

# DESCHLER-BROWN PRECEDENTS

OF THE

## United States

## House of Representatives

By

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1928-1974

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### VOLUME 16

COVERING PRECEDENTS THROUGH THE 105TH CONGRESS AND  
EMPLOYING CITATIONS TO THE RULES AND TO THE HOUSE  
RULES AND MANUAL OF THAT PERIOD WHICH HAVE  
SUBSEQUENTLY BEEN RECODIFIED AS SHOWN IN H. DOC.  
106-320 AT PAGES XIII-XV





## A TRIBUTE

In volume 12 of this work in September 1997, it was acknowledged that former Parliamentarian Lewis Deschler had collaborated with his successor, Wm. Holmes Brown, in the preparation of these volumes. Mr. Brown continued to assist in the preparation of these volumes following his retirement in 1994 until his death on May 27, 2001. In particular, Mr. Brown's work on Volume 16 reflects his intimate involvement during his term as Parliamentarian with many questions involving House-Senate relations and conference reports. Mr. Brown was eulogized in the House on June 5, 2001 (147 CONG. REC. H2862 (daily ed.), 107th Cong. 1st Sess.).

CHARLES W. JOHNSON,  
Parliamentarian

February 2002.



TABLE OF ABBREVIATIONS AND TERMS

ad hoc	For a particular purpose or end
A.L.R.	American Law Reports Annotated
Am Jur	American Jurisprudence
amend.	Amendment to the Constitution
Annals of Cong.	Annals of Congress (1789–1824)
App. D.C.	Appeal Cases, District of Columbia
App. Div.	Appellate Division
art.	Article of the Constitution
C.A.	Court of Appeals
Cert.	Certiorari
<i>cf.</i>	Compare with
CFR	Code of Federal Regulations
Ch.	Chapter
Cir.	Circuit Court of Appeals (federal)
Cir. Ct. App.	Circuit Court of Appeals (state)
cl.	clause
Comm.	Committee
Cong.	Congress
Cong. Deb.	Congressional Debates (1824–1837)
Cong. Globe	Congressional Globe (1833–1873)
Cong. Rec.	Congressional Record
<i>contra</i>	Contradictory authority
Crim. App.	Court of Criminal Appeals
Ct. Cl.	Court of Claims
D.	District Court (federal)
daily ed.	Daily edition of Record
<i>e.g.</i>	For example
<i>et al.</i>	Omission of party in case name
<i>et seq.</i>	And the following
<i>ex rel.</i>	On the relation of . . .
Exec. Comm.	Executive Communication
F (or F2d, F3d)	Federal Reporter
FCA	Federal Code Annotated
Fed. Reg.	Federal Register
FRD	Federal Rules Decisions
F Supp	Federal Supplement
H. Con. Res.	House Concurrent Resolution
H. Doc.	House Document
H.J. Res.	House Joint Resolution
H. Jour.	House Journal
H.R.	House Bill
H. Rept.	House Report
H. Res.	House Resolution
<i>Id.</i>	Citation to same authority as in immediately preceding citation
<i>i.e.</i>	That is
<i>In re</i>	In the matter of . . .
<i>infra</i>	Subsequent section or chapter
<i>inter alia</i>	Among others
L.Ed (or L.Ed2d)	Lawyers' Edition, U.S. Supreme Court Reports

## TABLE OF ABBREVIATIONS AND TERMS

L.J.	Law Journal
L. Rev.	Law Review
<i>Mem.</i>	Disposition of case without opinion
N.E. (or N.E.2d)	North Eastern Reporter
N.W. (or N.W.2d)	North Western Reporter
Op. Att'y Gen.	Attorney General's Opinions
P. (or P.2d)	Pacific Reporter
<i>Per Curiam</i>	Disposition of case with short opinion
Priv. L.	Private Law
Pub. L.	Uncodified Statute or Session Law
S.	Senate Bill
S. Con. Res.	Senate Concurrent Resolution
S. Ct.	Supreme Court Reporter
S. Doc.	Senate Document
S.E. (or S.E.2d)	South Eastern Reporter
Sess.	Session
<i>Sic</i>	Mistake in original quoted material
S.J. Res.	Senate Joint Resolution
S. Jour.	Senate Journal
S. Rept.	Senate Report
S. Res.	Senate Resolution
So. (or So.2d)	Southern Reporter
Stat.	Statutes at large
Sup. Ct.	Supreme Court
supra	Prior section or chapter
S.W. (or S.W.2d)	South Western Reporter
U.S.	United States Supreme Court Reports
USC (or USCA)	United States Code (or United States Code Annotated)
U.S. Code Cong. & Ad. News	United States Code Congressional and Administrative News
U.S. Const.	United States Constitution
U.S.L.W.	United States Law Week

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Commentary and editing by William Holmes Brown, J.D. Manuscript editing by Joan Deschler Bamel and Deborah Woodard Khalili.

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# *House-Senate Relations*

## A. INTRODUCTORY

### § 1. In General; Messages Between the Houses

The material in this chapter examines messages between the House and Senate and procedures for the disposition of amendments of one House to measures adopted by the other.<sup>(1)</sup> The material in Chapter 33, *infra*, examines House-Senate conferences, conference managers (conferees) and conference reports, including the consequences of their adoption or rejection. It is the logical extension of this chapter, and both chapters are necessary for a comprehensive understanding of the procedures which reconcile differences between the Houses. To the extent that the disposal of amendments between the Houses is accomplished by resorting to a confer-

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1. For comparable precedents that occurred prior to 1935 consult 5 Hinds' Precedents §§ 6163-6253, 6594, 6599 and 8 Cannon's Precedents §§ 3177-3208.

ence, some material will appear in both chapters.

The House of Representatives and the Senate communicate and coordinate their activities by sending formal messages to each other. These messages between the two Houses constitute the sole source of official information regarding actions taken by the other House.<sup>(2)</sup> The reception of a message from the Senate is a highly privileged matter,<sup>(3)</sup> although such reception is not considered the transaction of business and therefore does not require a quorum.<sup>(4)</sup> Until the 95th Congress, messages were not read in the absence of a quorum.<sup>(5)</sup> Under the modern practice, the reading of a message from the Senate or the President

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2. 8 Cannon's Precedents §§ 3342, 3343. See §§ 2.11, 2.14, *infra*.

3. See § 1.4, *infra*.

4. See § 1.7, *infra*; and 8 Cannon's Precedents § 3339.

5. *House Rules and Manual* § 55 (1973); 8 Cannon's Precedents § 3339; 5 Hinds' Precedents §§ 6600, 6650; and 4 Hinds' Precedents § 3522.

does not require the presence of a quorum.<sup>(6)</sup> Messages may be received even though the originating House may have adjourned.<sup>(7)</sup> The reception of a message may even interrupt a call of the roll.<sup>(8)</sup>

Senate bills and House bills with Senate amendments messaged from the Senate to the House go to the Speaker's table, from which they may be referred by the Speaker to the appropriate standing committees in the same manner as public bills introduced by the Members.<sup>(9)</sup> Those bills and amendments requiring consideration in the Committee of the Whole are placed on the Union Calendar for consideration there, after being reported from the standing committees to which they were referred. However, House bills with Senate amendments not requiring consideration in the Committee of the Whole and Senate bills which do not require

consideration there, and which are substantially the same as House bills which were reported by a standing committee, may be disposed of in the House on motion authorized by that committee.<sup>(10)</sup> In determining whether the bills of the House and Senate are substantially the same, the Chair considers the House bill as reported from the standing committee rather than as originally introduced in the House.<sup>(11)</sup>

In order for a Senate bill to be eligible to be taken directly from the Speaker's table for consideration in the House under this exception to the general rule, the similar House bill must already be on the House Calendar when the Senate bill is placed on the Speaker's table.<sup>(12)</sup> If a House bill has already been passed before the similar Senate bill arrives, the Senate bill may still be disposed of when authorized by the appropriate committee.<sup>(13)</sup>

6. See *House Rules and Manual* § 55 (1997).

7. See § 1.9, *infra*, and 8 Cannon's Precedents § 3338. The earlier practice is illustrated at 5 Hinds' Precedents §§ 6601, 6603.

8. *House Rules and Manual* § 767 (1997).

9. Rule XXIV clause 2, *House Rules and Manual* § 882 (1997). See §§ 5.27, 5.28, *infra*.

10. Rule XXIV clause 2, *House Rules and Manual* §§ 882, 883 (1997). See also § 3.8, *infra*.

11. 6 Cannon's Precedents §§ 734, 736.

12. 6 Cannon's Precedents §§ 727, 736, 738, 4 Hinds' Precedents § 3096, and § 3.8, *infra*.

13. 6 Cannon's Precedents §§ 734, 735. See § 3.9, *infra*.

### *Senate Informed of House Quorum*

§ 1.1 At the beginning of a session of Congress, the House informs the Senate that a quorum of the House has assembled and is ready to proceed with business.

On Jan. 7, 1960,<sup>(14)</sup> the House sent the following message to the Senate:

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, informed the Senate that a quorum of the House is present and that the House is ready to proceed with business.

The message also informed the Senate that a committee of three members had been appointed by the Speaker on the part of the House of Representatives to join with the committee on the part of the Senate to notify the President of the United States that a quorum of each House had assembled and that Congress was ready to receive any communication he might be pleased to make.

*Parliamentarian's Note:* The House and Senate also notify each other of additional organizational matters—the election of officers,<sup>(15)</sup> setting the date and time for the President's state of the Union ad-

14. 106 CONG. REC. 76, 86th Cong. 2d Sess.

15. 1 Hinds' Precedents §§ 225, 229.

dress,<sup>(16)</sup> arranging for the counting of the electoral vote<sup>(17)</sup> in January following a Presidential election.

### *One House Often Uses a Resolution To Inform the Other of Certain Actions*

§ 1.2 Senate resolutions are often used to notify the House of matters related to the organization of the Senate.

When a new Congress convenes, each House notifies the other of steps taken to permit legislative activity to begin. The resolutions noted here from the proceedings of Jan. 4, 1989,<sup>(18)</sup> are typical of those sent to the House to provide official notification of Senate actions.

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. (Dale E.) Kildee (of Michigan)] at 12 o'clock and 25 minutes p.m.

#### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced

16. See *House Rules and Manual* § 169 (1997).

17. 3 Hinds' Precedents § 1961.

18. 135 CONG. REC. 194, 101st Cong. 1st Sess.

that the Senate had passed resolutions and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

## S. RES. 1

*Resolved*, That a committee consisting of two Senators be appointed to join such committee as may be appointed by the House of Representatives to wait upon the President of the United States and inform him that a quorum of each House is assembled and that the Congress is ready to receive any communication he may be pleased to make.

## S. RES. 2

*Resolved*, That the Secretary inform the House of Representatives that a quorum of the Senate is assembled and that the Senate is ready to proceed to business.

## S. RES. 5

*Resolved*, That the House of Representatives be notified of the election of Robert C. Byrd, a Senator from the State of West Virginia, as President pro tempore.

### *Refusal To Receive Message From Other House*

#### **§ 1.3 The refusal of one House to receive a message from the other is a breach of the practice of comity between the two Houses.**

On Oct. 14, 1970,<sup>(19)</sup> Mr. Leslie C. Arends, of Illinois, was granted

19. 116 CONG. REC. 36675, 91st Cong. 2d Sess.

unanimous consent to make this statement:

Mr. Chairman, it is not very often that I have found occasion to criticize the action of the other body. I have always felt that my responsibility here in the House, as is the case with every Member of this body, was to maintain the spirit of comity.

But yesterday and today that spirit was closer to comedy than it was to comity.

In due deliberation and in the regular order yesterday, the House considered and approved the conference report on the farm bill. The official papers on that legislation plus the papers on other bills were carried by a House employee to the other body, in conformity with the normal practice.

Strangely enough, the path was blocked in a fashion reminiscent of the action of Gov. George Wallace who one day stood in the schoolroom door.

This morning the same sorry scene was repeated as our House employee was again abruptly turned away.

Finally, we now hear the farm bill papers have been accepted, but alas, the farm bill is not going to be considered prior to the election recess.

In my time in the House I can recall no instance of this nature—whatever one may think of the farm bill.

What I cannot understand, Mr. Chairman, is why the leadership of the other body would refuse to even consider the farm bill. . . .

I certainly think this whole dismal affair has pointed up very dramatically the need for change in the other body—a change from pettiness to substance

that will make it both responsible and responsive to public interest.

### ***Privilege of Reception of Senate Message***

**§ 1.4 The reception of a message from the Senate is a highly privileged matter and may interrupt the consideration of a bill, even though the previous question has been ordered thereon.**

On May 3, 1961,<sup>(20)</sup> the House had just ordered the previous question on H.R. 6441, to amend the Federal Water Pollution Control Act, when a message was received from the Senate.

A message from the Senate by Mr. McGown, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3935) entitled "An act to amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employers engaged in commerce or in the production of goods for commerce, to increase the minimum wage under the act to \$1.25 an hour, and for other purposes."

20. 107 CONG. REC. 7172, 87th Cong. 1st Sess.

Following receipt of the message, the House proceeded to other privileged business—the consideration of a conference report, the submission of another conference report, the filing of a privileged report from the Committee on Rules—before resuming consideration, as unfinished business, of the bill on which the previous question was ordered.<sup>(1)</sup>

### ***Privilege of Request for Return of Message***

**§ 1.5 The request of the Senate for the return of a message is laid before the House by the Speaker as privileged, and it requires only a majority vote to grant such request.**

On Aug. 24, 1935,<sup>(2)</sup> the House and the Senate both approved House Concurrent Resolution 38, providing that both Houses of Congress adjourn *sine die* at the end of the day. However, later that day the following took place in the House:

THE SPEAKER:<sup>(3)</sup> . . . The Chair lays before the House the following request from the Senate.

1. *Id.* at p. 7195.
2. 79 CONG. REC. 14583, 14645, 14669, 74th Cong. 1st Sess.
3. Joseph W. Byrns (Tenn.).

The Clerk read as follows:

*Ordered*, That the Secretary of the Senate be directed to request the House of Representatives to return to the Senate the concurrent resolution (H. Con. Res. No. 38), a concurrent resolution providing for the *sine die* adjournment of the first session of the Seventy-fourth Congress.

THE SPEAKER: The question is on agreeing to the request of the Senate.

The question was taken; and on a division (demanded by Mr. Snell and Mr. Taber) there were—ayes 127, noes 103.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MAPES: May I inquire of the Chair whether to grant this request of the Senate the rules must be suspended, and to agree to the motion will require a two-thirds vote?

THE SPEAKER: No; the request of the Senate is laid before the House and acted upon by a majority of the House. The action taken by the House will determine what shall be done with the request.

MR. MAPES: The Chair rules that it requires only a majority to grant the request?

THE SPEAKER: It requires only a majority.

### ***Time for Reception of Senate Message***

#### **§ 1.6 The Speaker may receive a message from the Senate**

#### **before the approval of the Journal.**

On Sept. 13, 1965,<sup>(4)</sup> the House was debating the motion to approve the Journal when a message arrived from the Senate. After the time of the Member then speaking (Mr. Durward G. Hall, of Missouri) had expired, the Chair<sup>(5)</sup> recognized the Senate messenger who informed the House of Senate passage of several House bills. Mr. H. R. Gross, of Iowa, then stated a point of order.

Mr. Speaker, a point of order.

THE SPEAKER: For what purpose does the gentleman from Iowa arise?

MR. GROSS: The transacting of business of the House prior to adoption of the reading of the Journal.

THE SPEAKER: The Chair will state it is always proper, as well as courteous, to receive a message from the President of the United States, or from the other body, as quickly as possible.<sup>(6)</sup>

#### ***Receipt of Senate Message Absent House Quorum***

4. 111 CONG. REC. 23604, 89th Cong. 1st Sess.
5. John W. McCormack (Mass.).
6. In the permanent Record, the message from the Senate is shown following completion of the pending business—the approval of the Journal—and not at the point where it was actually received. See 111 CONG. REC. 23607, 89th Cong. 1st Sess.

**§ 1.7 A message from the Senate may be received in the absence of a quorum, pending a motion for a call of the House.**

On Oct. 8, 1968,<sup>(7)</sup> the following occurred on the floor of the House:

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER:<sup>(8)</sup> Evidently a quorum is not present.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

THE SPEAKER: At this time the Chair will receive a message. . . .

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 8781. An act to authorize the Secretary of the Interior to exchange certain lands in Shasta County, Calif., and for other purposes. . . .

A call of the House was ordered.

***Effect of Failure of a Quorum Upon Message Received During a Call***

**§ 1.8 Where a message from the Senate is received during a call of the House, and the House adjourns when a quo-**

7. 114 CONG. REC. 30091, 90th Cong. 2d Sess.

8. John W. McCormack (Mass.).

**rum fails to appear on the call, the message is held at the Speaker's table until it next convenes.**

On Oct. 11, 1968,<sup>(9)</sup> the following occurred on the floor of the House:

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll. . . .

During the call of the roll messages were received from the President of the United States and from the Senate.

THE SPEAKER:<sup>(10)</sup> One hundred eighty-eight Members are present, not a quorum.

The Chair recognizes the gentleman from Oklahoma.

MR. ALBERT: Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 53 minutes p.m.), the House adjourned until tomorrow, Saturday, October 12, 1968, at 12 o'clock noon.<sup>(11)</sup>

9. 114 CONG. REC. 30816, 30817, 90th Cong. 2d Sess.

10. John W. McCormack (Mass.).

11. *Parliamentarian's Note*: While the reception of messages from the President or the Senate is not the transaction of business requiring the presence of a quorum, if they are received during a call of the House, and a quorum does not appear on the call, they are not read until a quorum is present. In this instance, both messages were laid before the House when it met the following day.

When the House met on Oct. 12, 1968, immediately following the approval of the Journal, the following message was laid before the House.<sup>(12)</sup>

MESSAGE FROM THE SENATE  
RECEIVED OCTOBER 11

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title: . . .

The message also announced that the Senate had passed concurrent resolutions of the following titles:

S. Con. Res. 82. Concurrent resolution authorizing the President of the Senate and the Speaker of the House to sign enrolled bills and resolutions; and

S. Con. Res. 83. Concurrent resolution establishing that when the two Houses of Congress adjourn on Friday, October 11, 1968, they stand adjourned *sine die*.

*Receipt of Senate Message After  
Senate Adjournment*

**§ 1.9 The House may receive a message from the Senate although that body may have adjourned.**

<sup>12</sup>. 114 CONG. REC. 31116, 90th Cong. 2d Sess.

On Aug. 24, 1935,<sup>(13)</sup> the House approved House Concurrent Resolution 38, which provided that upon adjourning that night, both Houses would stand adjourned *sine die*. Subsequently, the Senate notified the House of the following actions relating to House Concurrent Resolution 38: It agreed to the concurrent resolution; it then requested the House to return its message of agreement to the Senate.<sup>(14)</sup> It later reconsidered its vote on agreement and again passed the resolution. Mr. James W. Wadsworth, Jr., of New York, was then recognized with a parliamentary inquiry:

Mr. Speaker, in view of the fact the Senate has informed the House that it has rescinded its action in recalling from the House the adjournment concurrent resolution, what is the present situation?

THE SPEAKER:<sup>(15)</sup> The Chair has been informed that the Senate has taken a recess until Monday at 12 o'clock. The Chair will ask the House to take a recess for a reasonable time until the fact can be ascertained. . . .

A further message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate had ordered

<sup>13</sup>. 79 CONG. REC. 14583, 14645, 14667, 14669-71, 14673, 74th Cong. 1st Sess.

<sup>14</sup>. See § 1.14, *infra*.

<sup>15</sup>. Joseph W. Byrns (Tenn.).



that the secretary be directed to inform the House of Representatives that the Senate has reconsidered its action in agreeing to House Concurrent Resolution No. 38, providing for the *sine die* adjournment of the first session of the Seventy-fourth Congress.

MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I make a point of order against the message from the Senate because the Senate adjourned several minutes ago.

THE SPEAKER: This is a message from the Senate and can be delivered to the House even though the Senate has adjourned. The Chair does not understand that a point of order lies against the reporting of a message from the Senate by a regularly accredited official of the Senate.

***“Deeming Resolutions”—Use in the House***

**§ 1.10 On rare occasions, the House has anticipated legislative actions of the Senate and acted in futuro, deeming certain actions to be taken by the House if and when a message is received showing that the anticipated legislative acts in fact occurred.**

On Dec. 18, 1982,<sup>(16)</sup> as the House approached the end of the session, it was necessary to expedite the conclusion of the further

16. 128 CONG. REC. 32137, 97th Cong. 2d Sess.

continuing appropriation bill for fiscal year 1983. The measure was still under consideration in the Senate, but the House leadership thought it essential to begin the conference as quickly as possible.

APPOINTMENT OF CONFEREES ON HOUSE JOINT RESOLUTION 631, FURTHER CONTINUING APPROPRIATIONS, 1983

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed the joint resolution (H.J. Res. 631) with amendments, insisted upon its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. Whitten, Boland, Natcher, Smith of Iowa, Addabbo, Long of Maryland, Yates, Roybal, Bevill, Dicks, Ginn, Sabo, Dixon, Fazio, Conte, McDade, Edwards of Alabama, Myers, Robinson, Coughlin, Kemp, and Lewis.

When the House reconvened on Dec. 19, 1982,<sup>(18)</sup> the Speaker laid

17. Thomas P. O'Neill, Jr. (Mass.).

18. 128 CONG. REC. 32401, 97th Cong. 2d Sess.

before the House the following communication from the Clerk:

COMMUNICATION FROM THE CLERK  
OF THE HOUSE

THE SPEAKER: The Chair lays before the House the following communication:

WASHINGTON, D.C.,  
December 19, 1982.

Hon. THOMAS P. O'NEILL, Jr.,  
*The Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted in the Rules of the House of Representatives, the Clerk received, at 3:22 p.m. on Sunday, December 19, 1982, the following message from the Secretary of the Senate: That the Senate passed with amendments H.J. Res. 631 and requested a conference thereon.

In accordance with action taken by the House on Saturday, December 18, 1982, the Clerk has notified the Senate that the House disagreed to the amendments of the Senate to H.J. Res. 631 and agreed to a conference thereon.

With kind regards, I am,  
Sincerely,

EDMUND L. HENSHAW, Jr.,  
*Clerk, House of Representatives.*

*Parliamentarian's Note:* This was the first instance where the House took such an action. The procedure is contrary to the principle in Jefferson's Manual<sup>(19)</sup> that the House should not take notice of bills in the other body, until the

19. *House Rules and Manual* § 308 (1997).

actions are communicated to the House. However, procedural steps such as this are used when necessary under the modern practice.

***House Sometimes Anticipates Senate Action and Acts Before Formal Message Is Received***

§ 1.11 On occasion, the House anticipates Senate action, and, by unanimous consent, has established the conditions for a conference on a House bill with Senate amendment even before the Senate has acted and messaged its request for a conference to the House.

The unanimous-consent request of Sept. 26, 1984,<sup>(20)</sup> made by the chairman of the Committee on Appropriations, Jamie L. Whitten, of Mississippi, relating to House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and the Chair's anticipatory appointment of conferees are shown below.

MR. WHITTEN: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed the joint resolution (H.J. Res.

20. 130 CONG. REC. 27341, 98th Cong. 2d Sess.

648) with amendments, insisted upon its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi? The Chair hears none and, without objection in this instance, the Chair appoints the following conferees: Messrs. Whitten, Boland, Natcher, Smith of Iowa, Addabbo, Long of Maryland, Yates, Roybal, Beville, Lehman of Florida, Dixon, Fazio, Hefner, Conte, McDade, Edwards of Alabama, Myers, Robinson, Coughlin, and Kemp.

There was no objection.

When the Senate finally messaged its action to the House on Oct. 5, 1984,<sup>(1)</sup> the Speaker made a further statement for the Record, confirming that the action which the House had anticipated had in fact occurred.

#### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 4966. An act to recognize the organization known as the Wom-

en's Army Corps Veterans' Association: . . .

The message also announced that the Senate insists upon its amendments to the joint resolution (H.J. Res. 648) "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Hatfield, Mr. Stevens, Mr. Weicker, Mr. McClure, Mr. Garn, Mr. Cochran, Mr. Andrews, Mr. Abdnor, Mr. Kasten, Mr. D'Amato, Mr. Mattingly, Mr. Rudman, Mr. Specter, Mr. Domenici, Mr. Stennis, Mr. Byrd, Mr. Inouye, Mr. Hollings, Mr. Eagleton, Mr. Chiles, Mr. Johnston, Mr. Huddleston, Mr. Burdick, Mr. Leahy, Mr. DeConcini, and Mr. Bumpers to be the conferees on the part of the Senate.

#### ANNOUNCEMENT BY THE SPEAKER REGARDING HOUSE JOINT RESOLUTION 648, CONTINUING APPROPRIATIONS

THE SPEAKER:<sup>(2)</sup> Pursuant to the order of the House of September 26, 1984, pertaining to the joint resolution (H.J. Res. 648) making continuing appropriations for the fiscal year 1985, and for other purposes. The House is deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate and the Speaker to have appointed managers on the part of the House as appointed on that date.

