, 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. —). The following amendments also have been in order as merely constricting the range of objects for which funds might be used: denying use of funds to eliminate an existing legal requirement for sureties on custom bonds (June 27, 1984, p. 19101); denying use of funds by any Federal official in any manner which would prevent a provision of existing law from being enforced (relating to import restrictions) (June 27, 1984, p. 19101); denying use of funds for any reduction in Customs Service regions or for any consolidation of Customs Service offices (June 27, 1984, p. 19102); denying use of funds to carry out (or pay the salaries of persons who carry out) tobacco crop and insurance programs (July 20, 1995, p. —). An amendment in the form of a limitation prohibiting the use of funds in a general appropriation bill 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). Similarly, language in a general appropriation bill 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).

“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. § 1062. Legislation reducing expenditures. 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 which are considered to be legislation (see §§ 1059–1961, *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 which 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 which 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’s Precedents, vol. 8, ch. 26, sec. 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 which requires 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 must also 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 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 Public 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 which 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. But 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 which 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.

RULES OF THE HOUSE OF REPRESENTATIVES

§ 1063–§ 1063a

Rule XXI, clause 2

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, Dec. 12, 1985) 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. —), violations of this clause are enforced only against specific provisions in general appropriation bills containing reappropriations rather than against consideration of the bill (see, e.g., Procedure, ch. 25, sec. 18).

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) (former 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 which 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).

Under paragraph 2(f) an amendment en bloc changing amounts in a paragraph not yet read for amendment must be outlay neutral. It is not sufficient that the offsetting amendment is merely budget authority neutral (Aug. 4, 1999,

§ 1063a. Offsetting en bloc amendments.

p. —). 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. —).

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 8103 of the Transportation Equity Act for the 21st Century, as adjusted, for the highway category or the mass transit category, as applicable.

§ 1064. Transportation obligation limitations.

The Transportation Equity Act for the 21st Century (sec. 8101(e), P.L. 105–178) 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. —). The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (sec. 108, div. C, P.L. 105–277; 112 Stat. 2681–586), included the following provision: “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.” This clause and the cited law should be read together notwithstanding subsequent re adoption of clause 3 because the two are not mutually inconsistent.

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

§ 1065. Restriction of power to report appropriations.

appropriation in such a bill, joint resolution, or amendment thereto may be raised at any time 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. —), 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 to an appropriation bill (VII, 1572), but it may be directed against an item of appropriation in a Senate bill (VII, 2136, 2147; July 30, 1957, pp. 13056, 13181), and 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 of 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 which 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 to a reported bill 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, pp. 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 prior to its adoption (Apr. 23, 1975, p. 12043). But 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 amendment 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 point of order provided for in this clause is not applicable to propositions 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), and is not applicable to language exempting loan guarantees in a legislative bill from statutory limitations on expenditures (July 16, 1974, p. 23344). Legislation authorizing the availability of certain loan receipts is not an appropriation 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). 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). 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. An amendment expanding the definition in existing law of recipients under a Federal subsidy program was held to permit a new use of funds already appropriated in violation of this clause (May 11, 1976, pp. 13409-11); and a provision in a legislative bill authorizing the use, without a subsequent appropriation, of funds directly appropriated by a previous statute for a new purpose constitutes an appropriation prohibited by this clause (Oct. 1, 1980, pp. 28637-40). But 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). A direction to a departmental

officer to pay a certain sum out of unexpended balances is equivalent to an appropriation and not in order (VII, 2154). Language authorizing the use of funds of the Shipping Board is not in order (VII, 2147). A direction to pay out of Indian trust funds is not in order (VII, 2149). A provision in an authorization bill making excess foreign currencies immediately available for a new purpose is in violation of this clause (Aug. 3, 1971, p. 29109). Provisions authorizing the collection of fees or user charges by Federal agencies and making the revenues collected therefrom available without further appropriation have been ruled out in violation of this clause (June 17, 1937, pp. 5915–18; Mar. 29, 1972, pp. 10749–51), and the transfer of existing Federal funds into a new Treasury trust fund to be immediately available for a new purpose has been construed as an appropriation (June 20, 1974, pp. 20273–75), as has a provision in a legislative bill transferring unexpended balances of appropriations from an existing agency to a new agency created therein (Apr. 9, 1979, p. 7774). A provision in an omnibus reconciliation bill reported by the Budget Committee (pursuant to section 310(c)(2) of the Budget Act upon recommendation from the Energy and Commerce Committee) making a direct appropriation to carry out a part of the Energy Security Act was ruled out in violation of this clause (Oct. 24, 1985, p. 28812). An amendment 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, may nevertheless be in violation of this clause as an appropriation on a legislative bill (Aug. 10, 1988, p. 21719).

An amendment increasing the duties of a commission is not necessarily an appropriation (VII, 1578). Language authorizing payment from an appropriation to be made or authorizing payment from an appropriation that has not yet been made is in order (Jan. 31, 1923, p. 2794). Section 401(a) of the Congressional Budget Act of 1974 (88 Stat. 317) prohibits consideration in the House of any bill or resolution or amendment which 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 act (see § 1127, *supra*). See also Procedure, ch. 25, sec. 3, addressing appropriations on legislative bills generally.

Tax and tariff measures and amendments

5. (a) 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

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

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.

This provision was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34). 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. —). 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 a 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; see also Jan. 5, 1993, p. 105).

Although in the case of most points of order against provisions in bills or against amendments the burden is on the proponent of the provision to show that it does not violate the cited rule, in the case of 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), the burden is on the Member making the point of order to show a necessary, certain, and inevitable change in revenue collections or tax statuses or liabilities (there being no other funds available that fiscal year under existing law) (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). Thus, in determining whether a limitation in a general appropriation bill constitutes a tax or tariff measure proscribed by this paragraph, 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). Similarly, in determining whether an amendment to a general appropriation bill proposing a change in IRS funding priorities constitutes a tax measure proscribed by this paragraph, the Chair will consider 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) containing a recommendation from the Committee on Education and Labor (now Education and the Workforce) 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) containing 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 (now Education and the Workforce) 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 (now International Relations) 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), 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).

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.

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

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. —). 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. —). 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. —). This paragraph does not apply to a concurrent resolution (Speaker Gingrich, May 18, 1995, p. —). A resolution reported from the Rules Committee waiving this paragraph may be adopted by majority vote (Oct. 26, 1995, p. —). 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 waiving that provision (Oct. 26, 1995, p. —).

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. —). 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. —).

RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

1. A motion to disagree to Senate amendments to a House bill or resolution and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate bill or resolution and to request or agree to a conference with the Senate,

§ 1069. Motion for conference.