1. *Id.* at p. 30292.

2. Thomas P. O'Neill, Jr. (Mass.).

### ***Reception by Committee of the Whole***

#### **§ 1.12 The Committee of the Whole must rise to receive messages from the Senate.**

*Parliamentarian's Note:* On this occasion, Mar. 22, 1961,<sup>(3)</sup> the Speaker<sup>(4)</sup> wished to sign enrolled bills, prepared in advance, but which could not be signed by the Speaker until the message announcing their passage by the Senate had been received in the House. Therefore, the Committee of the Whole resolved itself back into the House for the reception of the message from the Senate.

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I move the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Elliott, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5000) to authorize certain construction at military installations, and for other purposes, had come to no resolution thereon.

3. 107 CONG. REC. 4563, 87th Cong. 1st Sess.

4. Sam Rayburn (Tex.).

The Speaker then recognized the Senate clerk, who delivered the following message.

A further message from the Senate by Mr. McGown, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4510) entitled "An act to provide a special program for feed grains for 1961."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4806) entitled "An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the Federal unemployment tax, and for other purposes."

On motion of Mr. Vinson, the House then again resolved into the Committee of the Whole for further consideration of H.R. 5000.<sup>(5)</sup>

### ***The Committee of the Whole May Rise Informally***

#### **§ 1.13 Under the more modern practice in the House, the Committee rises informally, not by motion, both to receive a message or to permit the Speaker to lay before**

5. 107 CONG. REC. 4563, 87th Cong. 1st Sess., Mar. 22, 1961.

**the House an enrolled bill which has been signed by the Speaker.**

The practice whereby the Committee of the Whole rises without a formal motion is recognized in Jefferson's Manual: "If a message is announced during a committee, the Speaker takes the chair and receives it, because the committee can not."<sup>(6)</sup> A formal motion that the Committee rise can provoke a vote in Committee, so in the modern practice the informal method of rising is normally employed. The proceedings of Feb. 8, 1995, and Jan. 28, 1980, are illustrative of the current practice.

On Feb. 8, 1995,<sup>(7)</sup> the Committee rose informally to enable the Speaker to receive a message from the President:

THE CHAIRMAN:<sup>(8)</sup> The Committee will rise informally in order that the House may receive a message.

MESSAGE FROM THE PRESIDENT

The Speaker pro tempore (Mr. Lightfoot) assumed the chair.

THE SPEAKER PRO TEMPORE: The Chair will receive a message.

6. See portions of Jefferson's Manual carried in §§ 330, 563, *House Rules and Manual* (1997).

7. 141 CONG. REC. 4112, 104th Cong. 1st Sess.

8. Jim Lightfoot (Iowa).

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PARLIAMENTARY INQUIRY

MR. [MELVIN L.] WATT of North Carolina: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WATT of North Carolina: How can we rise out of the Committee of the Whole without a motion to that effect? I did not hear anybody make a motion. It is strictly a technical point, but there are some procedural rules that apply in this body, I thought.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman from North Carolina the Committee of the Whole can rise informally just for the purpose of receiving a message.

MR. WATT of North Carolina: Informally.

THE SPEAKER PRO TEMPORE: Yes. A motion is not required just for the purpose of receiving a message.

MR. WATT of North Carolina: I thank the Chair for enlightening me.

THE SPEAKER PRO TEMPORE: The Committee will resume its sitting.

On Jan. 28, 1980,<sup>(9)</sup> there is an example of the Committee rising informally to lay down an enrolled bill.

9. 126 CONG. REC. 888, 96th Cong. 2d Sess.

THE CHAIRMAN: The Committee will rise informally in order that the Speaker may sign an enrolled resolution.

The Speaker resumed the chair.

THE SPEAKER:<sup>(10)</sup> The Chair lays before the House the following enrolled joint resolution:

H.J. Res. 478. Joint resolution to extend by 60 days the expiration date of the Defense Production Act of 1950.

THE SPEAKER: The Committee will resume its sitting.

***One House Sometimes Asks the Other for the Return of a Message***

**§ 1.14 The Senate, by a second message, may request the return of an earlier message informing the House of a legislative action.**

On Aug. 24, 1935,<sup>(11)</sup> the House approved and sent to the Senate House Concurrent Resolution 38, providing for a *sine die* adjournment of both Houses of Congress at the end of the day. A short time later the House received a message from the Senate which included the following:

10. Thomas P. O'Neill, Jr. (Mass.).

11. 79 CONG. REC. 14583, 14645, 14667, 74th Cong. 1st Sess.

The message also announced that the Senate agreed to concurrent resolutions of the House of the following titles:

H. Con. Res. 38. Concurrent resolution providing for the *sine die* adjournment of the first session of the Seventy-fourth Congress. . . .

Still later that day the House received this message from the Senate:

A still further message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate requests the House to return to the Senate the concurrent resolution (H. Con. Res. 38) providing for the *sine die* adjournment of the first session of the Seventy-fourth Congress.

***Correcting Error in House Engrossment of House Amendment***

**§ 1.15 Where the House belatedly discovered an error in its amendment of a Senate bill, it adopted a resolution (by unanimous consent) requesting the Senate to return the engrossed House amendment and directed the Clerk to prepare a new engrossment eliminating the error.**

House Resolution 534, requesting the Senate to return the engrossed amendment of the House to S. 725, was not reported from

a committee but was called up on the floor and considered by unanimous consent. The resolution and the debate explaining the necessity for this action are included here.<sup>(12)</sup>

MR. [HENRY A.] WAXMAN [of California]: Mr. Speaker, I offer a resolution (H. Res. 534) to correct the engrossment of the amendment of the House of Representatives to the Senate bill (S. 725), and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the resolution.

The text of House Resolution 534 is as follows:

#### H. RES. 534

*Resolved,*

##### SECTION 1. RETURN.

The Senate is requested to return to the House of Representatives the amendment of the House to the Senate bill (S. 725).

##### SEC. 2. CORRECTION.

Upon the return of the House amendment to the Senate bill (S. 725), the Clerk of the House of Representatives shall make the following change in the engrossment of the House amendment: Strike section 5 and insert the following:

##### SEC. 3. STATE STANDARDS. . . .

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> Is there objection to the request of the gentleman from California?

MR. [CARLOS J.] MOORHEAD [of California]: Mr. Speaker, reserving the

right to object, I will not object, but I would like to request that the gentleman from California [Mr. Waxman] explain exactly what this unanimous-consent request includes.

MR. WAXMAN: Mr. Speaker, will the gentleman yield?

MR. MOORHEAD: I yield to the gentleman from California.

MR. WAXMAN: Mr. Speaker, this resolution corrects the engrossment of S. 725, a bill passed by the House. The correction replaces two paragraphs of the Senate-passed bill which were inadvertently omitted in the House-passed version. This will correct, I think, technically what we all tried to accomplish.

MR. MOORHEAD: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection. The resolution was agreed to.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The Senate could have amended the House amendment to correct the error, but this would have required a second House action.

### ***Replacing Lost Official Papers***

**§ 1.16 Where the official papers are lost or destroyed, the House and Senate can authorize their recreation by the Clerk of the House and Secretary of the Senate.**

12. See 140 CONG. REC. 24911, 24912, 103d Cong. 2d Sess., Sept. 20, 1994.

13. Alcee L. Hastings (Fla.).

The concurrent resolution carried here was considered by unanimous consent, adopted by the House (and later by the Senate). It authorized the preparation of duplicate original "official papers" where the original ones had been misplaced in the Senate.<sup>(14)</sup>

MR. [NORMAN Y.] MINETA [of California]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 414) directing the preparation of duplicate conference papers on H.R. 5930.

The Clerk read the title of the concurrent resolution.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> Is there objection to the request of the gentleman from California?

MR. [ELLIOTT H.] LEVITAS [of Georgia]: Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from California if he would explain the effect of the concurrent resolution.

MR. MINETA: Mr. Speaker, will the gentleman yield?

MR. LEVITAS: I yield to the gentleman from California.

MR. MINETA: Mr. Speaker, this concurrent resolution merely recreates papers which apparently have been lost. It does not approve or constitute approval of the conference report.

I expect to bring that conference report before the House tomorrow.

14. 128 CONG. REC. 26058, 97th Cong. 2d Sess., Sept. 29, 1982.

15. John P. Murtha, Jr. (Pa.).

MR. LEVITAS: Further reserving the right to object, and I will not object, I wanted to make certain that it did not constitute approval of the conference report by the adoption of the concurrent resolution.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the concurrent resolution, as follows:

#### H. CON. RES. 414

*Resolved by the House of Representatives (the Senate concurring), That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of the conference papers on the bill (H.R. 5930) to extend the aviation insurance program for five years.*

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

### ***Modification of Text of Bill Agreed to by Both Houses***

#### **§ 1.17 Changes in the text of a bill agreed to by the two Houses may be made by concurrent resolution.**

On Feb. 1, 1937,<sup>(16)</sup> when the House was considering the Senate amendments to the text of House

16. 81 CONG. REC. 646-48, 75th Cong. 1st Sess.



Joint Resolution 81, creating a Joint Congressional Committee on Government Organization, Mr. John E. Rankin, of Mississippi, attempted to offer an amendment to the provisions in the House-passed measure.

THE SPEAKER:<sup>(17)</sup> The gentleman is not confining himself in his amendment to the Senate amendment, which deals only with the number of Senators on the joint committee; but he goes further down in the paragraph and adds additional matter to the text, to which both Houses have already agreed. . . .

MR. [CLAUDE A.] FULLER [of Arkansas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. FULLER: Cannot that be amended by unanimous consent?

THE SPEAKER: The only way under the rules of the House by which this situation could be changed would be by a concurrent resolution, agreed to by both Houses, changing the text of the matter already passed upon by the House and accepted by the Senate.

## § 2. Messages Relating to Bills

Each House informs the other of the passage of a measure and of any subsequent legislative action taken. A House-passed bill is en-

grossed, attested to by the Clerk of the House and is messaged to the Senate. If the Senate passes the bill without change, that action is formalized, attested to, and the House is notified. If the Senate amends, its amendments are engrossed, attested to by the Secretary and the House is informed. Any further amendments by either House are engrossed as well. If one House disagrees with amendments of the other a conference may result. The request for or agreement to a conference, the appointment of conferees, actions taken on the report or amendments in disagreement—all are certified by the appropriate official of the acting House. The package of actions travels together from one House to the other.

The “bundle” of messages and attested copies of legislative actions are called the “official papers.” To act on a measure, the body must be in possession of these papers. The progression of papers from one House to the other normally mirrors the flow of messages.

When the conference meeting is held, the managers of the asking House (having possession of the papers because it received the last message—the agreement to the

17. William B. Bankhead (Ala.).

conference) carries the papers to the conference meeting. When the conference results in agreement, the expectation is that the asking House will yield the papers to the agreeing House which may act first on the report.<sup>(18)</sup> However, if the managers of the agreeing House release the official papers to the managers of the other House, the sequence of actions may be reversed. No point of order lies against a conference report which is acted on “out of order” so long as the acting House has possession of the papers when the report is considered.<sup>(19)</sup>

When the conference results in disagreement, the managers of the asking House are justified in retaining the papers so that the body they represent may act first on the amendments in disagreement.<sup>(20)</sup>

Messages are also used to communicate a request for a return of a bill already transmitted to the

18. See *Jefferson's Manual* Sec. XLVI, *House Rules and Manual* § 555 (1997).

19. See § 2.19, *infra*. Once managers have filed a conference report in the Senate, with the official papers attached, retrieval of the papers—to transfer them to the House—required unanimous consent. See § 2.18, *infra*.

20. See § 2.12, *infra*.

other House,<sup>(1)</sup> to indicate an error in the text of an engrossed bill or amendment, and to inform the other House of unusual legislative actions.<sup>(2)</sup>

### *Senate Request for Return of Bill*

§ 2.1 The House, by unanimous consent, agreed to a request of the Senate for the return of a Senate bill which had been messaged to the House and referred to a committee thereof.

On Jan. 21, 1960,<sup>(3)</sup> Speaker Sam Rayburn, of Texas, laid before the House the following message from the Senate:

*Ordered*, That the House of Representatives be requested to return to the Senate the bill (S. 1282) entitled “An act relating to acreage allotments for Durum wheat.”

THE SPEAKER: Without objection, the request is granted.

There was no objection.

### *Discharge of Senate Bill From House Committee*

1. See §§ 2.1, 2.2, *infra*.

2. See § 1.14, *supra*, and §§ 2.3–2.5, *infra*.

3. 106 CONG. REC. 1022, 86th Cong. 2d Sess.

**§ 2.2 The House, responding to a request of the Senate, discharged one of its standing committees from consideration of a Senate bill and directed the Clerk to return the bill to the Senate.**

On July 10, 1969,<sup>(4)</sup> the following took place in the House:

THE SPEAKER:<sup>(5)</sup> The Chair lays before the House a request from the Senate.

The Clerk read as follows:

That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 1583) entitled "An Act to provide that appointments and promotions in the Post Office Department, including the postal field service, be made on the basis of merit and fitness", together with all accompanying papers. . . .

THE SPEAKER: . . . Without objection, the request of the Senate is agreed to, the Committee on Post Office and Civil Service is discharged from further consideration of the bill S. 1583, and the Clerk will return the bill to the Senate.

There was no objection.

### ***Bills Passed in Closing Hours of Previous Session***

**§ 2.3 At the beginning of a session of Congress, bills are messaged to the Senate that**

- 
4. 115 CONG. REC. 19095, 91st Cong. 1st Sess.
  5. John W. McCormack (Mass.).

were passed by the House in the closing hours of a previous session of that Congress and not messaged to the Senate before adjournment *sine die*.

On Jan. 7, 1960,<sup>(6)</sup> the House sent to the Senate a message concerning actions it had taken prior to the adjournment of the first session of that Congress.

The message announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 5349. An act to provide for the conveyance to Orange County, Calif., of all right, title, and interest of the United States in and to certain real property situated in Orange County, Calif.; and

H.R. 8289. An act to accelerate the commencing date of civil service retirement annuities, and for other purposes.

### ***Veto Overridden***

**§ 2.4 When the House passes a bill over a President's veto, it notifies the Senate by message.**

On Apr. 2, 1948,<sup>(7)</sup> this message from the House was received by the Senate:

- 
6. 106 CONG. REC. 76, 86th Cong. 2d Sess.
  7. 94 CONG. REC. 4018, 80th Cong. 2d Sess.

IN THE HOUSE OF  
REPRESENTATIVES, U.S.,  
April 2, 1949.

The House of Representatives having proceeded to reconsider the bill (H.R. 4790) entitled "An act to reduce individual income-tax payments, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

"Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same."

Attest:

JOHN ANDREWS,  
Clerk.

### ***House Strikes Enacting Clause of Senate Bill***

**§ 2.5 Where the House strikes the enacting clause of a Senate bill, the Speaker directs the Clerk to notify the Senate, but the original papers are not returned to the Senate.**

On Oct. 4, 1972,<sup>(8)</sup> the Committee of the Whole recommended that the House strike out the enacting clause of S. 1316, a bill to amend the Federal Meat Inspection Act and Poultry Products Inspection Act.

8. 118 CONG. REC. 33785-87, 92d Cong. 2d Sess.

THE SPEAKER:<sup>(9)</sup> The question is on the recommendation of the Committee of the Whole House on the State of the Union that the enacting clause be stricken out.

The question was taken; and there were—yeas 173, nays 169, not voting 88. . . .

So the recommendation of the Committee of the Whole House on the State of the Union that the enacting clause be stricken out was agreed to. . . .

THE SPEAKER: The Clerk will notify the Senate of the action of the House.

*Parliamentarian's Note:* The last instance where the House struck the enacting clause of a Senate bill was June 20, 1946.<sup>(10)</sup> The message from the House to the Senate at that time did not indicate that the original papers were returned to the Senate.

### ***Privilege of Senate Request for Return of a Bill***

**§ 2.6 A request of the Senate for the return of a bill is treated as privileged in the House.**

On Sept. 14, 1959,<sup>(11)</sup> the Speaker, Sam Rayburn, of Texas, laid before the House a request of

9. Carl Albert (Okla.).

10. 92 CONG. REC. 7211, 79th Cong. 2d Sess.

11. 105 CONG. REC. 19715, 86th Cong. 1st Sess.

the Senate that the House return to the Senate H.R. 8392, to amend the District of Columbia Stadium Act of 1957. Mr. H. R. Gross, of Iowa, then rose:

Mr. Speaker, is that subject to a reservation of any kind?

THE SPEAKER: It is a privileged matter. It is a request of the Senate to return a bill.

**§ 2.7 Where the Senate, by message, requests the return of a bill it has passed, the request is considered as privileged in the House and may be disposed of by motion.**

On Sept. 9, 1970,<sup>(12)</sup> the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication from the Senate relating to a bill which the Senate had passed eight days previously:

IN THE SENATE OF THE UNITED STATES,  
*September 1, 1970.*

*Ordered,* That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H.R. 16968) entitled "An act to provide for the adjustment of the Government contribution with respect to the health benefits coverage of Federal employees and annuitants, and for other purposes".

12. 116 CONG. REC. 30850, 30851, 91st Cong. 2d Sess.

Attest:

FRANCIS R. VALEO,  
*Secretary.*

MR. [THADDEUS J.] DULSKI [of New York]: Mr. Speaker, I move that the request of the Senate be agreed to.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. DULSKI: I yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, will the gentleman explain to the House briefly the nature of this legislation and the reason for the Senate asking the papers and this bill be sent back to that body?

MR. DULSKI: . . . It also is our understanding that upon return of the House bill, a motion will be made in the Senate to amend the House bill by inserting the language of the Senate-passed bill. The House bill with the Senate amendment would then be returned to the House for further consideration.

This gives the details of what happened in the Senate.

MR. GROSS: Mr. Speaker, will the gentleman yield further?

MR. DULSKI: I yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, in other words, the other body took up the bill, apparently on the call of the calendar, and by unanimous consent, without debate, passed a bill that was faulty and now asks its return by the House.

MR. DULSKI: That would be correct, in substance.

MR. GROSS: I thank the gentleman for yielding. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from New York.

The motion was agreed to.

§ 2.8 A request of the Senate for the return of a bill is treated as privileged, and the Chair can immediately put the question on the request without debate.

On Dec. 29, 1970,<sup>(13)</sup> Speaker Pro Tempore Hale Boggs, of Louisiana, laid before the House this request of the Senate:

DECEMBER 28, 1970.

*Ordered*, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (H.R. 14984) entitled "An Act to provide for the disposition of funds appropriated to pay judgments in favor of the Mississippi Sioux Indians in Indian Claims Commission dockets Nos. 142, 359-363, and for other purposes", together with all accompanying papers.

FRANCIS R. VALEO,  
*Secretary.*

THE SPEAKER PRO TEMPORE: The question is on agreeing to the request of the Senate. . . .

The question was taken; and there were—yeas 235, nays 20, not voting 177. . . .

So the request of the Senate was agreed to.

***Receipt and Consideration of Senate Request for Return of a Bill***

13. 116 CONG. REC. 43776, 91st Cong. 2d Sess.

§ 2.9 A message from the Senate requesting that the House return a bill must be presented to the House for consideration, and the question of complying with the request is treated as privileged.

On Sept. 14, 1959,<sup>(14)</sup> Speaker Sam Rayburn, of Texas, laid before the House this request of the Senate:

*Ordered*, That the Secretary of the Senate request the House of Representatives to return to the Senate the bill (H.R. 8392) entitled "An act to amend the District of Columbia Stadium Act of 1957 with respect to motor-vehicle parking areas, and for other purposes," together with accompanying papers.

THE SPEAKER: The question is on agreeing to the request of the Senate. . . .

The question was taken; and the Speaker announced that the ayes had it.

Mr. Gross, of Iowa, then asked if consideration of the Senate's request required unanimous consent. The Speaker stated it was a privileged matter. The Speaker then put the question.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I object to the vote on the ground that a quorum is not present,

14. 105 CONG. REC. 19715, 86th Cong. 1st Sess.

and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count. [After counting.] Two hundred and thirty-nine Members are present, a quorum.

So the request of the Senate was granted.

### *House Compliance With Senate Request*

§ 2.10 On occasion, the House, acting by unanimous consent, agrees to a request of the Senate for the return of a House bill.

On Nov. 6, 1963,<sup>(15)</sup> the following request of the Senate was disposed of by the House:

*Ordered*, That the Secretary of the Senate request the House of Representatives to return to the Senate the bill (H.R. 2985) entitled "An act to amend section 1391 of title 28 of the United States Code, relating to venue generally" together with all accompanying papers.

THE SPEAKER:<sup>(16)</sup> Without objection, the request is granted.

There was no objection.

A motion to reconsider was laid on the table.<sup>(17)</sup>

15. 109 CONG. REC. 21122, 88th Cong. 1st Sess.

16. John W. McCormack (Mass.).

17. See also 107 CONG. REC. 20822, 87th Cong. 1st Sess., Sept. 22, 1961; and 106 CONG. REC. 9853, 86th Cong. 2d Sess., May 10, 1960.

### *Message Requesting Return of Bill*

§ 2.11 The two Houses communicate officially by written messages; and when the House receives a message from the Senate asking for the return of a bill previously sent to the House, the message is laid before the House for action. Such requests are frequently agreed to without objection.

When the Senate asked for the return of a Senate bill previously messaged to the House, the Speaker laid the communication before the House for action. The proceedings below show the disposition of such a request.<sup>(18)</sup>

The Speaker laid before the House the following communication from the Senate of the United States:

*Ordered*, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 622) entitled "An Act to provide standby authority to assure that the essential energy needs of the United States are met, to reduce reliance on oil imported from insecure sources at high prices, to implement United States obligations under international agreements to deal with shortage conditions, and to authorize and direct the implementation of

18. 121 CONG. REC. 30414, 94th Cong. 1st Sess., Sept. 26, 1975.

Federal and State conservation programs consistent with economic recovery", together with all accompanying papers.

THE SPEAKER:<sup>(19)</sup> Without objection, the request is agreed to.

There was no objection.

### *Progression of Conference "Official Papers"*

**§ 2.12 Where conferees report in total disagreement, the papers are normally retained by the asking House so that it may act first on the matter in disagreement; but where the only matter remaining in disagreement is an amendment of the asking House, which cannot amend its own amendment, the papers may be transferred so that the agreeing House may address the disagreement by amending.**

The conference agreement brought before the House on Oct. 7, 1975, was the second report dealing with amendments in disagreement on H.R. 8121, the State, Justice, Commerce, and the Judiciary appropriations for fiscal 1976. The second conference was asked by the Senate and the second report dealt with the sole

<sup>19</sup>. Carl Albert (Okla.).

remaining Senate amendment in disagreement, and the conferees agreed to recommend a further amendment to that amendment. Since the Senate—the "asking House" which would normally entitle it to act first—could not amend its own amendment, the report was filed in disagreement, the House retained the papers and acted first on the managers recommendation.

The form of the report, the Senate amendment in disagreement, and the House action thereon are shown in the *Congressional Record* excerpt and the relevant parts of the statement of the managers are carried here:<sup>(20)</sup>

CONFERENCE REPORT (H. REPT. NO.  
94-527)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 8 to the bill (H.R. 8121) "making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes," having met, after further full and free conference, have been unable to agree.

JOHN M. SLACK . . .

<sup>20</sup>. 121 CONG. REC. 31510, 94th Cong. 1st Sess., Oct. 2, 1975.



JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE . . .

## TITLE I—DEPARTMENT OF STATE

*General provisions—Department of  
State*

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion as follows:

Restore the matter stricken by said amendment amended to read as follows:

“SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal.”

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

When the report was called up and read on Oct. 7, 1975, the Speaker<sup>(1)</sup> laid down the amendment in disagreement.<sup>(2)</sup>

The Clerk read the Senate amendment, as follows:

Senate amendment No. 8: Page 16, line 18, strike out:

“SEC. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone.”

1. Carl Albert (Okla.).
2. 121 CONG. REC. 32064, 94th Cong. 1st Sess.

## MOTION OFFERED BY MR. SLACK

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Slack moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment amended to read as follows:

“SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal.”

## PARLIAMENTARY INQUIRY

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FLYNT: Mr. Speaker, is a division of the question in order?

THE SPEAKER: Yes, a request for a division of the question is in order.

MR. FLYNT: Mr. Speaker, I demand a division of the question.

THE SPEAKER: The question will be divided. . . .

The question is on whether the House shall recede from its disagreement to Senate amendment No. 8.

The question was taken; and the Speaker announced that the ayes appeared to have it.<sup>(3)</sup>

The Speaker later put the question on concurring in the Senate amendment with an amendment.

3. *Id.* at p. 32075.

***Message Returning a Bill Passed by the Other Body***

**§ 2.13 Where the House orders a bill returned to the Senate, it notifies the Senate of this fact by a message accompanying the returned bill.**

On May 20, 1965,<sup>(4)</sup> the following resolution was called up as a question of the privileges of the House by the chairman of the Committee on Ways and Means, Wilbur D. Mills, of Arkansas:

H. RES. 397

*Resolved*, That the bill of the Senate (S. 1734) to conserve and protect domestic fishery resources in the opinion of this House contravenes the first clause of the seventh section of the first article of the Constitution of the United States, and is an infringement of the privileges of this House, and that the said bill be respectfully returned to the Senate with a message communicating this resolution.

The resolution was agreed to. This action was communicated to the Senate as shown by the following Record proceedings of May 21, 1965.<sup>(5)</sup>

A message from the House of Representatives, by Mr. Hackney, one of its

4. 111 CONG. REC. 11149, 11150, 89th Cong. 1st Sess.

5. *Id.* at p. 11188.

reading clerks, notified the Senate that, pursuant to the provisions of House Resolution 397, 89th Congress, the engrossed bill (S. 1734) to conserve and protect domestic fishery resources, was herewith returned to the Senate.

***Notice of Senate Proceedings***

**§ 2.14 The Chair does not take public notice of the proceedings of the Senate unless formally brought to the attention of the House by message from the Senate.**

On July 10, 1969,<sup>(6)</sup> Speaker John W. McCormack, of Massachusetts, directed the Clerk to read a request from the Senate:

That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 1583) entitled "An Act to provide that appointments and promotions in the Post Office Department, including the postal field service, be made on the basis of merit and fitness", together with all accompanying papers.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. GROSS: Mr. Speaker, is this the bill that was passed by the other body on Tuesday morning without any debate whatsoever, the only explanation being the bill as printed in the Record?

6. 115 CONG. REC. 19095, 91st Cong. 1st Sess.

THE SPEAKER: The Chair is not aware of what action took place in the other body.

The Chair is aware of the action of the other body which is now before the House.

### *House Request To Return Message*

§ 2.15 The House, by unanimous consent, requested the Senate to return to the House a message by which the Senate had been erroneously informed that the House had concurred in the Senate amendments to a House bill.

On Dec. 19, 1969,<sup>(7)</sup> Mr. Olin M. Teague, of Texas, was recognized to rectify a mistake made the preceding day, whereby the House had inadvertently notified the Senate that it had concurred in the Senate amendments to H.R. 9634, instead of H.R. 9334, both of which amended title 38 of the United States Code.

MR. TEAGUE of Texas: Mr. Speaker, I also ask unanimous consent that the Clerk be directed to request the Senate to return to the House of Representatives the message on the bill (H.R. 9634) to amend title 38 of the United States Code in order to improve and make more effective the Veterans' Ad-

7. 115 CONG. REC. 40189, 40191, 40215, 91st Cong. 1st Sess.

ministration program of sharing specialized medical resources.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

### *Effect of Motion To Postpone Indefinitely*

§ 2.16 The motion to postpone indefinitely has been used in the House to finally dispose of a Senate measure, passed by the House but identical to a House bill previously passed by both Houses, after the Senate had acquiesced in the House's request for its return.

Where the House had inadvertently passed a Senate joint resolution identical to a House joint resolution passed by both bodies, it requested the Senate return the papers and then put the matter to rest by use of a motion to postpone indefinitely.<sup>(9)</sup>

Had this action not been taken, the Senate would have enrolled the resolution and two identical

8. Carl Albert (Okla.).

9. See 135 CONG. REC. 28222, 89th Cong. 1st Sess., Nov. 9, 1989; and 135 CONG. REC. 29587, 89th Cong. 1st Sess., Nov. 16, 1989.

measures would have been sent to the President.

DIRECTING THE CLERK TO REQUEST RETURN OF MESSAGE ON SENATE JOINT RESOLUTION 216

MR. [THOMAS C.] SAWYER [of Ohio]: Mr. Speaker, I ask unanimous consent that the Clerk be directed to request the Senate to return to the House of Representatives the message on the joint resolution (S.J. Res. 216).

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Is there objection to the request of the gentleman from Ohio?

There was no objection.

MESSAGE FROM THE SENATE

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The Chair lays before the House the following message from the Senate:

*Ordered*, That the Secretary be directed to return to the House of Representatives its message informing the Senate that the House had passed the joint resolution (S.J. Res. 216) "Joint resolution designating November 12 through 18, 1989, as 'Community Foundation Week'," in compliance with a request of the House for the return thereof.

THE SPEAKER PRO TEMPORE: Without objection, the Senate joint resolution is indefinitely postponed.

There was no objection.

***House Bill Returned by President Pursuant to Senate Request***

10. Ronald Coleman (Tex.).

11. Peter H. Kostmayer (Pa.).

§ 2.17 Where the Senate by way of a concurrent resolution requests the President to return a House bill sent to him for signature, he returns the bill to the House and the House messages the same to the Senate.

On July 3, 1947,<sup>(12)</sup> the following occurred on the floor of the House:

The Speaker<sup>(13)</sup> laid before the House the following message from the President of the United States, which was read by the Clerk:

*To the House of Representatives:*

In compliance with the request contained in the resolution of the Senate (the House of Representatives concurring therein), I return herewith H.R. 493, an act to amend section 4 of the act entitled "An act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia," approved July 8, 1932 (sec. 22, 3204 D.C. Code, 1940 ed.).

HARRY S. TRUMAN.

*THE WHITE HOUSE, July 3, 1947.*

Later that day<sup>(14)</sup> this message from the House was received by the Senate:

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, informed the Senate

12. 93 CONG. REC. 8260, 80th Cong. 1st Sess.

13. Joseph W. Martin, Jr. (Mass.).

14. 93 CONG. REC. 8203, 80th Cong. 1st Sess.

that the President of the United States having returned to the House of Representatives the enrolled bill (H.R. 493) to amend section 4 of the act entitled "An act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia," approved July 8, 1932 (sec. 22, 3204 D.C. Code, 1940 ed.)," in compliance with the request contained in Senate Concurrent Resolution No. 22; and returned the engrossed copy of said bill to the Senate.

### *Possession of Official Papers*

**§ 2.18 Where a conference report had been filed in both Houses and the original papers were at the Senate desk (the Senate having agreed to the House request for a conference and being scheduled to act first), unanimous consent was required (and objected to) in the Senate to transfer the official papers to the House to permit the House to act first on the conference report.**

The following proceedings occurred in the Senate on June 28, 1990:<sup>(15)</sup>

#### AMERICANS WITH DISABILITIES ACT

MR. [EDWARD M.] KENNEDY [of Massachusetts] addressed the Chair.

15. 136 CONG. REC. 16249, 101st Cong. 2d Sess.

THE PRESIDING OFFICER:<sup>(16)</sup> The Senator from Massachusetts.

MR. KENNEDY: Mr. President, I understand that the papers regarding the conference report on the Americans With Disabilities Act are at the desk; am I correct?

THE PRESIDING OFFICER: The Senator is correct.

MR. KENNEDY: I ask unanimous consent to be able to receive those papers in order to be able to deliver them to the House of Representatives.

THE PRESIDING OFFICER: Is there objection? . . .

MR. [STROM] THURMOND [of South Carolina]: Mr. President, I object.

THE PRESIDING OFFICER: The Senator from South Carolina objects. . . .

MR. [BOB] DOLE [of Kansas]: Mr. President I reserve the right to object to the unanimous-consent request. There is no objection to the Senator from Massachusetts. Perhaps the Senator from Nebraska could first proceed to make a statement on some other matter.

MR. KENNEDY: Mr. President, I will not object. I just would like to inquire of the minority leader what the reluctance is to permit the papers from the Americans With Disabilities Act (ADA) to go over to the House of Representatives, which is now waiting, so that they can take action prior to Fourth of July recess. As we celebrate Independence Day, 43 million disabled Americans would like to have independence from the kind of physical and mental barriers which they have lived with for so long.

16. Joseph I. Lieberman (Conn.).

I just inquire of the minority leader, what in the world is the reluctance to release this conference report that bears the signature of every Republican and every Democratic Member of the Senate conference committee? What is the reluctance to permit this conference report to follow the traditional path and be acted on by the House of Representatives if that body is prepared to act.

THE PRESIDING OFFICER: The Senator from Kansas, the Republican leader, has the floor.

MR. DOLE: Mr. President, I do not know that it is any reluctance. They can celebrate the Fourth of July and I am part of 43 million that will be celebrating the Fourth of July.

In any event, this bill cannot be signed by the President until somewhere around the 12th of July, and the primary concern we have—in fact initially I had no concern until I checked with the Parliamentarian—is to preserve the rights of Members on this side—I am not one of them—some Members have some concern with certain provisions of the ADA bill, not one—checking true disability, the so-called Chapman amendment, and we have another amendment, the Grassley amendment.

I am advised by the Parliamentarian and by my staff that they would lose certain rights if in fact the papers went to the House, the House acted, then there would not be any conference. You could not recommit the bill to conference because there would not be any conference left because the House will have acted.

So it is that concern. Certainly we have no problem with the bulk of the

legislation. I think it certainly, as the Senator from Massachusetts indicated, is a landmark action by the Congress for millions of disabled Americans. But this happened to be a procedure, and I think if I consent to the request of the Senator from Massachusetts, it would undercut and take away some of the rights of my colleagues on this side of the aisle. I cannot do that. Therefore, I will object. That will take care of it.

### *Possession and Transfer of Official Papers*

§ 2.19 **It is customary, at the conclusion of a successful conference, for the House which has asked for the conference to surrender the original papers to the conferees from the other House which has agreed to the conference in order that the latter House may act first on the conference report; but the failure of conferees from the Senate, which had asked for the conference in question, to immediately surrender the original papers to the House conferees at the conclusion of a successful conference, deviated from the customary handling of original papers but did not specifically violate the rules of the House.**

The following proceedings relating to H.R. 3982, the Omnibus Reconciliation Act of 1981, occurred in the House on July 31, 1981:<sup>(17)</sup>

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman will state it.

MR. VENTO: Mr. Speaker, I inquire of the Chair whether the papers of the reconciliation package, H.R. 3982, are in the possession of the House.

THE SPEAKER PRO TEMPORE: Yes, they are.

MR. VENTO: Mr. Speaker, I would further inquire, is it customary for these papers to remain in the possession of the House at the conclusion of a conference committee, and in this instance, were they retained at the conclusion of the conference committee, or were they more recently delivered to the House?

THE SPEAKER PRO TEMPORE: Yes, the Chair would say to the gentleman, it is customary for the papers to be transferred to the House which agreed to the conference—and is to act first on the report—at the conclusion of a successful conference.

MR. VENTO: In this case, Mr. Speaker, were the papers retained by the House conferees on the matter of the reconciliation conference?

THE SPEAKER PRO TEMPORE: Evidently not, because they were brought

back to the House this morning at about 9:15 by a messenger from the other body.

MR. VENTO: Mr. Speaker, in other words, this violated one of the tenets that we have in terms of consideration.

I thank the Chair.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that this deviated from custom but did not especially violate the rules of the House.

### § 3. House Action on Senate Bills

Senate bills which are messaged to the House may be subject to a variety of legislative actions. Senate bills may be referred to the appropriate House committees in the same fashion as House-introduced bills,<sup>(19)</sup> considered in committee, reported to the House with amendments, considered in the House, where appropriate,<sup>(20)</sup> or in Committee of the Whole.<sup>(1)</sup> Senate measures may be held at the Speaker's table, awaiting later legislative action.<sup>(2)</sup> Some Senate bills are never acted on and remain at the rostrum or in committee until *sine die* adjournment.

<sup>19</sup>. See §§ 3.1, 3.12, *infra*.

<sup>20</sup>. See § 3.7, *infra*.

<sup>1</sup>. See § 3.14, *infra*.

<sup>2</sup>. See §§ 3.3, 3.4, 3.5, *infra*.

<sup>17</sup>. 127 CONG. REC. 18884, 18885, 97th Cong. 1st Sess.

<sup>18</sup>. Barney Frank (Mass.).

The generally accepted principles of comity between the two Houses fosters the expectation that a bill of the House which acts first on a legislative measure is the numbered bill that is formally enrolled and presented to the President.<sup>(3)</sup>

### *Reference to Committee*

#### **§ 3.1 The reference of a Senate bill on the Speaker's table is within the discretion of the Chair.**

On Mar. 27, 1936,<sup>(4)</sup> the House declined to grant unanimous consent to consider Senate Concurrent Resolution 238, providing for cancellation of mail contracts.

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

THE SPEAKER:<sup>(5)</sup> The gentleman will state it.

MR. LEHLBACH: Mr. Speaker, unanimous consent for the present consideration of the Senate joint resolution having been refused, is the resolution now referred to the Committee on Merchant Marine and Fisheries?

THE SPEAKER: It is within the discretion of the Chair to refer it.

3. See §§ 3.4, 3.8, 3.9, 3.13, *infra*.

4. 80 CONG. REC. 4547, 74th Cong. 2d Sess.

5. Joseph W. Byrns (Tenn.).

MR. LEHLBACH: I believe I asked is it now referred?

THE SPEAKER: No; it has not been referred.

### *Senate Bills Similar to House Bills*

#### **§ 3.2 A resolution may provide that upon the passage of a House bill, a similar Senate bill may be taken from the Speaker's table, all after the enacting clause stricken, and in lieu thereof the provisions of the House bill as passed be inserted.**

On May 6, 1947,<sup>(6)</sup> Mr. Clarence J. Brown, of Ohio, called up House Resolution 205, to make in order the consideration of H.R. 2616, to provide for assistance to Greece and Turkey. The resolution contained, *inter alia*, the following provision:

... After the passage of the bill H.R. 2616 it shall be in order to take from the Speaker's table the bill S. 938 and to move to strike out all after the enacting clause of said Senate bill and to insert in lieu thereof the provisions contained in H.R. 2616.

#### **§ 3.3 Where the rule under which a bill is being considered in the House provides**

6. 93 CONG. REC. 4605, 80th Cong. 1st Sess.



**that upon passage of the bill a similar Senate bill at the Speaker's table shall be taken therefrom, making in order a motion to strike all after the enacting clause and insert the provisions of the House bill in lieu thereof, the House proceeds to the disposition of the Senate bill immediately after passage of the House bill.**

On May 9, 1947,<sup>(7)</sup> the House had completed consideration of H.R. 2616, to provide assistance to Greece and Turkey.

THE SPEAKER:<sup>(8)</sup> The question is on the passage of the [House] bill. . . .

The question was taken; and there were—yeas 287, nays 107, answered “present” 2, not voting 35. . . .

THE SPEAKER: Under the rule, it is now in order to take from the Speaker's table the bill S. 938 and to move to strike out all after the enacting clause of said bill and to insert in lieu thereof the provisions contained in the bill H.R. 2616.

The Clerk will report the Senate bill.

The Clerk read the title of the bill.

MR. [CHARLES A.] EATON [of New Jersey]: Mr. Speaker, I move to strike out all after the enacting clause of the bill S. 938 and to insert in lieu thereof

the provisions contained in the bill H.R. 2616.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

### *Amending Senate Bill, Prior to Stage of Disagreement*

**§ 3.4 Unanimous consent request making in order, before the stage of disagreement, a debatable motion to take a Senate bill from the Speaker's table, to insert the text of a House-passed bill with the previous question ordered without intervening motion except one motion to recommit.**

On several occasions in the 104th Congress, the Senate chose to refer a House-passed bill to committees of the Senate, then later pass its own version of the measure and message the Senate numbered bill to the House. This sequence of events ignores the general practice which recognizes that the numbered bill which is first messaged to the other House is the one which becomes the vehicle for proceeding to conference.

7. 93 CONG. REC. 4975, 4976, 80th Cong. 1st Sess.

8. Joseph W. Martin, Jr. (Mass.).

On May 17, 1995,<sup>(9)</sup> two Senate bills considered in the Senate after receipt of the corresponding House bills were taken up in the House. S. 4, granting the President power to reduce budget authority (the line-item veto bill), and S. 219, the Regulatory Transition Act of 1995, were called up and amended by motions made in order by such unanimous-consent requests. Both measures passed the House, as amended. The House then insisted on its amendments to the bills and agreed to the conferences with the Senate.<sup>(10)</sup>

THE SEPARATE ENROLLMENT AND LINE-ITEM VETO ACT OF 1995

MR. [WILLIAM F.] CLINGER [Jr., of Pennsylvania]: Mr. Speaker, I ask unanimous consent that: First, it be in order to consider in the House a motion to take from the Speaker's table the bill (S. 4) to grant the power to the President to reduce budget authority, and for other purposes, to strike all after the enacting clause of the Senate bill, and to insert the text of H.R. 2 as passed by this House; second, that the motion be debatable for not to exceed 1 hour, to be equally divided and controlled among the chairman and ranking minority members of the Commit-

9. 141 CONG. REC. 13265, 13266, 104th Cong. 1st Sess.

10. *Id.* at p. 24030. S. 4 was the enrolled bill eventually transmitted to the President.

tee on Government Reform and Oversight and the Committee on Rules, and third, that the previous question be ordered on the motion to final adoption without intervening motion except for one motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> Is there objection to the request of the gentleman from Pennsylvania? . . .

MR. CLINGER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Clinger moves that the House take from the Speaker's table the bill (S. 4) to grant the power to the President to reduce budget authority, and for other purposes, strike all after the enacting clause of the Senate bill, and insert the text of H.R. 2, as passed by the House.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania [Mr. Clinger] will be recognized for 15 minutes, the gentleman from West Virginia [Mr. Wise] will be recognized for 15 minutes, the gentleman from Florida [Mr. Goss] will be recognized for 15 minutes, and the gentleman from Ohio [Mr. Hall] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. Clinger].

MR. CLINGER: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on February 6 of this year, this House passed H.R. 2, the Line-Item Veto Act, to give the President the power to restrain irresponsible Federal spending through a true line-item veto. On March 23, the Senate followed suit in passing S. 4, which I think we would all agree is a weaker

11. Fred Upton (Mich.).

bill, which nonetheless moves toward greater Federal spending control, so both of our bodies have gone on record as saying we encourage and desire to enact something that will act as a restraint on further Federal spending control.

Since that time, however, Mr. Speaker, both bills have been stalled really in parliamentary limbo awaiting further action in preparation for conference. That has been some several months now.

Because of the Senate's unusual handling of the House-passed bill, unfortunately neither body is currently in a position to request the needed conference and the legislation has been at a standstill, just literally in limbo. . . .

#### REGULATORY TRANSITION ACT OF 1995

MR. CLINGER: Mr. Speaker, I ask unanimous consent that: First, it be in order to consider in the House a motion to take from the Speaker's table the Senate bill (S. 219) to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes, to strike all after the enacting clause of S. 219 and to insert in lieu the text of H.R. 450 as passed by the House;

Second, that the motion be debatable for not to exceed 1 hour, to be equally divided and controlled among chairmen and ranking minority members of the Committees on Government Reform and Oversight and the Judiciary; and

Third, that the previous question be ordered on the motion to final adoption without intervening motion except one motion to commit. . . .

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Is there objection to the request from the gentleman from Pennsylvania?

There was no objection.

MOTION OFFERED BY MR. CLINGER

MR. CLINGER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Clinger moves to take from the Speaker's table the bill (S. 219) to grant the power to the President to reduce budget authority, and for other purposes, strike all after the enacting clause of the Senate bill, and insert the text of H.R. 450 as passed by the House.

### *Amending Senate Bill Before Stage of Disagreement*

**§ 3.5 Proceedings in the House pursuant to a special rule which provided for: (1) taking up a Senate bill; (2) waiving points of order against its consideration; (3) amending the Senate bill in several discrete particulars by one indivisible motion; and (4) making in order a motion to insist and request a conference with the Senate.**

House Resolution 197, the special order establishing the procedure for sending to conference the bill S. 395, the Alaska Power Administration Asset Sale and Ter-

12. Bill Emerson (Mo.).

mination Act of 1995, was adopted on July 24, 1995. The rule provided, first, for the consideration of H.R. 70, relating to exports of Alaskan North Slope oil. The proceedings to follow passage of H.R. 70 were carried in section 2 of that resolution, the text of which is set forth here.

SEC. 2. (a) After passage of H.R. 70, it shall be in order to take from the Speaker's table the bill S. 395 and to consider the Senate bill in the House. All points of order against the Senate bill and against its consideration are waived. It shall be in order to consider in the House, any rule of the House to the contrary notwithstanding, the motion to amend described in subsection (b). The motion to amend shall not be subject to a demand for division of the question. The previous question shall be considered as ordered on the motion to amend and on the Senate bill without intervening motion except one motion to recommit the bill with or without instructions. If the motion to amend is adopted and the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendments to S. 395 and request a conference with the Senate thereon.

(b) The motion to amend the Senate bill made in order by subsection (a) is as follows:

"(1) Strike title I.

"(2) Strike sections 201 through 204 and insert the text of H.R. 70, as passed by the House.

"(3) Strike section 205.

"(4) Strike section 206.

"(5) Strike title III."

The proceedings in the House on July 25, 1995,<sup>(13)</sup> following the passage of H.R. 70, are carried here. Noteworthy is the Speaker's appointment of specific conferees from the House for each of the five House amendments.

ALASKA POWER ADMINISTRATION ASSET  
SALE AND TERMINATION ACT

MR. [DON] YOUNG of Alaska: Mr. Speaker, pursuant to section 2 of House Resolution 197, I call up the Senate bill (S. 395) to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and to authorize the export of Alaska North Slope crude oil, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 395

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

TITLE I

SEC. 101. SHORT TITLE.

This title may be cited as the "Alaska Power Administration Asset Sale and Termination Act". . . .

SEC. 102. SALE OF SNETTISHAM AND EKLUTNA HYDROELECTRIC PROJECTS. . . .

13. 141 CONG. REC. 20286-89, 20298, 104th Cong. 1st Sess.

## TITLE II

## SEC. 201. SHORT TITLE.

This title may be cited as "Trans-Alaska Pipeline Amendment Act of 1995" . . . .

## SEC. 205. RETIREMENT OF CERTAIN COSTS INCURRED FOR THE CONSTRUCTION OF NON-FEDERAL PUBLICLY OWNED SHIPYARDS.

(a) IN GENERAL.—The Secretary of Energy shall—

(1) deposit proceeds of sales out of the Naval Petroleum Reserve in a special account in amounts sufficient to make payments under subsections (b) and (c); and

(2) out of the account described in paragraph (1), provide, in accordance with subsections (b) and (c), financial assistance to a port authority that—

(A) manages a non-Federal publicly owned shipyard on the United States west coast that is capable of handling very large crude carrier tankers . . . .

## SEC. 206. OIL POLLUTION ACT OF 1990.

Title VI of the Oil Pollution Act of 1990 (Public Law 101-380; 104 Stat. 554) is amended by adding at the end thereof the following new section:

"SEC. 6005. TOWING VESSEL REQUIRED. . . .

## TITLE III

## SEC. 301. SHORT TITLE.

This Title may be referred to as the "Outer Continental Shelf Deep Water Royalty Relief Act".

## SEC. 302. AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT. . . .

## AMENDMENTS OFFERED BY MR. YOUNG OF ALASKA

MR. YOUNG of Alaska: Mr. Speaker, pursuant to section 2(b) of House Resolution 197, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. Young of Alaska: (1) Strike title I.

(2) Strike sections 201 through 204 and insert the text of H.R. 70, as passed by the House.

(3) Strike section 205.

(4) Strike section 206.

(5) Strike title III.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The question is on the amendments offered by the gentleman from Alaska [Mr. Young].

The amendments were agreed to.

The Senate bill was read a third time and passed, and a motion to reconsider was laid on the table.

The title of the Senate bill was amended so as to read: "A bill to permit exports of certain domestically produced crude oil, and for other purposes."

## APPOINTMENT OF CONFEREES

MR. YOUNG of Alaska: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Young moves pursuant to House Resolution 197 that the House insist on its amendment to S. 395 and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Alaska [Mr. Young].

The motion was agreed to.

## MOTION TO INSTRUCT OFFERED BY MR. MILLER OF CALIFORNIA

MR. [DAN] MILLER of California: Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

14. Scott McInnis (Colo.).

Mr. Miller of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendments to the bill S. 395 be instructed to insist upon the provisions of the House amendments which strike Title III of S. 395.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman from California [Mr. Miller] will be recognized for 30 minutes, and the gentleman from Alaska [Mr. Young] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Miller]. . . .

After the motion to instruct was agreed to, the Speaker named managers on the part of the House.

Without objection, the Chair appoints the following conferees on S. 395: On House amendment No. 1: Messrs. Young of Alaska, Calvert, Bliley, Miller of California, and Dingell.

On House amendment No. 2: Messrs. Young of Alaska, Calvert, Thomas, Roth, Bliley, Coble, Miller of California, Hamilton, Dingell, and Mineta.

On House amendment No. 3: Messrs. Spence, Kasich, and Dellums.

On House amendment No. 4: Mr. Coble, Mrs. Fowler, and Mr. Mineta.

On House amendment No. 5: Messrs. Young of Alaska, Calvert, and Miller of California.

There was no objection.

**§ 3.6 A resolution (reported from the Committee on Rules) making in order the disposition of a Senate bill on**

**the Speaker's table after passage of a House bill reported by the Committee on Post Office and Civil Service, was amended to delete all references to the Senate bill.**

On Sept. 9, 1970,<sup>(15)</sup> Mr. Spark M. Matsunaga, of Hawaii, was recognized on the floor of the House.

MR. MATSUNAGA: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1046 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1046

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16542) to amend title 39, United States Code, to regulate the mailing of unsolicited credit cards, and for other purposes. . . . After the passage of H.R. 16542, it shall then be in order in the House to take from the Speaker's table the bill S. 721 and to move to strike all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 16542 as passed by the House.

THE SPEAKER:<sup>(16)</sup> The gentleman from Hawaii is recognized for 1 hour.

15. 116 CONG. REC. 30873, 91st Cong. 2d Sess.

16. John W. McCormack (Mass.).

MR. MATSUNAGA: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Matsunaga: On page 2, strike out all of the last sentence, beginning with "After the passage of" in line 6 and ending with the period in line 11.

THE SPEAKER: The question is on the amendment offered by the gentleman from Hawaii.

The amendment was agreed to.<sup>(17)</sup>

**§ 3.7 By unanimous consent, the House considered a Senate bill under the terms of a resolution adopted for consideration of a similar House bill.**

On Mar. 12, 1959,<sup>(18)</sup> the Committee of the Whole rose and reported to the House that it had come to no resolution on the bill H.R. 4221.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I renew my unanimous-consent request, heretofore made, that it may be in order for the House to consider the bill S. 50, in lieu of the bill H.R. 4221, under the terms and provisions of House Resolution 205

17. *Parliamentarian's Note*: The Senate bill, S. 721, to amend the "Truth-in-Lending Act," which was *not* similar to H.R. 16542, was then referred to the Committee on Banking and Currency.

18. 105 CONG. REC. 4005, 86th Cong. 1st Sess.

adopted yesterday by the House in relation to the Hawaiian statehood bill.<sup>(19)</sup>

THE SPEAKER:<sup>(20)</sup> Is there objection to the request of the gentleman from Massachusetts?

MR. [JOHN R.] PILLION [of New York]: Mr. Speaker, I do not renew my previous objection.

There was no objection.

After some intervening business, the House again resumed consideration of the Hawaiian statehood bill pursuant to the following motion:

HAWAII STATEHOOD

MR. [LEO W.] O'BRIEN of New York: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 50) to provide for the admission of the State of Hawaii into the Union, in lieu of the bill H.R. 4221.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 50, with Mr. Kilday in the chair.

**§ 3.8 Senate bills substantially the same as House bills al-**

19. H. Res. 205 had been reported from the Committee on Rules on Mar. 10, 1959. The Senate passed its version of the Hawaiian statehood bill (S. 50) on Mar. 11, 1959, too late for the rule to reflect its availability.

20. Sam Rayburn (Tex.).

ready favorably reported by a committee of the House, and not required to be considered in Committee of the Whole, may be disposed of as the House may determine on motion directed to be made by such committee.

On Jan. 1, 1951,<sup>(1)</sup> the following occurred on the floor of the House:

MR. [LINDLEY] BECKWORTH [of Texas]: Mr. Speaker, by direction of the Committee on Interstate and Foreign Commerce, I call up from the Speaker's table the bill (S. 3295) to amend the Railway Labor Act and to authorize agreements providing for union membership and agreements for deductions from the wages of carriers' employees for certain purposes and under certain conditions, a bill substantially the same (H.R. 7789) being on the House Calendar.

The Clerk read the title of the Senate bill.

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I raise the question of consideration.

THE SPEAKER:<sup>(2)</sup> The gentleman from Virginia raises the question of consideration.

The question is, Will the House consider the bill? . . .

The question was taken; and there were—yeas 286, nays 48, not voting 94. . . .

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1. 96 CONG. REC. 17046, 17047, 81st Cong. 2d Sess.
  2. Sam Rayburn (Tex.).

### *Amending Special Rule for Disposition of Senate Bill*

§ 3.9 On the day following passage of a House bill, the Committee on Interstate and Foreign Commerce was discharged, by unanimous consent, from further consideration of a similar Senate bill (which had been messaged to the House prior to the reporting of the House bill); the Senate bill was then considered, amended to conform to the provisions of the House bill, passed, and the proceedings whereby the House bill was passed were vacated by unanimous consent.

On May 18, 1961,<sup>(3)</sup> Mr. Oren Harris, of Arkansas, made the following request:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill S. 610, to strengthen the domestic and foreign commerce of the United States by providing for Service within the Department of Commerce and a Travel Advisory Board, strike out all after the enacting clause, and insert the provisions of H.R. 4614 as passed by the House.

The Clerk read the title of the bill.

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3. 107 CONG. REC. 8367, 8368, 87th Cong. 1st Sess.



THE SPEAKER:<sup>(4)</sup> Is there objection to the present consideration of the bill?

There was no objection.

Mr. Harris then offered as an amendment in the nature of a substitute for S. 610 the provisions of H.R. 4614 as passed by the House.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table. . . .

By unanimous consent the proceedings by which the bill (H.R. 4614) was passed were vacated, and that bill was laid on the table.<sup>(5)</sup>

### *Passage of Senate Bill Vacated*

**§ 3.10 By unanimous consent, the House may vacate proceedings whereby it has amended and passed a Senate bill.**

On Aug. 31, 1962,<sup>(6)</sup> Mr. John J. McFall, of California, sought unanimous consent to correct a

4. Sam Rayburn (Tex.).

5. See also 80 CONG. REC. 5897, 5898, 74th Cong. 2d Sess., Apr. 22, 1936. Compare 105 CONG. REC. 15512, 86th Cong. 1st Sess., Aug. 11, 1959, where a similar result was accomplished by use of a special order.

6. 108 CONG. REC. 18300, 87th Cong. 2d Sess.

mistake whereby an amendment to a Senate bill, S. 919, removed certain penalties under the Hatch Act instead of merely modifying those penalties.

MR. MCFALL: Mr. Speaker, I ask unanimous consent that the proceedings whereby the House passed S. 919, with an amendment, be vacated, and that the House proceed to the further consideration of the Senate bill for the purpose of considering an amendment thereto.<sup>(7)</sup>

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from California? . . .

There was no objection.

### *Senate Bill Identical to Provision in Conference Report*

**§ 3.11 During debate on a conference report, the House by unanimous consent considered and passed a Senate bill which was identical to a provision in the conference report then under consideration.**

On Oct. 18, 1972, the House was considering the conference report

7. S. 919 had passed the House on the preceding day, Aug. 30, 1962. It had not yet been messaged to the Senate so the House did not have to request the return of the papers before taking this action.

8. John W. McCormack (Mass.).

on S. 3939, authorizing appropriations for the construction of certain highways in accordance with title 23 of the United States Code. Mr. John C. Culver, of Iowa, was then recognized.<sup>(9)</sup>

MR. CULVER: Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 3822) authorizing the City of Clinton Bridge Commission to convey its bridge structures and other assets to the State of Iowa and to provide for the completion of a partially constructed bridge across the Mississippi River at or near Clinton, Iowa, by the State Highway Commission of the State of Iowa.

The Clerk read the title of the Senate bill.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from Iowa? . . .

MR. [DURWARD G.] HALL [of Missouri]: It would be redundant if they were both to pass, but the gentleman's concern is we might not be in a position to operate, and if there are no objections to the bill, I have no objection to it. . . .

Mr. Speaker, I have no further objection, and I withdraw my reservation of objection.

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

There was no objection. . . .

The Senate bill was ordered to be read a third time, was read the third

time, and passed, and a motion to reconsider was laid on the table.

The consideration of the conference report was then resumed.

### *Referral of Senate Bill After Recommittal of House Bill*

**§ 3.12 Where a House bill was recommitted, a similar Senate bill (which had been held at the Speaker's table pending disposition of the House measure) was referred by the Speaker to the appropriate committee of the House.**

On June 22, 1962,<sup>(11)</sup> the following entry appeared in the Record:

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 3225. An act to improve and protect farm income, to reduce costs of farm programs to the Federal Government, to reduce the Federal Government's excessive stocks of agricultural commodities, to maintain reasonable and stable prices of agricultural commodities and products to consumers, to provide adequate supplies of agricultural commodities for domestic and foreign needs, to conserve natural resources, and for other purposes; to the Committee on Agriculture.

9. 118 CONG. REC. 37115, 37135-37, 92d Cong. 2d Sess.  
10. Carl Albert (Okla.).

11. 108 CONG. REC. 11433, 11434, 87th Cong. 2d Sess.

*Parliamentarian's Note:* H.R. 11222, the food and agricultural bill of 1962, had been acted on by the House the preceding day and had been recommitted to the Committee on Agriculture.

***Resolution Discharging House Committee and Providing for Consideration of Senate Bill Similar to House Measure Already Reported***

**§ 3.13 The House discharged its committee from further consideration of a Senate bill, considered and passed the bill, and then laid on the table a similar House bill which had been reported by the committee.**

On Mar. 29, 1961,<sup>(12)</sup> Mr. Richard Bolling, of Missouri, by direction of the Committee on Rules, called up House Resolution 238, which provided, *inter alia*:

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 153) to further amend the Reorganization Act of 1949, as amended, so that such Act will apply to reorganization plans transmitted to

12. 107 CONG. REC. 5267, 5268, 5273, 87th Cong. 1st Sess.

the Congress at any time before June 1, 1963, and all points of order against said bill are hereby waived. . . .

THE SPEAKER:<sup>(13)</sup> The question is on the resolution.

The resolution was agreed to.

After considering S. 153, the Committee of the Whole reported that bill back to the House.

THE SPEAKER: The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5742) was laid on the table.

***Consideration of Private Senate Bill in Committee of the Whole***

**§ 3.14 The House may adopt a resolution taking a private Senate bill from the Speaker's table and providing for its consideration in Committee of the Whole.**

On Mar. 14, 1961,<sup>(14)</sup> Mr. William M. Colmer, of Mississippi, called up House Resolution 224.

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consid-

13. Sam Rayburn (Tex.).

14. 107 CONG. REC. 3911, 87th Cong. 1st Sess.

eration of the bill (S. 1173) to authorize the appointment of Dwight David Eisenhower to the active list of the Regular Army, and for other purposes.<sup>(15)</sup>

### ***Senate Bills Included in Omnibus Bills***

#### **§ 3.15 Where an omnibus private bill is passed containing House bills similar to Senate bills on the Speaker's table, the Speaker may recognize Members for unanimous-consent requests to take up such Senate bills for consideration.**

On Aug. 21, 1935,<sup>(16)</sup> Speaker Joseph W. Byrns, of Tennessee, made the following statement:

Permit the Chair to make a statement. In the omnibus bills which were passed on yesterday there were included several bills which had previously passed the Senate and were on the Speaker's table. The Chair feels

that those Members who are interested in those particular bills should have an opportunity to ask unanimous consent for the immediate consideration of the Senate bills, so that they can be taken out of the omnibus bills when they are reported to the Senate. The Chair will therefore first recognize Members who have such bills. The Chair understands there are a number of Members on the floor who have such bills.

*Parliamentarian's Note:* The provisions of Rule XXIV clause 6, provide a procedure for the consideration of private bills and resolutions on the first and third Tuesdays of the month. On the third Tuesday of the month, the Speaker may entertain omnibus bills, which may contain measures objected to when called previously on the Calendar. It was within the context of this rule<sup>(17)</sup> that the Speaker made the statement carried above.

15. *Parliamentarian's Note:* Since a private Senate bill resulting in the expenditure of public funds (and thus requiring consideration in the Committee of the Whole) is not privileged and cannot be taken from the Speaker's table by motion for direct action by the House, the House adopted a resolution taking the bill from the table and providing for its consideration.

16. 79 CONG. REC. 13993, 74th Cong. 1st Sess.

### **§ 4. House Action on Senate Resolutions**

Senate resolutions, concurrent and joint, are subject to various legislative actions in the House as are Senate-passed bills.<sup>(18)</sup> Simple

17. See *House Rules and Manual* § 893 (1997).

18. See §§ 4.2, 4.3, 4.4, *infra*.

Senate resolutions are sent to the House for information only and are generally held at the Speaker's table and not referred.<sup>(19)</sup>

### *Return to Senate*

#### § 4.1 The House agreed to a request of the Senate for the return of a Senate concurrent resolution with accompanying papers.

On Sept. 14, 1961,<sup>(20)</sup> the Speaker Pro Tempore, John W. McCormack, of Massachusetts, laid before the House the following request of the Senate:

*Ordered*, That the House of Representatives be requested to return to the Senate the concurrent resolution (Senate Concurrent Resolution 14) entitled "Concurrent resolution saluting 'Uncle Sam' Wilson, of Troy, N.Y., as the progenitor of America's national symbol of 'Uncle Sam,'" with the accompanying papers.

FELTON M. JOHNSTON,  
*Secretary.*

THE SPEAKER PRO TEMPORE: Without objection, the request is granted.

There was no objection.

19. See § 1.2, *infra*.

20. 107 CONG. REC. 19540, 87th Cong. 1st Sess.

### *Consideration Under Five-minute Rule*

#### § 4.2 A Senate joint resolution at the Speaker's table may be called up by unanimous consent and considered under the five-minute rule.

On July 31, 1967,<sup>(1)</sup> the following occurred in the House:

MR. [JAMES C.] CORMAN [of California]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate joint resolution (S.J. Res. 98) authorizing the National Advisory Commission on Civil Disorders to compel the attendance and testimony of witnesses and the production of evidence.

The Clerk read the title of the Senate joint resolution.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from California?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, I should like to ask the sponsor of this Senate joint resolution if under this unanimous-consent request the gentleman proposes to yield time, and how much time is to be taken in the consideration thereof. . . .

Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman from Iowa will state his parliamentary inquiry.

1. 113 CONG. REC. 20604, 90th Cong. 1st Sess.  
2. John W. McCormack (Mass.).

MR. GROSS: How much time will be taken on this Senate joint resolution?

THE SPEAKER: The Chair will state to the gentleman from Iowa that if the unanimous-consent request is granted, the resolution comes before the House under the 5-minute rule.<sup>(3)</sup>

MR. GROSS: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

### *Consideration in Committee of the Whole*

#### **§ 4.3 The House may adopt a resolution providing for the consideration in the Committee of the Whole of a Senate joint resolution which had not been referred to a House committee and on which there was no House report.**

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3. S.J. Res. 98 was being held at the Speaker's table. While it had not been referred to a House committee, it was a measure that if reported in the House would have been placed on the Union Calendar. Where the House grants unanimous consent for consideration of a measure that would be on the Union Calendar if reported, the bill is considered in the House as in the Committee of the Whole. See proceedings of Apr. 6, 1966, at 112 CONG. REC. 7749, 89th Cong. 2d Sess. and Jefferson's Manual, *House Rules and Manual* § 424 (1997).

On Sept. 24, 1962,<sup>(4)</sup> Mr. William M. Colmer, of Mississippi, by direction of the Committee on Rules, called up House Resolution 804.

The Clerk read the resolution, as follows:

*Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (S.J. Res. 224) to authorize the President to order units and members in the Ready Reserve to active duty for not more than twelve months, and for other purposes. . . .

THE SPEAKER:<sup>(5)</sup> The question is on the resolution.

The resolution was agreed to.

*Parliamentarian's Note:* The Senate joint resolution was held at the Speaker's table and not referred to a committee, since the House Committee on Armed Services reported an identical House joint resolution the same day the Senate joint resolution was messaged to the House.

### *Provisions of House Resolution Inserted*

#### **§ 4.4 By unanimous consent a Senate joint resolution was taken from the Speaker's ta-**

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4. 108 CONG. REC. 20489, 20494, 87th Cong. 2d Sess.  
5. John W. McCormack (Mass.).

**ble, the preamble and all after the resolving clause stricken; and preamble and provisions of a similar House joint resolution were then inserted by amendment.**

On Jan. 8, 1964,<sup>(6)</sup> after the House considered House Joint Resolution 871, providing for renaming the National Cultural Center the John F. Kennedy Center for the Performing Arts, the following occurred:

THE SPEAKER:<sup>(7)</sup> The question is on the passage of the [House] joint resolution.

The joint resolution was passed.

A motion to reconsider was laid on the table.

MR. [ROBERT E.] JONES of Alabama: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Joint Resolution 136, a similar joint resolution to House Joint Resolution 871 just passed; strike out all after the enacting clause of Senate Joint Resolution 136, and insert the provisions of House Joint Resolution 871.

The Clerk read the title of the joint resolution.

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

MR. JONES of Alabama: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

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6. 110 CONG. REC. 145, 146, 88th Cong. 2d Sess.  
7. John W. McCormack (Mass.).

Amendment offered by Mr. Jones of Alabama: Strike out the preamble and all after the resolving clause of Senate Joint Resolution 136 and insert the preamble and provisions of House Joint Resolution 871 as passed.

THE SPEAKER: The question is on the amendment offered by the gentleman from Alabama.

The amendment was agreed to.

### ***Deletion of Senate Amendment to House Bill***

**§ 4.5 By unanimous consent, the House considered and agreed to a Senate concurrent resolution authorizing the Clerk, in the enrollment of a House bill, to delete a Senate amendment thereto.**

On Sept. 28, 1971,<sup>(8)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. B. F. Sisk, of California:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate concurrent resolution (S. Con. Res. 42), providing for a deletion in the enrollment of H.R. 4713. . . .

THE SPEAKER: The Clerk will report the Senate concurrent resolution.

The Clerk read the Senate concurrent resolution as follows:

S. CON. RES. 42

*Resolved by the Senate (House of Representatives concurring), That the*

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8. 117 CONG. REC. 33715, 92d Cong. 1st Sess.

enrollment of H.R. 4713, the Clerk of the House of Representatives be authorized to delete Senate amendment numbered 5, which inserts at page 3, after the second line following line 6, a new section 7.

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

There was no objection.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The Senate had adopted several numbered amendments to the House bill, and the House had agreed to Senate amendment number 5. The Senate then decided to recede from that amendment, which it could not do except by concurrent action of the two Houses in correcting the enrollment of the bill.

## § 5. House Action on Senate Amendments

House measures with Senate amendments which do not require consideration in the Committee of the Whole are privileged for consideration in the House and may at once be disposed of on motion or as the House may other-

wise determine.<sup>(9)</sup> If any Senate amendment requires consideration in the Committee of the Whole, a motion to act on the Senate amendment is *not* privileged, and the rules provide that the entire measure be referred to the appropriate standing committee.<sup>(10)</sup> Upon being reported from that committee the measure is placed on the Union Calendar for consideration in the Committee of the Whole. However, as a practical matter this procedure is rarely used and such measures are either considered under the provisions of resolutions reported from the Committee on Rules ("special rules")<sup>(11)</sup> or by unanimous consent.<sup>(12)</sup> The motion to suspend the rules may also be used to dispose of such Senate amendments.

Motions for the disposal of these Senate measures or Senate amendments to House bills requiring consideration in Committee of the Whole become privileged after the stage of disagreement is

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9. Rule XXIV clause 2, *House Rules and Manual* § 882 (1997).
  10. Rule XX clause 1, *House Rules and Manual* § 827 (1997) and Rule XXIV clause 2, *House Rules and Manual* §§ 882, 883 (1997).
  11. See §§ 5.5, 5.30, 5.31, 5.33, 5.54, *infra*.
  12. See § 5.7, *infra*.



reached on that particular measure.<sup>(13)</sup> This stage is not reached until one House informs the other that it disagrees to some provision of that measure.<sup>(14)</sup> However, when these measures are considered under the provisions of a special rule, or by unanimous consent, motions for their disposal are thereby privileged (under the provisions of either the special rule or unanimous-consent agreement) despite the fact that the stage of disagreement may not have been reached. These measures are often sent to conference by unanimous consent,<sup>(15)</sup> pursuant to the provisions of a special rule from the Committee on Rules,<sup>(16)</sup> or pursuant to a committee-authorized motion to request or agree to a conference.<sup>(17)</sup> The provision in Rule XX, clause 1, now permits a motion to send a House bill with Senate amendments to conference, if the Speaker in his discretion recognizes a Member authorized by the com-

mittee having jurisdiction over the bill, to make such motion. However, motions for the disposal of these amendments in the House itself are still not privileged at this stage, and they require unanimous consent. While a privileged motion to go to conference under Rule XX clause 1 is pending, preferential motions to concur or to concur with amendments are not in order (the stage of disagreement not having been reached).<sup>(18)</sup>

Senate amendments must be read in full prior to their being taken from the Speaker's table.<sup>(19)</sup> They are debated in the House under the hour rule<sup>(20)</sup> or under the five-minute rule if in Committee of the Whole.<sup>(1)</sup> They are considered in their entirety either in the House<sup>(2)</sup> or in Committee of the Whole.<sup>(3)</sup>

13. See § 5.4, *infra*; and 8 Cannon's Precedents § 3194.

14. 6 Cannon's Precedents §§ 756, 757.

15. *Id.* at § 732. See §§ 5.6–5.9, *infra*.

16. See precedents in Ch. 33, § 2, *infra*.

17. Rule XX clause 1, *House Rules and Manual* § 827 (1997), as amended by H. Res. 8, 89th Cong. 1st Sess. (1965) at p. 21.

18. *House Practice* (104th Cong.), § 11, Senate Bills; Amendments Between the Houses, p. 820, 124 CONG. REC. 38724, 95th Cong. 1st Sess., Dec. 7, 1977.

19. 8 Cannon's Precedents §§ 2400, 3232.

20. See § 5.56, *infra*.

1. *House Rules and Manual* § 828 (1997). See also § 5.50, *infra*.

2. See § 5.42, *infra*.

3. 5 Hinds' Precedents § 6194.

***Amendment of Text to Which Both Houses Have Agreed***

§ 5.1 During House consideration of Senate amendments to a House bill, it is not in order to enlarge the Senate amendment to change the text of the bill to which both Houses have agreed.

On June 10, 1940,<sup>(4)</sup> the House was considering Senate amendments to H.R. 9209, appropriations for the military. Mr. J. Buell Snyder, of Pennsylvania, offered a motion to recede and concur with an amendment. Mr. John Taber, of New York, rose with a point of order:

. . . I shall feel obliged to make a point of order against the part of the amendment beginning with the comma in the first line thereof and continuing through the balance of the language, because . . . it is not an amendment to an amendment to which it is offered, it being an amendment to the language on page 37, line 6 [of the House text], to which paragraph the Senate made no amendment whatever. . . .

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. SNYDER: I concede the point of order, Mr. Speaker.

4. 86 CONG. REC. 7895, 76th Cong. 3d Sess.

5. William P. Cole, Jr. (Md.).

THE SPEAKER PRO TEMPORE: The Chair sustains the point of order.

***Amending Text Previously Agreed to By Both Houses***

§ 5.2 Where a Senate amendment struck language in a House bill and inserted a new provision, the House concurred with an amendment striking the insertion and altering other portions of the House engrossment, thus amending its own agreed-upon text. In the Senate, the motion to concur in the House action was agreed to.

Under section XLV of his Manual of Parliamentary Practice, Jefferson states that “the Commons resolved that it is unparliamentary to strike out, at a conference, anything in a bill which hath been agreed and passed by both Houses.”<sup>(6)</sup> In the modern practice, the further principle has been established in the House of Representatives that it may not, even in the slightest degree, change the text to which both Houses have agreed.<sup>(7)</sup>

6. See *House Rules and Manual* § 527 (1997).

7. See 5 Cannon’s Precedents § 6180; 8 Cannon’s Precedents § 3257; and

While technically at variance with these principles, the House has permitted, by sufferance and by special procedures (under suspension or pursuant to a special order), the type of amendment illustrated below as a way of expediting consideration of amendments between the Houses.<sup>(8)</sup>

MR. [MARK O.] HATFIELD [of Oregon]: Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on House Joint Resolution 115, a joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate numbered 1 and 2 to the joint resolution (H.J. Res. 115) entitled "Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes."

*House Rules and Manual* § 527 (1997).

8. 141 CONG. REC. 32194, 104th Cong. 1st Sess., Nov. 13, 1995.

Similarly, on Oct. 14, 1986, the House agreed to a resolution considered under suspension of the rules, agreeing to a Senate amendment which inserted text in a House bill, with an amendment changing the text of the original House bill. See 132 CONG. REC. 30729, 99th Cong. 2d Sess. (H. Res. 589).

*Resolved*, That the House agree to the amendment of the Senate numbered 3 to the aforesaid joint resolution with the following amendment:

Delete the matter proposed by said amendment, and beginning on page 15, line 1 of the House engrossed joint resolution (H.J. Res. 115), strike all down to and including line 7, on page 36, and redesignate title IV as title III, and renumber sections accordingly.

MR. HATFIELD: Mr. President, I move that the Senate concur in the House amendment to the Senate amendment.

THE PRESIDING OFFICER:<sup>(9)</sup> The question is on agreeing to the motion.

So the motion was agreed to.

MR. HATFIELD: I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

### *Receding From a House Amendment With a New House Amendment to Senate Text*

§ 5.3 While under section XLV of Jefferson's Manual,<sup>(10)</sup> the House may not recede from its amendment to a Senate measure with an amendment, the House may, by unanimous consent, recede from its amendment and then amend the Senate text anew with another amendment.

9. Charles E. Grassley (Iowa).

10. *House Rules and Manual* § 526 (1997).

On June 21, 1982,<sup>(11)</sup> it became essential that the House proceed to act first on Senate Concurrent Resolution 92, the first concurrent resolution on the budget for fiscal year 1983. The conference report on the resolution had been filed, showing that the conferees had reported in complete disagreement for technical reasons.

The unanimous-consent request proposed by the chairman of the Committee on the Budget, James R. Jones, of Oklahoma, was designed to permit the House to "act first" on the resolution by a rather unorthodox—and rarely used—procedure.

Mr. Jones of Oklahoma submitted the following conference report and statement on the Senate concurrent resolution (S. Con. Res. 92) setting forth the recommended congressional budget for the U.S. Government for the fiscal years 1983, 1984, and 1985, and revising the congressional budget for the U.S. Government for the fiscal year 1982:

CONFERENCE REPORT (H. REPT. NO.  
97-614)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 92) setting forth the recommended congressional budget for the

United States Government for the fiscal years 1983, 1984, and 1985, and revising the congressional budget for the United States Government for the fiscal year 1982, having met, after full and free conference, have been unable to agree on a conference report because the conference decisions have changed certain budget figures outside the scope of conference. As set forth in the accompanying joint explanatory statement, the conferees do propose a congressional budget incorporated in a further amendment for the consideration of the two Houses. . . .

MR. JONES of Oklahoma: Mr. Speaker, I ask unanimous consent that it shall be in order tomorrow or any day thereafter to consider a motion by the chairman of the Committee on the Budget to recede from the House amendment, reported from conference in disagreement, to Senate Concurrent Resolution 92, and to amend the Senate concurrent resolution with the text of the amendment in the nature of a substitute printed in the joint statement of managers in the conference report as submitted in the House of Representatives, that debate on said motion shall continue not to exceed 1 hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, that said motion shall not be subject to a demand for a division of the question, and that the previous question shall be considered as ordered on said motion to final adoption without intervening motion.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Is there objection to the request of the gentleman from Oklahoma?

11. 128 CONG. REC. 14470, 14481, 14482, 97th Cong. 2d Sess.

12. James C. Wright, Jr. (Tex.).

MR. [TOM] LOEFFLER [of Texas]: Mr. Speaker, reserving the right to object, and I shall not object, I do so solely for the purpose of clarification.

As I understand the request of the distinguished chairman of the Budget Committee, this would only allow us to expedite consideration of the budget resolution conference report, which was reported in disagreement because of some minor-scope problems. This motion would, as I understand it, allow the House to proceed first to the consideration of the conference agreement. . . .

MR. LOEFFLER: Mr. Speaker, I thank the gentleman for his response, and I wish to inform the body that this unanimous-consent request has also been cleared by the Republican leadership.

Mr. Speaker, I withdraw my reservation of objection.

### ***When Privileged for Consideration***

**§ 5.4 After the stage of disagreement on a House bill with Senate amendments has been reached, the consideration of the amendments are privileged.**

On May 22, 1936,<sup>(13)</sup> Speaker Joseph W. Byrns, of Tennessee, had ruled out on a point of order the conference report on H.R. 9496, relating to losses suffered by

13. 80 CONG. REC. 7790-92, 74th Cong. 2d Sess.

the federal government through delivery of checks by mail, whereupon the Senate amendments thereto were again before the House for consideration.

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

THE SPEAKER: The gentleman will state it.

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

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

### ***Consequences of Objection to Unanimous-consent Request To Consider Senate Amendments***

**§ 5.5 Should objection be made to a unanimous-consent request to take from the Speaker's table a House bill with Senate amendments, and to disagree to the amendments and agree to a conference, the Speaker is not required by Rule XXIV clause 2 to send the bill and amendments directly to the legislative committee having jurisdiction thereof, but may hold the bill on the table until the Committee on Rules**

**has an opportunity to act or until the House takes other action.**

On Mar. 29, 1961,<sup>(14)</sup> during the pendency of a unanimous-consent request of Mr. Harold D. Cooley, of North Carolina, to take from the Speaker's table H.R. 5463, amending the Sugar Act of 1948, with Senate amendments thereto, Mr. Walter E. Rogers, of Texas, raised the following parliamentary inquiry:

If an objection is made, does the bill go back to the committee having jurisdiction?

THE SPEAKER:<sup>(15)</sup> It does not; and the Committee on Rules, I am sure, would be called together immediately and asked to report a rule to send the bill to conference.<sup>(16)</sup>

### ***Consideration by Unanimous Consent***

#### **§ 5.6 A motion to take from the Speaker's table a House bill**

14. 107 CONG. REC. 5288, 87th Cong. 1st Sess.

15. Sam Rayburn (Tex.).

16. See also 107 CONG. REC. 21475, 87th Cong. 1st Sess., Sept. 25, 1961 (Calendar Day). The motion to send a bill and amendments to conference was not made part of the rules until the 89th Congress. See H. Res. 8, 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.

**with Senate amendments (requiring consideration in the Committee of the Whole) for consideration in the House is not privileged before the stage of disagreement is reached, and such action requires unanimous consent.**

On May 27, 1946,<sup>(17)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Clarence J. Brown, of Ohio, to pose a parliamentary inquiry regarding the consideration of H.R. 4908, a bill to provide for the appointment of fact-finding boards to investigate labor disputes:

Would it be in order for a Member to move to take from the Speaker's desk H.R. 4908 for consideration at this time?

THE SPEAKER: The motion is not a privileged motion at this stage of the proceedings.

MR. BROWN of Ohio: Would it be within the discretion of the Speaker?

THE SPEAKER: It would not. It requires unanimous consent.

#### **§ 5.7 The House may, by unanimous consent, take from the Speaker's table a House bill with Senate amendments and consider**

17. 92 CONG. REC. 5864, 79th Cong. 2d Sess.

**those amendments in the House.**

On Dec. 20, 1963,<sup>(18)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Wayne N. Aspinall, of Colorado:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table and consider in the House the bill (H.R. 5945) to establish a procedure for the prompt settlement, in a democratic manner, of the political status of Puerto Rico, with Senate amendments thereto.

The Clerk read the title of the bill.

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

There was no objection.

THE SPEAKER: The Clerk will report the first Senate amendment.<sup>(19)</sup>

The motion to dispose of each Senate amendment was debatable for one hour.

**§ 5.8 A House bill, with Senate amendments that require consideration in Committee of the Whole, may be taken from the Speaker's table for consideration, for agreement to the Senate amendments, or sent to conference, by unanimous consent.**

18. 109 CONG. REC. 25365, 88th Cong. 1st Sess.

19. See also 111 CONG. REC. 27412, 89th Cong. 1st Sess., Oct. 19, 1965 (H.R. 168).

On Aug. 13, 1957,<sup>(20)</sup> Mr. Kenneth B. Keating, of New York, made this inquiry about the consideration of a civil rights bill:

Specifically with regard to the bill H.R. 6127, which is now on the Speaker's desk, I wish the Speaker would advise whether a unanimous-consent request is necessary from some Member to dispose of it in some manner as a preliminary to its being sent to the Committee on Rules?

THE SPEAKER:<sup>(1)</sup> It requires unanimous consent to take it up for consideration, send it to conference, or to agree to the amendments of the Senate.

**§ 5.9 A House bill, with Senate amendments requiring consideration in Committee of the Whole, was, by unanimous consent, taken from the Speaker's table for consideration; certain of the amendments were agreed to; and the House disagreed to the remaining amendments and agreed to a conference requested by the Senate.**

On July 31, 1961,<sup>(2)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Thomas J. Steed, of Oklahoma, to make this request:

20. 103 CONG. REC. 14568, 85th Cong. 1st Sess.

1. Sam Rayburn (Tex.).

2. 107 CONG. REC. 14050, 87th Cong. 1st Sess.

Mr. Speaker, I ask unanimous consent to take from the Speaker's table and consider the bill (H.R. 7208) making appropriations for the legislative branch for the fiscal year ending June 30, 1962, and for other purposes, with Senate amendments thereto.

The Clerk read the title of the bill.

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

There was no objection.

MR. STEED: Mr. Speaker, I ask unanimous consent that the House concur in the amendments of the Senate numbered 1 through 41, inclusive, and in amendments numbered 43 and 49; that the House disagrees to the amendments of the Senate numbered 42, 44, 45, 46, 47, 48, 50, 51, and 52; and that the House agree to the conference asked by the Senate.

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

The Chair hears none and appoints the following conferees:

Messrs. Steed, Kirwan, Cannon, Horan, and Taber.<sup>(3)</sup>

***Where Unanimous-consent Request Is Pending, Alternative Motions Not in Order***

**§ 5.10 When a unanimous-consent request to take from the Speaker's table a House bill with Senate amendments**

3. See also 108 CONG. REC. 15854, 15856, 87th Cong. 2d Sess., Aug. 8, 1962.

**thereto (which require consideration in the Committee of the Whole) is pending, no motion for the disposal of those amendments is in order.**

On Mar. 29, 1961,<sup>(4)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Harold D. Cooley, of North Carolina:

MR. COOLEY: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill—H.R. 5463—to amend and extend the Sugar Act of 1948, as amended, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

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

MRS. [CATHERINE D.] MAY [of Washington]: Mr. Speaker, reserving the right to object, may I propound a parliamentary inquiry?

THE SPEAKER: The gentlewoman will state it.

MRS. MAY: Mr. Speaker, may I offer a preferential motion?

THE SPEAKER: There is nothing before the House except the unanimous-consent request of the gentleman from North Carolina [Mr. Cooley].

**§ 5.11 If objection is made to a unanimous-consent request to take a House bill with**

4. 107 CONG. REC. 5288, 87th Cong. 1st Sess.



**Senate amendment from the Speaker's table and concur in the amendment, the Speaker has no authority to automatically put the question on concurring to a vote.**

The recurring procedural distinctions between unanimous-consent requests to concur or to consider a Senate amendment, before the stage of disagreement, was again the subject of an inquiry on June 29, 1976.<sup>(5)</sup>

MR. [AL] ULLMAN [of Oregon]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 10051) to amend section 815 of the Internal Revenue Code to allow a life insurance company to disregard (for purposes of that section) a distribution during the last month of its taxable year, determined to have been made out of the policyholders surplus account, if such distribution is returned to the company not later than the due date for filing its income tax return (including extensions thereof) for that year, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 3, after line 5, insert:

SEC. 2. EXCLUSION FROM INCOME UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM. . . .

5. 122 CONG. REC. 21140, 21141, 94th Cong. 2d Sess.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Oregon?

There was no objection.

THE SPEAKER: Is there objection to the request of the gentleman from Oregon (Mr. Ullman) to concur in the Senate amendments?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, is the question being put on consideration of the bill?

THE SPEAKER: On Senate amendments, to concur in the Senate amendments. The question was put.

MR. ULLMAN: Mr. Speaker, will the gentleman yield?

MR. BAUMAN: Reserving the right to object, I yield to the gentleman from Oregon.

MR. ULLMAN: Mr. Speaker, the unanimous-consent request is to agree to the Senate amendments. I attempted to explain what the Senate amendments do. This was a House-passed bill which we have already voted on, and we are agreeing by this action to the Senate amendments.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, if an objection is lodged to the request, can the Chair then put the question?

If an objection is lodged to the request to agree to the Senate amendments, would the Chair then be able to put the question?

6. Carl Albert (Okla.).

THE SPEAKER: No.

MR. BAUMAN: In other words, there is no manner in which a Member can obtain a rollcall vote on this?

THE SPEAKER: Not on this request.

MR. BAUMAN: It either passes by unanimous consent or not at all?

THE SPEAKER: Yes.

MR. BAUMAN: The gentleman from Maryland thinks that is unfortunate, and withdraws his reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

### ***Interruption of Amendments in Disagreement for Other Business***

#### **§ 5.12 The House interrupted the consideration of amendments in disagreement on a general appropriation bill to take up, pursuant to a unanimous-consent request, a continuing appropriation measure, making in order one indivisible motion to concur in all Senate amendments.**

Following a record vote on a motion to dispose of one of the amendments in disagreement to the Department of Veterans' Affairs and Housing and Urban Development appropriation bill,

fiscal 1990 (H.R. 2916), the chairman of the Committee on Appropriations was recognized to offer a unanimous-consent request, providing for consideration and disposition of the final continuing appropriation bill for fiscal 1990. The request and the motion made pursuant thereto, as excerpted from the *Congressional Record* of Oct. 25, 1989,<sup>(7)</sup> are carried here.

#### MAKING IN ORDER OFFERING OF MOTION FOR CONSIDERATION OF SENATE AMENDMENTS ON HOUSE JOINT RESOLUTION 423, FURTHER CONTINUING APPROPRIATIONS, 1990

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent that it be in order to offer an indivisible motion to take from the Speaker's table the joint resolution (H.J. Res. 423) making continuing appropriations for fiscal year 1990, and for other purposes, with Senate amendments numbered 1 through 13 thereto, and to concur in such Senate amendments; that such motion be debatable for 1 hour equally divided and controlled by myself and the gentleman from Massachusetts [Mr. Conte] and that the previous question be considered as ordered on such motion to final adoption without intervening motion.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Is there objection to the request of the gentleman from Mississippi?

7. 135 CONG. REC. 25887-90, 101st Cong. 1st Sess.

8. Frank McCloskey (Ind.).

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, reserving the right to object, I understand that we are taking up the continuing resolution with this. Does that mean that we have now accepted the Senate amendments?

MR. WHITTEN: Mr. Speaker, will the gentleman yield?

MR. WALKER: I am happy to yield to the gentleman from Mississippi.

MR. WHITTEN: Mr. Speaker, it means we accept the Senate amendments as we have participated in working this out by telephone during the day. The Senate amendment carries with it what we thought we needed in addition to what we passed yesterday. . . .

#### PARLIAMENTARY INQUIRY

MR. [CHALMERS P.] WYLIE [of Ohio]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WYLIE: Mr. Speaker, concerning the HUD-VA appropriation bill, will we get back to that this evening?

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman from Ohio that the House will continue with that later today. It will be temporarily interrupted.

MR. WYLIE: I thank the Chair.

#### FURTHER CONTINUING APPROPRIATIONS, 1990

MR. WHITTEN: Mr. Speaker, pursuant to the order of the House just agreed to, I move to take from the Speaker's table the joint resolution (H.J. Res. 423) making further continuing appropriations for the fiscal year 1990, and for other purposes, with Senate amend-

ments numbered 1 through 13 thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Page 2, line 2, strike out "section" and insert "sections".

Page 2, line 11, after "Fund" insert: "and to remain available until expended".

Page 2, lines 11 and 12, strike out "120(f)(1) and".

Page 2, line 13, strike out all after "Fund" down to and including "1990" in line 16.

Page 2, line 23, after "activities" insert ": *Provided*, That during fiscal year 1990, and within the resources available to carry out Section 7(b) of the Small Business Act, as amended, gross obligations for new direct loans shall not exceed \$1,813,250,000".

Page 3, line 4, after "authorized" insert: "Federal". . . .

Page 3, after line 10, insert:

"SEC. 109. Section 102(c) shall not apply to sections 107, 108, 109, 110, 111, 112, and 113."

Page 3, after line 10, insert:

"SEC. 110. Notwithstanding section 120(f) of title 23, United States Code, the Federal share payable on account of any project on the Interstate and other Federal-aid highway system resulting from Hurricane Hugo, September 1989, or the Loma Prieta Earthquake of October 17, 1989, with funds made available to carry out section 125 of such title shall be 100 percent for costs incurred in the 180-day period beginning on the date of such natural disaster". . . .

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi [Mr. Whitten] will be recognized for 30 minutes, and the gentleman from Massachusetts [Mr. Conte] will be recognized for 30 minutes. . . .

MR. WHITTEN: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am proud of our committee and of the Congress. We have proved that we can act in a hurry.

Eight days after the worst earthquake since 1906, which wreaked havoc on the people of California, with deaths totaling more than 80 and destruction of billions of dollars worth of valuable property, we on the Committee on Appropriations have worked out a resolution enabling the people of the area to go full speed ahead with efforts to relieve the suffering and to return, so far as possible, to orderly business and lives. . . .

Mr. Speaker, moving promptly on Friday, October 20, I introduced House Joint Resolution 423 for myself and on behalf of the delegations of the State of California, the State of South Carolina, and other areas affected by natural disasters on a national scale. On Monday, at 7:15 p.m. the committee reported the resolution.

Yesterday the House passed House Joint Resolution 423 which extends the present continuing resolution, Public Law 101-100, from October 25 to November 15, 1989. The existing resolution expires tonight at midnight. . . .

Mr. Speaker, the Senate earlier today adopted a resolution with 13 amendments. May I say in an effort to expedite this matter, we did work it out and reached an agreement by telephone where the Senate provision includes amendments we think important. So, it is a combination bill where we have gotten together in advance. I am glad to tell my colleagues that is the situation.

### *Distinction Between Unanimous Consent To Concur or Consider Senate Amendment*

**§ 5.13 A request to concur in a Senate action may lead to the final disposition of the matter, while a request to “consider” may permit a variety of motions and result in a vote on the motion offered.**

Amendments between the Houses are often disposed of in the House by a properly phrased unanimous-consent request. The distinction between a request to “concur” in a Senate amendment and one to “consider” the amendment are shown by the following requests and inquiries:<sup>(9)</sup>

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker’s desk the bill (H.R. 9524) to extend the Emergency Petroleum Allocation Act of 1973, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Strike out all after the enacting clause and insert:

9. 121 CONG. REC. 30415-17, 94th Cong. 1st Sess., Sept. 26, 1975.

## SHORT TITLE

SECTION 1. This Act may be cited as the "Emergency Petroleum Allocation Act of 1975". . . .

## PARLIAMENTARY INQUIRY

MR. [WILLIAM L.] ARMSTRONG [of Colorado]: Mr. Speaker, reserving the right to object, I wonder if I could propound a parliamentary inquiry.

THE SPEAKER:<sup>(10)</sup> The gentleman will state it.

MR. ARMSTRONG: Mr. Speaker, the effect of granting this unanimous-consent request will be not only that the bill will be considered, but it will be by granting the request adopted?

THE SPEAKER: There will be an agreement by the House to the Senate amendment.

MR. ARMSTRONG: And to adopt the bill?

THE SPEAKER: It is simply an amendment to the House bill, which would automatically be agreed to if there is no objection.

MR. ARMSTRONG: Well, Mr. Speaker, if I may ask, is there a way to divide that question? My interest does not preclude the consideration of this matter. My interest is to have a vote on the issue.

THE SPEAKER: This is not a divisible question. This is a unanimous-consent request. . . .

MR. ARMSTRONG: Mr. Speaker, further reserving the right to object, do I understand the gentleman's explanation that if the unanimous-consent re-

quest is agreed to, the effect is final action by the House; there would be no debate?

THE SPEAKER: That would be final action by the House.

MR. ARMSTRONG: Well, then, Mr. Speaker, reluctantly and not because I desire to delay consideration of this issue, but because I think a matter of this importance deserves the effort, I will, therefore, object to the unanimous-consent request.

THE SPEAKER: Objection is heard.

MR. STAGGERS: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9524) to extend the Emergency Petroleum Allocation Act of 1973, with a Senate amendment thereto, and consider the Senate amendment in the House.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

## SHORT TITLE

SECTION 1. This Act may be cited as the "Emergency Petroleum Allocation Act of 1975". . . .

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

There was no objection.

THE SPEAKER: Is there objection to consideration of the Senate amendment in the House?

MR. ARMSTRONG: Mr. Speaker, reserving the right to object, perhaps I am in doubt of our status. The information just given me is that upon the adoption of this amendment the bill

10. Carl Albert (Okla.).

will then be before the House in the Committee of the Whole.

THE SPEAKER: No.

MR. ARMSTRONG: Then I have been given the wrong information. I thank the Speaker for helping me. I withdraw my reservation of objection.

THE SPEAKER: Is there objection to consideration of the Senate amendment? The Chair hears none. The question is on the adoption of the Senate amendment.

MR. ARMSTRONG: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 342, nays 16, not voting 75. . . .

**§ 5.14 In response to a parliamentary inquiry, the Speaker stated the distinction between a unanimous-consent request to concur in Senate amendments and a request to consider such amendments in the House: only the second alternative permits debate and a vote.**

Where a request was made to take from the Speaker's table a House measure with the Senate's amendments thereto, and concur in those amendments, an inquiry

was directed to the Chair as shown in the following proceedings:<sup>(11)</sup>

MR. PHILLIP BURTON [of California]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the joint resolution (H.J. Res. 549) to approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," and for other purposes, with Senate amendments thereto, and concur in the Senate amendments. . . .

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from California?

MR. [M. G. (GENE)] SNYDER [of Kentucky]: Mr. Speaker, further reserving the right to object, I have a parliamentary inquiry on the reservation. What was the unanimous-consent request, to take it up or to agree to the Senate amendments?

THE SPEAKER: To concur in the Senate amendments.

MR. SNYDER: A further inquiry on my reservation, Mr. Speaker: If that unanimous-consent request then is granted, am I precluded from asking for a vote?

THE SPEAKER: Yes; the request is not for the immediate consideration of the Senate amendments. It is a unanimous consent to concur in the Senate amendments. . . .

11. 122 CONG. REC. 6147, 6148, 94th Cong. 2d Sess., Mar. 11, 1976.

12. Carl Albert (Okla.).

## PARLIAMENTARY INQUIRY

MR. SNYDER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. SNYDER: Mr. Speaker, I wonder if it would be possible for the gentleman from California to phrase his unanimous-consent request in such a way so that we could have a vote on it and dispose of it? I do not wish to unduly delay the proceedings but could that be done?

THE SPEAKER: The Chair will state that the only way that that could be done would be if the gentleman from California (Mr. Burton) had asked unanimous consent for the immediate consideration of the Senate amendments in the House; if that had been done, then the Senate amendments could have been debated. . . .

MR. SNYDER: I would merely like to be able to register a vote against the matter.

THE SPEAKER: The Chair will state that the procedure we are presently following is in order.

MR. SNYDER: I understand that.

THE SPEAKER: The Chair will further state that Members through the whip's notice have been advised that there would be no more voting today, so that the Chair would not entertain a unanimous-consent request for the consideration of the Senate amendments at this time.

***Unusual Unanimous-consent Procedure Providing for En Bloc Amendment of Five Senate Amendments to Five***

***House Bills on a Related Subject***

§ 5.15 Where the Senate had added components of the comprehensive National Energy Act (H.R. 8444, 95th Congress) to five private House bills, the House, acting by unanimous consent, amended four of the private bills by concurring in the germane amendments added by the Senate to each of them, and concurring in the energy-related amendments added by the Senate to each bill with a further amendment consisting of the entire text of the House-passed bill.

The Senate had anticipated the House action described above and had laid the foundation by amending the four private bills to set the stage for a possible need to invoke cloture. From the perspective of the House, adding the complete text of the House-passed measure to the portion of the energy regulatory programs added by the Senate put the House in a position to have the various aspects of the regulatory provisions of H.R. 8444 in conference so that House conferees would not be confined in negotiating a compro-

mise bill between the Senate language and existing law.

After amending the Senate energy-related amendments to the four bills, the House insisted on its amendments thereto, requested a conference on each, and appointed managers on the part of the House.

The tax portion of H.R. 8444, which was in title II of that bill, was addressed by a Senate amendment to a private relief tariff measure, which had been reported in the House by the Committee on Ways and Means (H.R. 5263) which the House sent to conference on Nov. 3, 1977.

All five private bills became public laws (Public Laws 95-617 through 95-621).

The pertinent proceedings in the House of Oct. 13, 1977,<sup>(13)</sup> are set out below:

SENATE AMENDMENTS TO H.R. 5037,  
FOR THE RELIEF OF JACK R. MISNER

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5037) for the relief of Jack R. Misner, with Senate amendments thereto and concur in Senate amendments No. 1 and No. 2 and concur in Senate amendment No. 3 with an amendment.

13. 123 CONG. REC. 33646, 33647, 33687, 33688, 95th Cong. 1st Sess.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendments, as follows:

Strike out the text of the Senate amendment numbered 3 and insert in lieu thereof the text of H.R. 8444 as passed the House (other than title II thereof and items in the table of contents relating thereto) as follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Energy Act".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and statement of purposes.

Sec. 3. National energy goals.

Sec. 4. References to Federal Power Commission and Federal Energy Administration.

TITLE I—PRICING, REGULATORY, AND  
OTHER NONTAX PROVISIONS . . .

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from West Virginia? . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, germaneness is out the window but I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R.  
5037, FOR THE RELIEF OF JACK R.  
MISNER

14. Thomas P. O'Neill, Jr. (Mass.).



MR. STAGGERS: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5037) for the relief of Jack R. Misner, with the House amendment to the Senate amendment thereto numbered 3, insist on the House amendment, and request a conference with the Senate thereon.

THE SPEAKER: Is there objection to the request of the gentleman from West Virginia? The Chair hears none and appoints the following conferees: Messrs. Staggers, Ashley, Ullman, Bolling, Foley, Dingell, Rogers, Eckhardt, Sharp, Moffett, Charles Wilson of Texas, Reuss, Rostenkowski, Vanik, Corman, Waggonner, Rangel, Anderson of Illinois, Brown of Ohio, Horton, Wydler, Brown of Michigan, Steiger, Collins of Texas, and Archer. . . .

HOUSE AMENDMENT TO SENATE  
AMENDMENT TO H.R. 5289, FOR THE  
RELIEF OF JOE CORTINA OF TAMPA,  
FLA.

MR. STAGGERS: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Fla., with Senate amendments thereto, concur in Senate amendments numbered 1, 2, 3, 4, 5, 6, and 7, and concur in the Senate amendment numbered 8 with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

Strike out the text of the Senate amendment and insert in lieu thereof the text of H.R. 8444 as passed by the House (other than title II thereof and items, in the table of contents relating thereto). . . .

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

MR. BAUMAN: Mr. Speaker, reserving the right to object, the gentleman has repeatedly asked permission to agree to certain Senate amendments and to disagree with a substitute amendment to others. The Senate amendments we have been asked to agree to, are all these germane to the different bills, or do they also deal with other matters?

MR. STAGGERS: They are all technical changes to conform to what the House has passed.

MR. BAUMAN: They do not deal with any substantive matters?

MR. STAGGERS: That is correct.

MR. BAUMAN: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

The procedure was similar with the other two private bills, the House concurring in the Senate amendments relating to the private claims and concurring with amendment in the energy-related Senate amendment with a further amendment.

*Referral of House Bill and  
Senate Amendments*

**§ 5.16 The Speaker's reference  
of a House bill with Senate  
amendments to a committee**

**is entered in the Record after the proceedings of the day.**

The following entry appeared in the Record of July 26, 1951:<sup>(15)</sup>

Under clause 2, of rule XXIV, the following bill with Senate amendments thereto, was taken from the Speaker's table and referred as follows:

H.R. 2416. An act relating to the exclusion from gross income of income from discharge of indebtedness, to the Committee on Ways and Means and ordered to be printed with the amendments of the Senate numbered.

**§ 5.17 The Speaker announced to the House that he had referred a general appropriation bill with Senate amendments thereto to the Committee on Appropriations.**

On July 2, 1945,<sup>(16)</sup> Speaker Sam Rayburn, of Texas, made this announcement:

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

***Use of Special Order To Prevent Amendment of Motion To Concur***

15. 97 CONG. REC. 8987, 82d Cong. 1st Sess.

16. 91 CONG. REC. 7142, 79th Cong. 1st Sess.

**§ 5.18 The House has on occasion utilized a special order to take from the Speaker's table a House bill, with Senate amendment thereto, and concur in the amendment with a further House amendment "without intervening motion," thus precluding a motion to recommit the Senate amendment.**

The House bill, H.R. 1643, dealing with the extension of most-favored-nation treatment to Bulgaria, had been returned to the House with an amendment which was not germane, since it addressed the subject of continuing appropriations for the government to avoid a "shutdown" during a period of budget impasse. The motion included in the report of the Committee on Rules addressed the subject matter of the Senate amendment and added further provisions related to the operations of government.

*Parliamentarian's Note:* The special order was within the competence of the Committee on Rules and did not violate the restriction placed on the authority of that committee by Rule XI clause 4(b), that prohibits a rule precluding a motion to recommit from being made as provided in Rule XVI

clause 4. That restriction applies to recommittal motions after the previous question is ordered on the passage of a bill or joint resolution. This distinction is discussed in § 729c, *House Rules and Manual*, 104th Congress.

The proceedings of Jan. 5, 1996,<sup>(17)</sup> were as follows:

MR. [DAVID] DREIER [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 334 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 334

*Resolved*, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 1643) to authorize the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of Bulgaria, with the Senate amendment thereto, and to consider in the House the motion printed in the report of the Committee on Rules accompanying this resolution. The Senate amendment and the motion shall be considered as read. All points of order against the motion are waived. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

17. 142 CONG. REC. 332, 341, 342, 104th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman from California [Mr. Dreier] is recognized for 1 hour. . . .

The question is on ordering the previous question [on the resolution].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 228, nays 187, not voting 18, as follows: . . .

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Later, pursuant to the resolution, Mr. Robert Livingston, of Louisiana, called up the bill H.R. 1643, and then offered the specified motion to amend the Senate amendment. After debate and unsuccessful attempts to modify the motion by unanimous consent, pursuant to the resolution, the Speaker announced that the previous question was considered as ordered, and the question was then put on the motion.

18. Jim Bunning (Ky.).

**§ 5.19 A special rule can make in order a single motion to concur in several Senate amendments (even before the stage of disagreement is reached), specify the control of the debate on the motion, and order the previous question thereon without intervening motion.**

In considering and passing the House-passed bill H.R. 1833, to amend title 18, United States Code, relating to partial-birth abortions, the Senate added six discrete amendments on that subject. The special order carried here was crafted to maintain the relationship between the amendments and prevent amendments to them. The rule and the motion made in order thereby were both passed by the House on Mar. 27, 1996.<sup>(19)</sup>

SENATE AMENDMENTS TO H.R. 1833,  
PARTIAL-BIRTH ABORTION BAN ACT

MRS. [ENID] WALDHOLTZ [of Utah]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 389 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

<sup>19</sup>. 142 CONG. REC. 6632, 104th Cong. 2d Sess.

*Resolved*, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions, with Senate amendments thereto, and to consider in the House a single motion to concur in each of the Senate amendments. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> The gentlewoman from Utah [Mrs. Waldholtz] is recognized for 1 hour.

MRS. WALDHOLTZ: . . . Mr. Speaker, House Resolution 389 provides for consideration of the Senate amendments to the Partial-Birth Abortion Ban Act, H.R. 1833. The rule provides for 1 hour of debate on a single motion to concur in each and all of the Senate amendments. The rule further provides that the previous question is considered as ordered on the motion for final adoption.

Mr. Speaker, this rule will allow the House to consider amendments adopted by the Senate to the partial-birth abortion ban including an amendment offered by Senator Dole that ensures doctors will be able to use this procedure when the life of a woman is in danger. . . .

So the resolution was agreed to.

<sup>20</sup>. Harold Rogers (Ky.).

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. [CHARLES T.] CANADY of Florida: Mr. Speaker, pursuant to House Resolution 389, I move to take from the Speaker's table the bill (H.R. 1833), to amend title 18, United States Code, to ban partial-birth abortions with the Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The text of the Senate amendments is as follows:

Page 2, line 9, strike out [Whoever] and insert: *Any physician who*

Page 2, line 12, after "both." insert: *This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury: Provided, That no other medical procedure would suffice for that purpose. This paragraph shall become effective one day after enactment.*

Page 2, line 13, strike out [As] and insert: *(1) As*

Page 2, after line 16, insert:

*"(2) As used in this section, the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provision of this section.*

Page 2, line 17, strike out [(c)(1) The father,] and insert: *(c)(1) The father, if married to the mother at the*

*time she receives a partial-birth abortion procedure,*

Page 3, strike out lines 12 through 20.

MOTION OFFERED BY MR. CANADY

MR. CANADY of Florida: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The Clerk read the motion.

Mr. Canady of Florida moves to concur in each of the six Senate amendments to H.R. 1833.

THE SPEAKER PRO TEMPORE: Pursuant to the rule, the gentleman from Florida [Mr. Canady] and the gentleman from Colorado [Mrs. Schroeder] each will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. Canady].

### ***Acting on Senate Amendments Before Stage of Disagreement***

**§ 5.20 Example of the form of motion used where a special order has provided for one indivisible motion to dispose of three Senate amendments to a House bill, before the stage of disagreement.**

Motions to dispose of Senate amendments, before the stage of disagreement, are not privileged, unless given that status by a unanimous-consent agreement or a resolution reported from the Committee on Rules and adopted by the House. In the proceedings

of Nov. 26, 1991,<sup>(1)</sup> carried here, the report of the Committee on Rules on the special order specified the amendments to the Senate amendments which would be included in the nondivisible motion.

PROVIDING FOR DISPOSITION OF SENATE AMENDMENTS TO H.R. 3807, CONVENTIONAL FORCES IN EUROPE TREATY IMPLEMENTATION ACT OF 1991

MS. [LOUISE MCINTOSH] SLAUGHTER of New York: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 316 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 316

*Resolved*, That upon adoption of this resolution it shall be in order to consider a nondivisible motion to take from the Speaker's table the bill (H.R. 3807) to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with the Treaty of Conventional Armed Forces in Europe, with the Senate amendments thereto, and to concur in the Senate amendments with amendments printed in the report of the Committee on Rules accompanying this resolution. The motion and the Senate amendments shall be considered as having been read. Debate on said motion shall continue not to exceed one hour, to be equally divided

1. 137 CONG. REC. 35487-90, 102d Cong. 1st Sess.

and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs. The previous question shall be considered as having been ordered on the motion to final adoption without intervening motion. All points of order against the motion are hereby waived.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The question is, Will the House now consider House Resolution 316?

The question was taken; and (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 316.

THE SPEAKER PRO TEMPORE: The gentlewoman from New York [Ms. Slaughter] is recognized for 1 hour.

MS. SLAUGHTER of New York: . . . Mr. Speaker, this House resolution makes in order a nondivisible motion to take H.R. 3807 from the Speaker's table, and agree to the Senate amendments with three House amendments. The House amendments are printed in the report to accompany the rule, and all points of order are waived against the motion. Finally, the rule provides 1 hour of debate on the motion. . . .

During its deliberations last night the Senate added three amendments relating to nuclear weapons destruction and emergency humanitarian assistance for the Soviet Union. Members of the Foreign Affairs and Armed Services Committees have met with their counterparts in the Senate and devised language which is mutually agreeable to all parties and—as I understand it—will be agreed to by the Senate once we have returned the legislation to that body. . . .

2. Steny H. Hoyer (Md.).

MOTION OFFERED BY MR. FASCELL

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, pursuant to House Resolution 316, I move to take from the Speaker's table the bill (H.R. 3807) to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with implementation of the Treaty on Conventional Armed Forces in Europe, with Senate amendments thereto, and concur in the Senate amendments with amendments.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion and the House amendments.

The text of the motion and the text of the House amendments are as follows:

Mr. Fascell moves to take from the Speaker's table the bill (H.R. 3807) to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, and armored combat vehicles to member countries of the North Atlantic Treaty Organization in conjunction with implementation of the Treaty on Conventional Armed Forces in Europe, with Senate amendments thereto, and concur in the Senate amendments with amendments, as follows:

Amendment to Senate amendment numbered 1:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE II—SOVIET WEAPONS  
DESTRUCTION

PART A—SHORT TITLE

SEC. 201. SHORT TITLE.

This title may be cited as the "Soviet Nuclear Threat Reduction Act of 1991".

PART B—FINDINGS AND PROGRAM  
AUTHORITY

SEC. 211. NATIONAL DEFENSE AND SOVIET WEAPONS DESTRUCTION. . . .

Amendment to Senate amendment numbered 2:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE III—EMERGENCY  
AIRLIFT AND OTHER SUPPORT

SEC. 301. AUTHORITY TO TRANSFER CERTAIN FUNDS TO PROVIDE EMERGENCY AIRLIFT AND OTHER SUPPORT. . . .

Amendment to Senate amendment numbered 3:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE IV—ARMS CONTROL AND  
DISARMAMENT ACT

SEC. 401. ARMS CONTROL AND DISARMAMENT AGENCY.

*Agreement to Senate Amendment Pursuant to Special Order*

**§ 5.21 A special order can provide either for consideration of a motion to concur in a Senate amendment with an amendment (as in the preceding precedent), or it can "self-execute" the concurrence, so that the only vote is on the special order itself,**

**obviating the necessity for further debate and a second vote implementing the terms of the motion.**

On Jan. 5, 1996,<sup>(3)</sup> H. Res. 338, making in order H.R. 1358, conveying a National Marine Fisheries laboratory to Gloucester, Massachusetts, was called up in the House. The Senate amendment to H.R. 1358 was not germane, since it also addressed continuing appropriations of the government. As in the preceding precedent noted in this section, the special order precluded a motion to recommit without expressly so stating.

MR. [DAVID] DREIER [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 338 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 338

*Resolved*, That upon adoption of this resolution the House shall be considered to have taken from the Speaker's table the bill (H.R. 1358) to require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts, with the Senate amendment thereto, and to have concurred in the Senate amendment

3. 142 CONG. REC. 454, 465, 466, 104th Cong. 2d Sess.

with an amendment consisting of the text printed in the report of the Committee on Rules accompanying this resolution.

The text of the Senate amendment and the House amendment to the Senate amendment is as follows:

Senate amendment:

Strike out all after the enacting clause and insert: . . .

MR. DREIER: . . . Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution. . . .

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 344, noes 24, not voting 65, as follows: . . .

So the resolution was agreed to.

***Disposing of Amendment by Resolution Offered Under Suspension of Rules***

**§ 5.22 The Speaker recognized a Member to offer a resolution, under suspension of the rules, which provided for concurring in a Senate amendment to a House bill**

4. Bill Emerson (Mo.).



**on the Speaker's table with a further amendment which was stated in the text of the resolution.**

On Dec. 20, 1973,<sup>(5)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Wright Patman, of Texas, to move to suspend the rules and agree to House Resolution 753:

Mr. Speaker, I move to suspend the rules and agree to the House resolution (H. Res. 753) to take from the Speaker's table the bill (H.R. 8449) to expand the national flood insurance program by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes, with Senate amendment thereto, and agree to the Senate amendments with an amendment to strike out title III of the Senate amendment in the nature of a substitute.

The Clerk read as follows:

H. RES. 753

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 8449, together with the Senate amendment thereto be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment be, and the same is hereby, agreed to with an amendment as follows:

5. 119 CONG. REC. 42883, 42884, 93d Cong. 1st Sess.

"Strike out title III of the Senate amendment in the nature of a substitute."

*Parliamentarian's Note:* The resolution being drafted with this language, the Member did not need to offer a motion from the floor which would spell out the text of the amendment to the Senate amendment. Had the suspension motion merely made in order the offering of a motion to amend the Senate amendment, the Speaker would have directed the reading of the proposed motion after the suspension motion was agreed to.

**§ 5.23 The Speaker recognized a Member to offer a resolution, under suspension of the rules, which provided for concurring in two Senate amendments to a House bill on the Speaker's table and for concurring in another Senate amendment with a further amendment.**

On Dec. 20, 1973,<sup>(6)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Charles C. Diggs, Jr., of Michigan, to move to suspend the rules and agree to House Resolution 754:

6. 119 CONG. REC. 42917, 93d Cong. 1st Sess.

Mr. Speaker, I move to suspend the rules and agree to the House resolution (H. Res. 754) to take from the Speaker's table the bill (H.R. 6186) to amend the District of Columbia Revenue Act of 1947 regarding taxability of dividends received by a corporation from insurance companies, banks, and other savings institutions, with Senate amendments thereto, and agree to the Senate amendments numbered 1 and 2 and agree to Senate amendment numbered 3, with an amendment.

The Clerk read as follows:

H. RES. 754

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 6186, with the Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table to the end that (1) Senate amendments numbered 1 and 2 be, and the same are hereby, agreed to; and (2) Senate amendment numbered 3 be, and the same is hereby, agreed to with an amendment as follows: . . .

Reading of the lengthy amendment carried in the text of the resolution was dispensed with by unanimous consent; after the motion was seconded, the resolution was debated and approved.

The Speaker did not state for the Record that the Senate amendments were disposed of pursuant to the terms of the resolution, nor did the Record carry

the text of the Senate amendments Nos. 1 and 2.<sup>(7)</sup>

**§ 5.24 The House adopted a motion to suspend the rules and agree to a resolution which provided for taking a House joint resolution with a Senate amendment from the Speaker's table and agreeing to the Senate amendment.**

On Oct. 14, 1972,<sup>(8)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Wright Patman, of Texas, to move to suspend the rules and agree to House Resolution 1165:

Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1165) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages under the National Housing Act.

The Clerk read as follows:

H. RES. 1165

*Resolved*, That immediately upon the adoption of this resolution the joint resolution (H.J. Res. 1301) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages under the National Housing Act, together with the Sen-

7. See § 5.50, where the text of amendments concurred in were printed. In this instance, the Journal did carry the texts.

8. 118 CONG. REC. 36408, 36409, 92d Cong. 2d Sess.

ate amendment thereto, be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment be, and the same is hereby, agreed to.

THE SPEAKER: Is a second demanded?

MR. [STEWART B.] MCKINNEY [of Connecticut]: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection. . . .

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> The question is on the motion offered by the gentleman from Texas (Mr. Patman) that the House suspend the rules and agree to House Resolution 1165.

The question was taken; and—two-thirds having voted in favor thereof—the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

**§ 5.25 The Speaker recognized the Chairman of the Committee on Interstate and Foreign Commerce to move to suspend the rules and agree to a resolution taking a House bill with a Senate amendment from the Speaker's table and agreeing to the Senate amendment.**

On Aug. 27, 1962,<sup>(10)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Oren

9. Hale Boggs (La.).

10. 108 CONG. REC. 17671, 17681, 87th Cong. 2d Sess.

Harris, of Arkansas, to offer a motion relating to H.R. 11040, the Communications Satellite Act of 1962:

Mr. Speaker, I move to suspend the rules and agree to House Resolution 769.

The Clerk read the resolution as follows:

H. RES. 769

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 11040, with the Senate amendment thereto, be, and the same is hereby, taken from the Speaker's table, to the end that the Senate amendment be, and the same is hereby, agreed to.

THE SPEAKER: Is a second demanded?

MR. [WILLIAM L.] SPRINGER [of Illinois]: Mr. Speaker, I demand a second.

MR. [WILLIAM FITTS] RYAN [of New York]: Mr. Speaker, I demand a second. . . .

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection. . . .

The question was taken; and there were—yeas 372, nays 10, not voting 53. . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was passed.

*Parliamentarian's Note:* The resolution was introduced by the chairman of the committee when he was recognized to move to suspend the rules and agree to the amendment. Prior introduction would, under the rules, have re-

quired reference to the Committee on Rules.

***Motion To Suspend Rules Not Subject to Amendment***

**§ 5.26 When a motion to suspend the rules and concur in a Senate amendment is pending, a motion to concur in such amendment with an amendment is not in order.**

On July 27, 1946,<sup>(11)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Hatton W. Sumners, of Texas:

Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the joint resolution (H.J. Res. 225) to quiet the titles of the respective States, and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles. . . .

THE SPEAKER: Is a second demanded?

MR. [SAM] HOBBS [of Alabama]: Mr. Speaker, I demand a second. . . .

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

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

There was no objection.

MR. HOBBS: Mr. Speaker, I offer an amendment.

THE SPEAKER: No amendment is in order.

MR. HOBBS: Mr. Speaker, I move to concur in the Senate amendment with an amendment.

THE SPEAKER: That motion is not in order.

MR. HOBBS: Mr. Speaker, I have an agreement with the gentleman from Texas that I would be permitted to offer an amendment to the Senate amendment.

THE SPEAKER: The Chair knows nothing about that agreement. An amendment to this motion is not in order.

The gentleman from Texas [Mr. Sumners] is recognized for 20 minutes and the gentleman from Alabama [Mr. Hobbs] is recognized for 20 minutes.

***Speaker's Authority To Refer House Bill and Senate Amendments to Committee***

**§ 5.27 If objection is made to a unanimous-consent request to take a House bill with Senate amendments from the Speaker's table, disagree to the amendments and agree to a conference, the Speaker may hold the bill on the table for a reasonable length of time, may refer it to the legislative committee having jurisdiction over it, or may await a rule from the Committee on Rules.**

11. 92 CONG. REC. 10310, 79th Cong. 2d Sess.

*Parliamentarian's Note:* The events in this and following precedents occurred before the 1989 amendment to Rule XX clause 1, which permits a privileged motion to send a Senate or House bill with amendments of the other House to conference.<sup>(12)</sup>

On July 6, 1937,<sup>(13)</sup> Mr. Marvin Jones, of Texas, requested unanimous consent to take from the Speaker's table the farm tenancy bill, H.R. 7562, with Senate amendments thereto, disagree to the amendments and agree to the conference requested by the Senate. Mr. Charles W. Tobey, of New Hampshire, objected, and Mr. Scott W. Lucas, of Illinois, made the following inquiry:

In the event objection is made to the request of the gentleman from Texas, am I correct in my understanding that then the bill will be referred back to the Rules Committee?

THE SPEAKER:<sup>(14)</sup> Will the gentleman from Illinois kindly restate his parliamentary inquiry?

MR. LUCAS: If objection is made to the unanimous-consent request submit-

ted by the distinguished gentleman from Texas, my inquiry is what will then happen to the bill as presented to the House?

THE SPEAKER: In answer to the inquiry, the Chair will state that it is within the discretion of the Chair to allow the bill to lie on the Speaker's table for a reasonable length of time, or to refer the bill and Senate amendments to the Committee on Agriculture.

MR. JONES: Mr. Speaker, may I answer the question further by a parliamentary inquiry? Would it not be in order for the chairman of the Committee on Agriculture to apply to the Rules Committee for a rule to send the bill to conference?

THE SPEAKER: Undoubtedly.

**§ 5.28 The Speaker has referred a House bill with Senate amendments to a standing committee instead of the Committee of the Whole.**

On Aug. 26, 1935,<sup>(15)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas, and the following occurred:

MR. BUCHANAN: Mr. Speaker, as chairman of the Appropriations Committee of the House, I request the Speaker to refer the third deficiency bill—H.R. 9215—now on the Speaker's table, to the Appropriations Committee of the House. This bill passed the

12. *House Rules and Manual* § 827 (1997); 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965. See also § 5.48 (*Parliamentarian's Note*), infra.

13. 81 CONG. REC. 6815, 6816, 75th Cong. 1st Sess.

14. William B. Bankhead (Ala.).

15. 79 CONG. REC. 14757-59, 74th Cong. 1st Sess.

House on Thursday, August 22, and, as usual, was promptly sent to the Senate, and was held there until 8 o'clock on the evening of Saturday, August 24, when it was messaged to the House, together with the resolution providing for the *sine die* adjournment of Congress at 12 o'clock on the same day, thus requiring action by the House on this bill within 4 hours, notwithstanding the fact that the Senate had placed amendments on the bill involving a possible outlay by the Government of from \$800,000,000 to \$2,000,000,000 by way of loans which were not in the bill as passed by the House and which had never received any consideration by the Appropriations Committee of the House or Senate and about which no Member of either branch of Congress was fully informed. Manifestly, if we are going to apply business methods to the conduct of the Government involving such vast outlays of public funds, hearings should be held by some committee of Congress in which all the facts should be developed in order to permit an intelligent determination of the soundness of the policy involved, the approximate obligations incurred, and whether or not the Government could raise the money without financial embarrassment or in any way affecting its credit. . . .

THE SPEAKER: The bill (H.R. 9215) making appropriations for deficiencies, known as the "third deficiency appropriation bill," is now on the Speaker's table. It is, of course, within the discretion of the Chair, under the rules of the House, to send it to the Committee on Appropriations. The ordinary course of procedure is to send it to conference, under a unanimous-consent request.

The chairman of the committee having jurisdiction of the bill having made no such request, the Chair feels in view of the request of the chairman of the Committee on Appropriations and the importance of the questions involved, both of legislation and appropriation, as set forth briefly by the gentleman from Texas [Mr. Buchanan], that this bill should be referred to the committee having charge of the bill, in order that that committee may conduct such hearings and take such measures looking to recommendations as it may choose. The Chair accordingly refers the bill to the Committee on Appropriations under the established practice of the House which requires the Chair to take that course. [Applause.] In taking this action the Chair is following a similar action taken by a former Speaker of the House on January 23, 1931 (Record, p. 2975), when Mr. Speaker Longworth referred the Interior Department appropriation bill to the Committee on Appropriations.

MR. [CARL] VINSON of Georgia: Mr. Speaker, I rise to a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. VINSON of Georgia: Why is it not in order that the House consider this appropriation bill in the Committee of the Whole House on the state of the Union?

THE SPEAKER: That will be in order if the Committee on Appropriations reports it, as is required under the established practice of the House.

MR. VINSON of Georgia: But before the Speaker announced his decision, it would have been in order for the House by substitute motion to have referred

this bill to the Committee of the Whole House on the state of the Union?

THE SPEAKER: It would not, because that motion would not have been privileged, as the Chair ruled on Saturday. When a House bill with Senate amendments involving new matter of appropriations comes from the Senate it may be sent to conference by unanimous consent; otherwise, the duty of the Chair under the established practice of the House is to refer to it the standing committee having jurisdiction of it. The Chair has taken that course in this instance, and no motion of the kind referred to by the gentleman from Georgia is in order as a matter of privilege.

#### HOUSE BILL REFERRED

A bill of the House of the following title was taken from the Speaker's table, with Senate amendments thereto, and under the rule, referred as follows:

H.R. 9215. An act making appropriations to provide urgent supplemental appropriations for the fiscal year ending June 30, 1936, to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1935, and for prior fiscal years, and for other purposes; to the Committee on Appropriations.

**§ 5.29 A Senate amendment to a House bill may be referred to a House committee having jurisdiction of the subject matter addressed in part of the amendment, even though the House bill was reported from another committee.**

On Mar. 26, 1981,<sup>(16)</sup> the Speaker, pursuant to the authority granted him in Rule X clause 2, and Rule XXIV clause 2, referred the Senate amendment to the bill H.R. 31, amending the Truth in Lending Act, to the Committee on Energy and Commerce, for consideration of a portion of the Senate amendment within that committee's jurisdiction.

The bill itself had been reported from the Committee on Banking, Finance and Urban Affairs. The portion of the Senate amendment which was controversial dealt with the qualifications of the Surgeon General of the United States, a matter within the competence of the Committee on Energy and Commerce. The Speaker's referral was for a time certain.

The referral statement of the Speaker is carried here, and a portion of the proceedings of Apr. 8, 1981,<sup>(17)</sup> as well, to show the discharge of the Committee on Energy and Commerce from further consideration of the matter. Conferees were appointed from both of the committees.

16. 127 CONG. REC. 5397, 97th Cong. 1st Sess.

17. *Id.* at p. 6826.

The excerpt from the Mar. 26 *Congressional Record* follows:

REFERRAL OF SENATE AMENDMENT  
UNDER TIME LIMITATION

Pursuant to clause 5, rule X and clause 2, rule XXIV, the Senate amendment to the bill (H.R. 31) to amend the Truth in Lending Act to encourage cash discounts, and for other purposes, was referred from the Speaker's table to the Committee on Energy and Commerce for a period ending not later than April 8, 1981, solely for consideration of such provisions of section 303 of the Senate amendment as fall within the jurisdiction of that committee under clause 1(h), rule X.

The pertinent proceedings of Apr. 8 are set out below:

MR. [FRANK] ANNUNZIO [of Illinois]: Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be discharged from further consideration of the Senate amendment to the bill (H.R. 31) to amend the Truth in Lending Act to encourage cash discounts, and for other purposes, and that the House disagree to the Senate amendment to H.R. 31 and request a conference with the Senate thereon. . . .

THE SPEAKER:<sup>(18)</sup> Is there objection to the request of the gentleman from Illinois? The Chair hears none, and appoints the following conferees:

Solely for consideration of all the provisions of the Senate amendment in the nature of a substitute except sec-

tion 303, and modifications thereof committed to conference, the following Members on the part of the House: Messrs. St Germain, Annunzio, Gonzalez, Minish, Stanton of Ohio, Evans of Delaware, and Wylie; and

Solely for the consideration of section 303 of the Senate amendment in the nature of a substitute, and modifications thereof committed to conference, the following Members on the part of the House: Messrs. Dingell, Waxman, Scheuer, Broyhill, and Madigan.

*Initiating Action on Special Order To Dispose of Senate Amendments*

**§ 5.30 Any Member may request that the chairman of the Committee on Rules call a meeting of that committee to consider reporting a resolution making in order disposition of a House bill, with Senate amendments that require consideration in the Committee of the Whole, notwithstanding Rule XXIV clause 2.**

On Aug. 13, 1957,<sup>(19)</sup> after objections had been made to two requests relating to H.R. 6127, the Civil Rights Act of 1957, and Senate amendments thereto, Mr. Kenneth B. Keating, of New York,

18. Thomas P. O'Neill, Jr. (Mass.).

19. 103 CONG. REC. 14568, 85th Cong. 1st Sess.



was recognized with a parliamentary inquiry:

Would the Speaker advise what action is necessary now in order to get the bill to the Committee on Rules?

THE SPEAKER:<sup>(20)</sup> Anyone can make the request of the chairman of the Committee on Rules to call a meeting of the committee to consider the whole matter.

MR. KEATING: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. KEATING: Mr. Speaker, if that were done, would the bill which is now on the Speaker's desk be before the Rules Committee?

THE SPEAKER: It would not be before the Committee on Rules. The Committee on Rules could consider the matter of what procedure to recommend to the House for the disposition of this whole matter.

### *Authority of the Committee on Rules*

#### **§ 5.31 The Committee on Rules has jurisdiction to report resolutions providing for the disposition of Senate amendments.**

On May 29, 1968,<sup>(1)</sup> the House was considering the bill, H.R. 5037, the Law Enforcement and

20. Sam Rayburn (Tex.).

1. 114 CONG. REC. 15499, 90th Cong. 2d Sess.

Criminal Justice Assistance Act of 1968, and the Senate amendments thereto. Mr. Emanuel Celler, of New York, Chairman of the Committee on the Judiciary, had asked for unanimous consent to take the bill and Senate amendments thereto from the Speaker's table, disagree with the amendments, and request a conference with the Senate. Mr. Richard H. Poff, of Virginia, then posed a series of parliamentary inquiries including the following:

If the motion to go to conference is not adopted by the House, in such case would it be in order for the Committee on Rules to report a resolution making it in order to move to recede and concur?<sup>(2)</sup>

THE SPEAKER:<sup>(3)</sup> Under the rules of the House, it is within the authority and jurisdiction of the Committee on Rules to report a resolution providing for the disposition of the Senate amendments.

### *Use of Special Order To Send Multiply-referred Bill to Conference*

#### **§ 5.32 Where the authorization of four House committees**

2. The stage of disagreement not having been reached, the proper motion was "to concur," not to "recede and concur."
3. John W. McCormack (Mass.).

**was required to authorize the motion to go to conference under Rule XX clause 1, the Committee on Rules reported, and the House adopted, a special order providing that the House disagree with the Senate amendment and request a conference.**

On July 30, 1979,<sup>(4)</sup> the House agreed to a resolution sending H.R. 111, the Panama Canal Act of 1979, to conference, a unanimous-consent request to accomplish this step having been objected to. Following the adoption of the resolution, a motion was made to instruct the managers at the conference to “adhere” to the House position set forth in certain sections of the House text.

PROVIDING FOR SENDING H.R. 111 TO  
CONFERENCE

MR. [LEO C.] ZEFERETTI [of New York]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 390 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

*Resolved*, That upon the adoption of this resolution the bill (H.R. 111)

4. 125 CONG. REC. 21298, 21302, 21309, 96th Cong. 1st Sess.

to enable the United States to maintain American security and interests respecting the Panama Canal, for the duration of the Panama Canal Treaty of 1977, with the Senate amendments thereto, is taken from the Speaker's table to the end that the House disagrees to the Senate amendments and requests a conference with the Senate thereof.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The gentleman from New York (Mr. Zeferetti) is recognized for 1 hour.

MR. ZEFERETTI: . . . [L]ast week on a motion to send House Resolution 111 to conference an objection was raised by an opponent of the measure. In this instance it would require the four committees who have jurisdiction over this bill to meet and vote on whether to direct the chairmen of these respective committees to offer a motion on the floor to request a conference. Unfortunately, such a procedure would require a significant amount of time and would have delayed further consideration of this bill.

The Rules Committee has been informed by the chairman of the Merchant Marine and Fisheries Committee that it is imperative for the House and Senate conferees to begin deliberation immediately so as to effectively come to agreement at the earliest possible date. . . .

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

5. George E. Brown, Jr. (Calif.).

MOTION OFFERED BY MR. BAUMAN

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bauman moves that the conferees on the part of the House on the disagreeing votes of the two Houses on the bill H.R. 111, be instructed to adhere to the language of sections 101, 102, 103, 104, 105, 110 of chapter 1; sections 231, 232, 233, 234, 235, 236, and 250 of chapter 5; sections 371, 372, 373, and 374 of chapter 9 of H.R. 111 as passed by the House with respect to the matters considered therein.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is recognized for 1 hour. . . .

MR. BAUMAN: . . . Mr. Speaker, I move the previous question on the motion.

The previous question was ordered. . . .

So the motion was agreed to.

*Parliamentarian's Note:* While the House cannot "adhere and ask a conference," since adherence is inconsistent with the request for a conference<sup>(6)</sup> and the willingness to negotiate, the form of the motion to instruct conferees did not render it subject to a point of order, and none was raised. See 8 Canon's Precedents §§ 3230, 3237, which indicate that consistency in motions to instruct is for the House, not the Chair, to decide.

6. See 5 Hinds' Precedents § 6303.

### ***Special Order To Refer House Bill and Senate Amendments***

**§ 5.33** The Chair indicated that the Committee on Rules could report out a resolution, taking a House bill with Senate amendments (requiring consideration in the Committee of the Whole) from the Speaker's table and sending it to the legislative committee of the House having jurisdiction thereof.

On the legislative day of Sept. 26, 1961,<sup>(7)</sup> Speaker Pro Tempore John W. McCormack, of Massachusetts, recognized Mr. Albert Thomas, of Texas, and the following discussion of the treatment of House bills with Senate amendments ensued:

MR. THOMAS: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9169) making supplemental appropriations for the fiscal year ending June 30, 1962, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Texas?

7. 107 CONG. REC. 21475, 21476, 87th Cong. 1st Sess., Sept. 25, 1961 (Calendar Day).

MR. [FRANK T.] BOW [of Ohio]: Mr. Speaker, reserving the right to object, and I do so in order to propound a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state the parliamentary inquiry.

MR. BOW: Mr. Speaker, my parliamentary inquiry is this: If an objection is made to sending this to conference, the supplemental appropriation bill, whether or not the Speaker will then refer the bill to the committee having charge of the bill and that committee return the bill to the House in the Committee of the Whole House for the consideration of the Senate amendments as provided in "Cannon's Precedents" on page 115, and whether or not the House then can work its will in the Committee of the Whole House on each amendment of the Senate under the 5-minute rule, report the bill back to the House, and then move to send the bill to conference?

THE SPEAKER PRO TEMPORE: The parliamentary inquiry involves several different fields, related, but nevertheless separate.

MR. BOW: Mr. Speaker, I shall be glad to state them separately.

THE SPEAKER PRO TEMPORE: The gentleman is clearly within his rights. In the first place, this is a procedure that the present occupant of the chair has no recollection of ever having taken place during his period of service in this body, and the Chair is informed, for many years prior thereto.

When objection is made the leadership of the House is confronted with the problem as to what action should be taken in order to get the bill to confer-

ence as quickly as possible. The Chair, while not answering the parliamentary inquiry with reference to the committee and committee action and coming back to the House, and then to the Committee of the Whole, would frankly state to the gentleman that the present occupant of the chair would employ every method under the rules in order to get the bill from the Speaker's desk to conference.

MR. BOW: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BOW: Mr. Speaker, inasmuch as these amendments of the Senate are in the nature of charges against the Treasury of the United States, I will ask this parliamentary inquiry:

Is it not then necessary under the rules and procedures as found in volume 5 of the Procedure of the House of Representatives that the bill be sent to the committee and then considered in the Committee of the Whole before sending it to conference?

THE SPEAKER PRO TEMPORE: It is the opinion of the Chair that the answer which the Chair gave to the first part of the gentleman's parliamentary inquiry also answers this inquiry: that if objection is made, the Chair would feel constrained, insofar as the Chair is capable of accomplishing it, to have the bill taken from the Speaker's desk and sent to conference under the rules without reference to the committee.

MR. BOW: I thank the Chair, and withdraw my reservation.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, further reserving the right to

object, if the conference report<sup>(8)</sup> should go to the Rules Committee for a rule, would it be possible for the Rules Committee to vote out a rule sending the bill to committee?

THE SPEAKER PRO TEMPORE: The answer is in the affirmative to that parliamentary inquiry.

### *Uses of Special Order Before Stage of Disagreement*

**§ 5.34 Before the stage of disagreement has been reached, a motion to take a House bill with a Senate amendment thereto which requires consideration in the Committee of the Whole from the Speaker's table and concur in the amendment is not privileged; but by adoption of a special order the House can: (1) bestow privilege to such a motion; (2) limit other options for disposition of the Senate amendment; and (3) prevent amendment of the motion to concur.**

As the time for *sine die* adjournment of the 95th Congress, 1st Session, approached, the pas-

8. Mr. Gross apparently intended to refer to the House bill with Senate amendments, because a conference report does not require a rule from the Committee on Rules for its consideration.

sage of a continuing appropriations bill became a high priority. As with the Labor-HEW appropriation bill, which remained in disagreement because of a restriction on abortion funding, the continuing appropriation bill also had a similar restriction remaining in disagreement.

On Dec. 7, 1977,<sup>(9)</sup> the House considered and adopted the following resolution reported from the Committee on Rules:

Mr. Dodd, from the Committee on Rules, reported the following privileged resolution (H. Res. 928, Rept. No. 95-833), which was referred to the House Calendar and ordered to be printed:

#### H. RES. 928

*Resolved*, That immediately upon the adoption of this resolution the House shall proceed to consider a motion to take from the Speaker's table the joint resolution (H.J. Res. 662) making further continuing appropriations for the fiscal year 1978, and for other purposes, with the Senate amendments thereto, and concur in the Senate amendments, without any intervening motion, and at the conclusion of the debate thereon the previous question shall be considered as ordered, and the question shall be put on the motion to concur without any intervening motion.

MR. [CHRISTOPHER J.] DODD [of Connecticut]: Mr. Speaker, by direction of the Committee on Rules, I call up

9. 123 CONG. REC. 38721, 38722, 95th Cong. 1st Sess.

House Resolution 928 and ask for its immediate consideration.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER PRO TEMPORE: The question is, will the House now consider House Resolution 928?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, does not the consideration of this resolution require a two-thirds vote?

THE SPEAKER PRO TEMPORE: The Chair will state that that is correct.

MR. BAUMAN: Is there no debate permitted on consideration of the question?

THE SPEAKER PRO TEMPORE: The Chair will state that no debate is permitted on consideration of the question.

The question is, will the House now consider House Resolution 928?

The question was taken.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 251, nays 86, not voting 97. . . .

10. K. Gunn McKay (Utah).

So (two-thirds having voted in favor thereof) the House agreed to consider House Joint Resolution 662.

The result of the vote was announced as above recorded.

Later on the same day,<sup>(11)</sup> the resolution was adopted and the prescribed action undertaken:

MR. DODD: Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The question was taken and on a division (demanded by Mr. Bauman) there were—yeas 54; nays 40.

So the resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Texas (Mr. Mahon).

MOTION OFFERED BY MR. MAHON

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, pursuant to the rule just adopted, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves to take from the Speaker's table the joint resolution (H.J. Res. 662) making further continuing appropriations for the fiscal year 1978, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

THE SPEAKER PRO TEMPORE: The Clerk will report the title of the joint

11. 123 CONG. REC. 38723, 38724, 38728, 38729, 95th Cong. 1st Sess.

resolution and the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

(1) Page 2, lines 15 and 16, strike out "as modified by the House of Representatives on August 2, 1977".

(2) Page 2, line 17, after "resolution" insert: "*Provided, however,* that none of the funds provided for in this paragraph shall be used to perform abortions: except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

"Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

"The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced."

#### PARLIAMENTARY INQUIRIES

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, if the motion offered to concur in the Senate amendments is defeated, is it still not in order for a Member to be recognized to offer a motion to concur in the Senate amendments with an amendment?

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that it would take unanimous consent.

MR. BAUMAN: Because of the rule that was adopted, that would not be in order?

THE SPEAKER PRO TEMPORE: No, it would not.

MR. BAUMAN: So, Mr. Speaker, the rule totally precludes any possibility of offering an amendment?

THE SPEAKER PRO TEMPORE: The gentleman is correct, other than by unanimous consent or by the adoption of another rule.

MR. BAUMAN: Mr. Speaker, I have a further parliamentary inquiry.

Under the normal order of procedure, which the rule has changed, such a motion would be first in order now instead of the pending motion, would it not?

The rule mentions nothing about precluding a motion to concur in the Senate amendments with an amendment. Would that not have been in order if this motion were defeated?

THE SPEAKER PRO TEMPORE: The rule makes in order one motion to concur and nothing else. Rejection of that motion would not at that stage permit other privileged motions in the House to dispose of the Senate amendment.

MR. BAUMAN: Mr. Speaker, I understand, and I thank the Chair.

THE SPEAKER PRO TEMPORE: The gentleman from Texas (Mr. Mahon) is recognized for 1 hour. . . .

All time has expired.

Under the rule, the previous question is ordered.

The question is on the motion offered by the gentleman from Texas (Mr. Mahon).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. MAHON: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 171, nays 178, answered “present” 1, not voting 84. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

When the motion made in order by the special order was defeated, the Committee on Rules met once more and reported a new resolution, not specifying the text of a motion but permitting consideration of the Senate amendments in the House.<sup>(12)</sup>

Mr. Dodd, from the Committee on Rules, reported the following privileged resolution (H. Res. 929, Rept. No. 95-834), which was referred to the House Calendar and ordered to be printed:

H. RES. 929

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to take from the Speaker's table the joint resolution (H.J. Res. 662) making further continuing appropriations for the fiscal year 1978, and for other purposes, together with the Senate amendments thereto, and to consider the Senate amendments in the House.

MR. DODD: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 929 and ask for its immediate consideration.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The Clerk will report the resolution.

The Clerk read the resolution.

THE SPEAKER PRO TEMPORE: The question is, Will the House now consider House Resolution 929?

The question was taken; and on a division (demanded by Mr. Bauman) there were—yeas 110, nays 31.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 240, nays 109, not voting 85. . . .

So (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 929.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentleman from Connecticut (Mr. Dodd) is recognized for 1 hour. . . .

MR. DODD: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MR. MAHON: Mr. Speaker, pursuant to the rule just adopted in the House, I move to take from the Speaker's table

12. *Id.* at pp. 38780-82.

13. W. C. (Dan) Daniel (Va.).



the joint resolution (H.J. Res. 662) making further continuing appropriations for the fiscal year 1978, and for other purposes, together with the Senate amendments thereto, and to consider the Senate amendments in the House.

The Clerk read the title of the joint resolution.

## SENATE AMENDMENTS

THE SPEAKER:<sup>(14)</sup> The Clerk will report the first Senate amendment.

The Clerk read as follows:

Senate amendment No. 1: Page 2, lines 15 and 16, strike "as modified by the House of Representatives on August 2, 1977".

MR. MAHON: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House concur in the amendment of the Senate numbered 1.

MR. MAHON: Mr. Speaker, this is purely a technical amendment. It should be clear that the continuing resolution provides for the operation of the Departments of Labor and HEW at the conference rate and also that these departments operate under the provisions of the conference agreement on the Labor-HEW bill. I do not know of any other conflict on this.

The motion was agreed to.

THE SPEAKER: The Clerk will report the second Senate amendment.

The Clerk read as follows:

Senate amendment No. 2; page 2, line 17, after "resolution" insert:

*“Provided, however, That none of the funds provided for in this paragraph shall be used to perform abortions: except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.*

*“Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.*

*“The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced.”.*

THE SPEAKER: The Chair recognizes the gentleman from Illinois (Mr. Michel).

## MOTION OFFERED BY MR. MICHEL

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Michel moves that the House concur in the amendment of the Senate numbered 2 with an amendment, as follows: *“Provided, That none of the funds provided for in this paragraph shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would*

14. Thomas P. O'Neill, Jr. (Mass.).

result if the pregnancy were carried to term when so determined by two physicians.

“Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

“The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced.”.

THE SPEAKER: The gentleman from Illinois (Mr. Michel) is recognized for 1 hour.

MR. MICHEL: Mr. Speaker, I yield 30 minutes to the chairman of our committee, the gentleman from Texas (Mr. Mahon), and pending that I will proceed for just a few moments.

The motion offered to the second Senate amendment, relating to abortion restrictions, was agreed to. Later in the same day, the Senate concurred in the House action and H.J. Res. 662, providing further continuing appropriations for fiscal 1978, was cleared for presentation to the President.

### ***Special Orders (Resolutions) for Consideration of Senate Amendments***

§ 5.35 **Before the stage of disagreement is reached, a motion to concur in a Senate amendment to a House bill is not privileged; but a special order can be adopted which makes such a motion in or-**

**der, divides debate time, and protects the motion from amendment or being displaced by a more privileged motion to dispose of the Senate amendment.**

A special order which provides for concurrence in a Senate amendment can take several forms. The choice is whether to make in order a motion to concur, which is then debatable when offered and which permits a vote on the motion, or to “self-execute” the concurrence: “Upon the adoption of this resolution, the Senate amendment is hereby agreed to.” The resolution is carried here to illustrate one of the approaches which can be utilized to dispose of a Senate amendment before the stage of disagreement.<sup>(15)</sup>

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 251 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 251

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House a motion to take from the Speaker’s table the bill (H.R. 20) to amend title 5, United

15. 139 CONG. REC. 21805, 21806, 103d Cong. 1st Sess., Sept. 21, 1993.

States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, with a Senate amendment thereto, and to concur in the Senate amendment. The Senate amendment shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. The previous question shall be considered as ordered on the motion to final adoption without intervening motion.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman from South Carolina [Mr. Derrick] is recognized for 1 hour. . . .

MR. DERRICK: Mr. Speaker, House Resolution 251 provides for consideration of H.R. 20, the Federal Employees Political Activities Act. The rule provides for a motion to take H.R. 20 from the Speaker's table with a Senate amendment and to concur in the Senate amendment. The rule provides that the Senate amendment shall be considered as read. The rule further provides that the motion will be debatable for 1 hour, equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service. . . .

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MR. [WILLIAM L.] CLAY [of Missouri]: Mr. Speaker, pursuant to House Resolution 251, I move to take from the

Speaker's table the bill (H.R. 20) to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Clay moves to take from the Speaker's table the bill, H.R. 20, with a Senate amendment thereto, and to concur in the Senate amendment.

THE SPEAKER PRO TEMPORE: Pursuant to the rule, the Senate amendment is considered as read.

The text of the Senate amendment is as follows:

Amendment:

Strike out all after the enacting clause and insert:

*That this Act may be cited as the "Hatch Act Reform Amendments of 1993".*

*Parliamentarian's Note:* In this instance, the Committee on Rules chose to make the motion to concur in order, rather than a "hereby" resolution, to avoid a possible point of order under section 308 of the Budget Act (requiring a CBO estimate of cost in the report on any bill or resolution containing new budget au-

16. Barney Frank (Mass.).

thority. On Feb. 24, 1993,<sup>(17)</sup> a discussion occurred in the House about the susceptibility of a special order providing for the consideration of a House bill and “self-executing” the adoption of an amendment to such a Budget Act point of order. The Chair ruled on that occasion that a special order for the consideration of a House bill that “self-executes” the adoption of an amendment providing new budget authority into the bill to be subsequently considered does not, itself, provide the new budget authority and is not subject to the point of order.

**§ 5.36 Although House rules preclude dividing a Senate amendment which strikes House text and inserts new language, such a division can be made in order by a special order reported from the Committee on Rules and adopted by the House.**

When the Senate considered for amendment H.R. 9209, the Emergency Unemployment Compensation Act Amendments of 1993, it struck out all after the enacting clause of the House bill and added a new text, consisting of seven

17. See 139 CONG. REC. 3554, 3555, 103d Cong. 1st Sess.

sections. The House wished to address section 7 of the Senate amendment, which dealt with congressional pay, by a separate vote. The following special order was reported from the Committee on Rules, debated and agreed to on Mar. 4, 1993.<sup>(18)</sup> The rule, pertinent debate, and the procedure in the House are carried here.

EMERGENCY UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

Mr. Moakley, from the Committee on Rules, submitted a privileged report (Rept. No. 103-26) on the resolution (H. Res. 115) providing for the consideration of the Senate amendment to the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, which was referred to the House Calendar and ordered to be printed:

H. RES. 115

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House, any rule of the House to the contrary notwithstanding, a motion to take from the Speaker's table the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment. The Senate amendment shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee

18. 139 CONG. REC. 4157-59, 103d Cong. 1st Sess.

on Ways and Means or their respective designees. The previous question shall be considered as ordered on the motion to final adoption without intervening motion. The motion shall be divided for a separate vote on concurring in section 7 of the Senate amendment, any rule of the House to the contrary notwithstanding.

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 115 and ask for its immediate consideration.

The Clerk read the resolution. . . .

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> The gentleman from Massachusetts [Mr. Moakley] is recognized for 1 hour.

MR. MOAKLEY: Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. Quillen], pending which I yield myself such time as I may consume. . . .

The rule provides 1 hour of general debate. The rule also automatically divides the question, allowing a separate vote on the last section of the bill, elimination of cost of living adjustment for Members of Congress in 1994. Mr. Speaker, the division is in order any rule of the House to the contrary notwithstanding. . . .

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table. . . .

MR. [ROBERT T.] MATSUI [of California]: Mr. Speaker, pursuant to House Resolution 115, I move to take from the Speaker's table the bill (H.R. 920) "An act to extend the emergency unemployment compensation program, and for other purposes," with the Senate amendment thereto, and to concur in the Senate amendment.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Under the rule, the Senate amendment is considered as read.

The text of the Senate amendment is as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Unemployment Compensation Amendments of 1993".

SEC. 2. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) GENERAL RULE.—Sections 102(f)(1) and 106(a)(2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) are each amended by striking "March 6, 1993" and inserting "October 2, 1993". . . .

SEC. 7. ELIMINATION OF COST OF LIVING ADJUSTMENT FOR MEMBERS OF CONGRESS IN 1994.

(a) COST OF LIVING ADJUSTMENT.—Notwithstanding section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)), the cost of living adjustment (relating to pay for Members of Congress) which would become effective under such provision of law during calendar year 1994 shall not take effect.

(b) SEVERABILITY.—If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the re-

19. Romano L. Mazzoli (Ky.).

mainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman from California [Mr. Matsui] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. Santorum] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Matsui].

**§ 5.37 Before the stage of disagreement is reached, a motion to take from the Speaker's table a House bill, with the Senate amendment thereto, and concur in the Senate amendment, is not privileged; but the motion can be made in order by a special order which provides for debate time and prohibits any intervening motion.**

On Apr. 22, 1993,<sup>(20)</sup> in an attempt to conclude consideration of an emergency supplemental appropriation bill, fiscal 1993 (H.R. 1335), the chairman of the Committee on Appropriations made a unanimous-consent request in the following form.

20. 139 CONG. REC. 8108, 103d Cong. 1st Sess.

EMERGENCY SUPPLEMENTAL  
APPROPRIATIONS ACT OF 1993

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Speaker, I ask unanimous consent that it be in order today to consider in the House, any rule of the House to the contrary notwithstanding, a motion to take from the Speaker's table the bill, H.R. 1335, making emergency supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes, with a Senate amendment thereto, and to concur in the Senate amendment; that the Senate amendment be considered as read; that the motion be debatable for 1 hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations or their designees; and that the previous question be considered as ordered on the motion to final adoption without intervening motion.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> Is there objection to the request of the gentleman from Kentucky? . . .

There was no objection.

For text of H.R. 1335, see proceedings of the House of March 18, 1993, at page H 1508.

MOTION OFFERED BY MR. NATCHER

MR. NATCHER: Mr. Speaker, pursuant to the order of the House, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Natcher moves to take from the Speaker's table the bill (H.R. 1335) making emergency supplement-

1. G. V. (Sonny) Montgomery (Miss.).

tal appropriations for the fiscal year ending September 30, 1993, and for other purposes, with a Senate amendment thereto, and to concur in the Senate amendment.

THE SPEAKER PRO TEMPORE: The Clerk will designate the Senate amendment.

The text of the Senate amendment is as follows:

SENATE AMENDMENT

Strike out all after the enacting clause and insert:

“That the following sum is appropriated out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes, namely:

“DEPARTMENT OF LABOR

“ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

“For an additional amount for “Advances to the unemployment trust fund and other funds”, \$4,000,000,000, to remain available until September 30, 1994.”.

THE SPEAKER PRO TEMPORE: Pursuant to the order of the House of today, the gentleman from Kentucky [Mr. Natcher] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. McDade] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. Natcher].

MR. NATCHER: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the Members know, late on March 18, this body passed H.R. 1335. The House-passed version of this bill included \$16.2 billion of new emer-

gency funding and \$3.2 billion in obligation ceiling increases for transportation programs that the President recommended to help get our country moving again. The Senate completed action on this bill yesterday and amended it so that only \$4 billion for unemployment benefits remain in the bill.

*Motion To Dispose of Senate Amendments, En Bloc, Before Stage of Disagreement*

§ 5.38 Example of the use of a special order to permit the House to consider one privileged motion to dispose of Senate amendments to a House bill, waiving all points of order against the motion and specifying that the motion is not subject to a demand for division of the question unless demanded by the Majority Leader or his designee.

On Nov. 10, 1995,<sup>(2)</sup> the Committee on Rules called up House Resolution 261, permitting disposition of amendments on a continuing appropriations bill.

The chairman of the Committee on Appropriations<sup>(3)</sup> offered the motion permitted by the special

2. 141 CONG. REC. 32112, 32113, 104th Cong. 1st Sess.

3. Robert Livingston (La.).

order later on that same day.<sup>(4)</sup> The Senate amendment numbered 3 proposed to strike a portion of the House bill and insert a new provision. This motion to strike out and insert not being subject to a division, Mr. Livingston's amendment proposed to delete the Senate's insertion and then to strike the portions of the House text—thus removing from the bill all provisions dealing with the use of federal subsidies or grants to lobby government officials or agencies.

The rule, the motion, and a portion of the debate on both are carried here.

MR. [DAVID] DREIER [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 261 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 261

*Resolved*, That upon adoption of this resolution it shall be in order without intervention of any point of order to take from the Speaker's table the joint resolution (H.J. Res. 115) making further continuing appropriations for the fiscal year 1996, and for other purposes, with any Senate amendment thereto, and to consider in the House a motion offered by the majority leader or his

designee to dispose of all Senate amendments. Any Senate amendments and motions shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the majority leader and the minority leader or their designees. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question except any such demand made by the majority leader or his designee.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The gentleman from California [Mr. Dreier] is recognized for 1 hour. . . .

MR. DREIER: Mr. Speaker, this rule provides for consideration in the House, without intervening point of order, of a motion if offered by the majority leader or his designee to dispose of Senate amendments to House Joint Resolution 115, a continuing resolution making appropriations for fiscal year 1996 through December 1, 1995.

This rule provides for 1 hour of debate equally divided between the majority leader and the minority leader or their designees, and further provides that the previous question is ordered to adoption of the motion without intervening motion or demand for a division of the question unless the demand is made by the majority leader or his designee. . . .

MR. LIVINGSTON: Mr. Speaker, pursuant to House Resolution 261, I call up the joint resolution (H.J. Res. 115), making further continuing appropriations for the fiscal year 1996, and for other purposes, with Senate amendments thereto, and I offer a motion.

4. 141 CONG. REC. 32135-37, 104th Cong. 1st Sess.

5. John D. Hayworth, Jr. (Ariz.).



The Clerk read the title of the joint resolution.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Pursuant to House Resolution 261, the Senate amendments are considered as read.

The text of the Senate amendments is as follows:

Senate amendments:

Page 2, line 20, after "1948," insert: *section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236),*

Page 10, line 19, after "resolution." Insert: *Included in the apportionment for the Federal Payment to the District of Columbia shall be an additional \$15,000,000 above the amount otherwise made available by this joint resolution, for purposes of certain capital construction loan repayments pursuant to Public Law 85-451, as amended.*

Page 15, strike out line 1 and all that follows over to and including line 7 on page 36, and insert:

### TITLE III

#### PROHIBITION ON SUBSIDIZING POLITICAL ORGANIZATIONS WITH TAXPAYER FUNDS

SEC. 301. (a) LIMITATIONS.—(1) *Notwithstanding any other provision of law, any organization receiving Federal grants in an amount that, in the aggregate, is greater than \$125,000 in the most recent Federal fiscal year, shall be subject to the limitations on lobbying activity expenditures under section 4911(c)(2) (B) of the Internal Revenue Code of 1986, except that, if exempt purpose expenditures are over \$17,000,000 then the organization shall also be subject to a limitation on lobbying of 1 percent of the excess of the exempt*

6. David Dreier (Calif.).

*purpose expenditures over \$17,000,000 unless otherwise subject to section 4911(c)(2)(A) based on an election made under section 501(h) of the Internal Revenue Code of 1986. . . .*

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Livingston moves:

(1) That the House concur in the amendment of the Senate numbered 1,

(2) That the House concur in the amendment of the Senate numbered 2,

(3) That the House concur in the amendment of the Senate numbered 3 with an amendment as follows:

Delete the matter proposed by said amendment, and beginning on page 15, line 1 of the House engrossed joint resolution, H.J. Res. 115, strike all down to and including line 7, on page 36, and redesignate Title IV as Title III, and renumber sections accordingly.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 261, the gentleman from Louisiana [Mr. Livingston] will be recognized for 30 minutes, and the gentleman from Wisconsin [Mr. Obey] will be recognized for 30 minutes. . . .

MR. LIVINGSTON: . . . Mr. Speaker, I am offering a motion to dispose of these amendments. The first two are not controversial and make improvements to the CR and my motion is to concur with these amendments, for they are fine. The modification to the Simpson-Istook-McIntosh language unfortunately is technically insufficient and therefore, is not acceptable. There is agreement that we can not get an acceptable version on this matter agreed to on this CR. Therefore, my motion is to delete

the Senate proposed modification and to delete the underlying Simpson-Istook-McIntosh language, so that it hopefully will be addressed at another time.

***Special Order To Make Particular Disposition of Senate Amendment Only Option***

**§ 5.39 Before the stage of disagreement, a request to take a House bill, with a Senate amendment and concur in the amendment is not privileged; and where other options for disposition of the Senate amendment are to be avoided, a special order is sometimes employed.**

The special order reported from the Committee on Rules and a summary of the explanation, as excerpted from the *Congressional Record* of Aug. 25, 1980,<sup>(7)</sup> are carried here as well as the procedural steps which followed the adoption of the resolution.

MULTIEMPLOYER PENSION PLAN  
AMENDMENTS ACT OF 1979

MR. [GILLIS W.] LONG of Louisiana: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 764 and ask for its immediate consideration.

7. 126 CONG. REC. 23003, 23008, 23038, 23049, 96th Cong. 2d Sess.

The Clerk read the resolution, as follows:

H. RES. 764

*Resolved*, That upon the adoption of this resolution it shall be in order to consider a motion to take from the Speaker's table the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment with an amendment printed in the *Congressional Record* of August 21, 1980, by Representative Thompson of New Jersey, without any intervening motion, and at the conclusion of debate thereon the previous question shall be considered as ordered on said motion to final adoption without intervening motion. . . .

MR. LONG of Louisiana: Mr. Speaker, I yield the usual 30 minutes to the gentleman from Tennessee (Mr. Quillen) for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 764 makes in order the consideration of H.R. 3904, the Multiemployer Pension Plan Amendments of 1980, as amended by the Senate. The rule provides for a motion to concur in the Senate amendment with an amendment, as printed in the *Congressional Record* of August 21 by Representative Thomp-

son, without intervening motion. Upon conclusion of debate, the previous question shall be considered as ordered on the final adoption of the motion, also without intervening motion.

In effect, this rule allows the House to vote on a motion to return H.R. 3904 to the Senate, in essentially the same form it overwhelmingly passed this body by a vote of 374 to 0 on May 22. It was the hope at that time that the Senate would act quickly on the matter. Instead the Senate waited until July 29 to consider the measure. Though the bill reported in the Senate was generally consistent with the aims of H.R. 3904, several nongermane amendments were added on the Senate floor. . . .

The resolution was agreed to.

MOTION OFFERED BY MR. THOMPSON

MR. [FRANK] THOMPSON [Jr., of New Jersey]: Mr. Speaker, pursuant to House Resolution 764, I move to take from the Speaker's table the bill (H.R. 3904) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment printed in the *Congressional Record* of August 21, 1980.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment to the bill (H.R. 3904), insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multiemployer Pension Plan Amendments Act of 1980". . . .

MR. THOMPSON (during the reading): Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Is there objection to the request of the gentleman from New Jersey?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey (Mr. Thompson) is recognized for 1 hour.

MR. THOMPSON: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, my amendment, in its broad outlines, does the following:

It deletes the crippling nongermane amendments. It restores certain House provisions of H.R. 3904. Some of these are essential to better protect the interests of retirees of our inflation ravaged society. Other provisions reflect compromises between the majority and minority members of both committees. Finally certain provisions inserted by the other body at the 11th hour, re-

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8. George E. Danielson (Calif.).

quired technical changes to make them workable. . . .

Mr. Speaker, I yield back the balance of my time.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 764, the previous question is ordered.

The question is on the motion offered by the gentleman from New Jersey (Mr. Thompson).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. THOMPSON: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 363, nays 0, not voting 69.

### *Intervening Motion Precluded by Special Rule*

**§ 5.40 The House may agree to a resolution reported from the Committee on Rules, providing for disagreeing to Senate amendments to a House bill on the Speaker's table and for messaging of the House's action to the Senate without intervening motion.**

On Nov. 29, 1973,<sup>(9)</sup> Mr. Claude Pepper, of Florida, by direction of the Committee on Rules, called up

9. 119 CONG. REC. 38675, 93d Cong. 1st Sess.

House Resolution 721, which the House approved:

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 11104) to provide for a temporary increase of \$10,700,000,000 in the public debt limit and to extend the period to which this temporary limit applies to June 30, 1974, together with the Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table, to the end that the Senate amendments be, and the same are hereby disagreed to, and the Clerk is hereby directed to message that action of the House to the Senate without any intervening motion.

*Parliamentarian's Note:* The Senate had added amendments to H.R. 11104—relating to election campaign financing and establishing an election reform commission—which were not germane to the House bill, a measure dealing with the public debt. The leadership decided to send the amendments back to the Senate in order to expedite enactment of the debt-limit bill. To accomplish that end, and to avoid a possible motion to send the bill to conference, the resolution was drafted to provide for the disagreement to, and immediate return of, the Senate amendments. A motion to agree to the conference requested by the Senate would have been privileged and could have been offered immediately upon the adoption of

House Resolution 721, had it not precluded all intervening motions, since the stage of disagreement would then have been reached and the amendments would have been before the House.

***Providing for Consideration of Senate Amendments Before Stage of Disagreement and Before Receipt of Papers***

**§ 5.41 The House adopted a special order, by unanimous consent, making it in order for the Majority Leader or his designee to move to concur, with one indivisible motion, in various Senate amendments to a House-passed bill (which had not yet been messaged to the House).**

H.R. 3660, the Government Ethics Reform Act of 1989, passed the House on Nov. 16, 1989;<sup>(10)</sup> the Senate acted on the following day.<sup>(11)</sup> The request of Mr. Steny H. Hoyer, of Maryland, was made just before a late-night recess on

10. See 135 CONG. REC. 29513, 101st Cong. 1st Sess.

11. See 135 CONG. REC. 29679, 101st Cong. 1st Sess., Nov. 17, 1989.

Nov. 17;<sup>(12)</sup> the message of the Senate action was received in the House after midnight on that same legislative day.<sup>(13)</sup> The House concurred, pursuant to the special order carried here, in the early morning hours of Nov. 18, 1989.<sup>(14)</sup>

MAKING IN ORDER AT ANY TIME MOTION  
TO CONSIDER SENATE AMENDMENTS  
TO H.R. 3660, GOVERNMENT ETHICS  
REFORM ACT OF 1989

MR. HOYER: Mr. Speaker, I ask unanimous consent that it be in order to consider at any time a motion, if offered by the majority leader, or his designee, after consultation with the minority leader, to take from the Speaker's table the bill (H.R. 3660), and for other purposes, with the Senate amendment or amendments thereto, and to dispose of the Senate amendment or amendments; that such motion be debatable for not to exceed 1 hour, equally divided and controlled by the majority leader and the minority leader, or their designees; that the previous question be considered as ordered on the motion to final adoption without intervening motion; that all points of order against the motion be waived; that such motion shall be considered as having been read; and that such motion not be subject to a demand for a division of the question.

12. *Id.* at p. 29982.

13. *Id.* at p. 30011.

14. 135 CONG. REC. 30029, 101st Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection. . . .

#### RECESS

THE SPEAKER PRO TEMPORE: The House will now stand in recess subject to the call of the Chair.

Members will be given an hour's notice before any legislative business by the whip system, and bells will be rung 15 minutes prior to reconvening.

The House is now in recess.

Accordingly (at 9 o'clock and 45 minutes p.m.) the House stood in recess subject to the call of the Chair.

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 1 o'clock and 20 minutes a.m.

#### FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3660. An act to amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for governmentwide ethics reform, and for other purposes.

#### GOVERNMENT ETHICS REFORM ACT OF 1989

MR. [VIC] FAZIO [of California]: Mr. Speaker, pursuant to the order of the

15. Gillespie V. (Sonny) Montgomery (Miss.).

House of earlier today, I move to take from the Speaker's table the bill (H.R. 3660) to amend the Rules of the House of Representatives and the Ethics in Government Act of 1978 to provide for governmentwide ethics reform, and for other purposes, with the Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The text of the Senate amendments is as follows:

Senate amendments: Page 2, strike out lines 1 to 4, and insert:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Ethics Reform Act of 1989". . . .

MRS. [LYNN] MARTIN of Illinois: Mr. Speaker, I reserve the balance of my time.

MR. FAZIO: Mr. Speaker, I yield back the balance of my time.

MRS. MARTIN of Illinois: Mr. Speaker, I yield back the balance of my time.

THE SPEAKER:<sup>(16)</sup> Pursuant to the order of the House of earlier today, the previous question is ordered.

The question is on the motion offered by the gentleman from California [Mr. Fazio].

The motion was agreed to.

A motion to reconsider was laid on the table.

### *Debate on Motion Before Stage of Disagreement*

#### **§ 5.42 Where a motion to consider and dispose of Senate amendments is made, prior**

16. James C. Wright, Jr. (Tex.).

**to the stage of disagreement, the proponent of the motion is entitled to one hour and may yield time as he sees fit.**

Rule XXVIII clause 2(a),<sup>(17)</sup> providing for a division of time between the majority and the minority parties is applicable only to conference reports and amendments in disagreement. While there have been occasions where the Speaker has allocated time, without objection, on an initial motion to dispose of Senate amendments in the House, the practice prescribed in the standing rules is as carried here.<sup>(18)</sup>

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 666) making further continuing appropriations for the fiscal year 1991, and for other purposes, with Senate amendments thereto, and consider the Senate amendments in the House.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

Senate amendments:

In subsection 101(b), after "the Senate as of October 1, 1990," insert "or at a rate for operations not ex-

ceeding the current rate and under the authority and conditions provided in applicable appropriations Acts for the fiscal year 1990."

In section 103, strike out "\$262,969,000,000" and insert "\$265,369,000,000".

In subsection 108(c), strike out "October 20, 1990" and insert "October 19, 1990"....

There being no objection to the request, the chairman of the Committee on Appropriations was recognized to offer a motion.

MOTION OFFERED BY MR. WHITTEN

MR. WHITTEN: Mr. Speaker, I move to concur in Senate amendments Nos. 1, 2, 3, 4, and 5.

THE SPEAKER:<sup>(19)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Whitten moves to concur in Senate amendments Nos. 1, 2, 3, 4, and 5....

THE SPEAKER: The gentleman from Mississippi [Mr. Whitten] is recognized for 1 hour.

MR. WHITTEN: Mr. Speaker, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. Conte] for purpose of debate only pending which I yield myself such time as I may consume.

### ***Division of Time Before Stage of Disagreement***

**§ 5.43 The Chair has on occasion divided debate time under the hour rule into 20-**

17. *House Rules and Manual* § 912a (1997).

18. See 136 CONG. REC. 28013, 101st Cong. 2d Sess., Oct. 8, 1990.

19. Thomas S. Foley (Wash.).

**minute segments on a motion relating to Senate amendments before the stage of disagreement, following the formula for debate on a motion to dispose of an amendment in disagreement prescribed in Rule XXVIII clause 2(b).**

On Nov. 17, 1989,<sup>(20)</sup> the House was considering Senate amendments to H.R. 3566, the Labor and Health and Human Services appropriation bill for fiscal year 1990. Consideration was pursuant to a unanimous-consent agreement permitting individual motions to dispose of seven Senate amendments. The last amendment was controversial and time for debate was demanded. The proceedings and the Chair's allocation of the time are carried here.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The Clerk will designate the next Senate amendment.

The text of the amendment is as follows:

Senate Amendment No. 7: Page 74, after line 7, insert:

SEC. 521. RESTORATION AND CORRECTION OF DIAL-A-PORN SANCTIONS.

20. 135 CONG. REC. 29904, 29905, 101st Cong. 1st Sess.

1. Brian J. Donnelly (Mass.).

(1) AMENDMENT.—Section 223 of the Communications Act of 1934 (47 U.S.C. 223) is amended by striking subsection (b) and inserting the following: . . .

MOTION OFFERED BY MR. NATCHER

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Natcher moves that the House disagree to the amendment of the Senate numbered 7.

MR. [SILVIO O.] CONTE [of Massachusetts] (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Massachusetts.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Reserving the right to object, Mr. Speaker, I would propound first a parliamentary inquiry.

PARLIAMENTARY INQUIRY

MR. WALKER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, it is our desire at this point to attempt to defeat this particular motion; so I assume at this point that we would object to the unanimous-consent request and then an hour would be allocated for debate on the motion; is that correct?

THE SPEAKER PRO TEMPORE: Does the gentleman wish debate time?



MR. WALKER: Yes, we do wish debate time, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Kentucky [Mr. Natcher] will be recognized for 30 minutes, and the gentleman from Massachusetts [Mr. Conte] will be recognized for 30 minutes.

MR. WALKER: Mr. Speaker, if they are both in favor, the time could be allocated, 20 minutes to the various sides, is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. CONTE: We have no objection to that, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Is the gentleman from Massachusetts in favor of the motion?

MR. CONTE: Yes, Mr. Speaker, I am in favor of the motion.

THE SPEAKER PRO TEMPORE: If that is the case, the Chair will allocate the time three ways. The gentleman from Kentucky [Mr. Natcher] will be recognized for 20 minutes, the gentleman from Massachusetts [Mr. Conte] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. Walker] will be recognized for 20 minutes.

### *Amending Special Order Providing for Disposition of Senate Amendments*

**§ 5.44 If the previous question is voted down on a resolution providing for agreeing to Senate amendments to a House bill, the resolution is open to amendment.**

On June 17, 1970,<sup>(2)</sup> Mr. Spark M. Matsunaga, of Hawaii, by direction of the Committee on Rules, called up House Resolution 914:

*Resolved*, That, immediately upon the adoption of this resolution, the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices, with Senate amendments thereto, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendments are, and the same are hereby, agreed to.

THE SPEAKER:<sup>(3)</sup> The gentleman from Hawaii is recognized for 1 hour.

After one hour of debate, Mr. Matsunaga moved the previous question on the resolution.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Speaker, a "no" vote on the previous question does give an opportunity for one of those who led the fight against the resolution to amend the resolution now pending before the House?

THE SPEAKER: The Chair will state in response to the parliamentary inquiry of the gentleman from Michigan that if the previous question is voted down, the resolution is open to amendment.

2. 116 CONG. REC. 20159, 20198-200, 91st Cong. 2d Sess.

3. John W. McCormack (Mass.).

***Effect of Rejection of Special Rule***

§ 5.45 The Chair indicated that should a resolution providing for concurring in Senate amendments to a House bill be rejected, the bill and amendments would remain on the Speaker's table for further action by the House.

On June 17, 1970,<sup>(4)</sup> the House was considering House Resolution 914, which provided for the taking of H.R. 4249, to extend the Voting Rights Act of 1964, with Senate amendments thereto, from the Speaker's table, to the end that those amendments be agreed to. Mr. Albert W. Watson, of South Carolina, raised a parliamentary inquiry:

Mr. Speaker, if this resolution is voted down then, further, it will mean we will follow the orderly procedure and let this matter go to conference and reconcile the differences?

THE SPEAKER:<sup>(5)</sup> The Chair will state that if the resolution is voted down the matter will lie on the Speaker's desk until the House determines what it wants to do with the matter.

MR. WATSON: I thank the Speaker.

4. 116 CONG. REC. 20159, 20198-200, 91st Cong. 2d Sess.

5. John W. McCormack (Mass.).

***Reading of Senate Amendment***

§ 5.46 Where the House has before it a resolution providing for concurrence in a Senate amendment, such Senate amendment may be read by unanimous consent.

On Mar. 31, 1950,<sup>(6)</sup> Mr. John E. Lyle, Jr., of Texas, by direction of the Committee on Rules, called up House Resolution 531:

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 1758) to amend the Natural Gas Act approved June 21, 1938, as amended, with Senate amendment thereto, be, and the same is hereby taken from the Speaker's table to the end that the Senate amendment be, and the same is hereby, agreed to. . . .

MR. LYLE: Mr. Speaker, I yield 30 minutes to the gentleman from Illinois [Mr. Allen].

MR. [LEO E.] ALLEN of Illinois: Mr. Speaker, I yield myself such time as I may desire.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, will the gentleman yield for a parliamentary inquiry?

MR. ALLEN of Illinois: I yield to the gentleman from Illinois.

MR. YATES: Mr. Speaker, under the terms of this rule we are asked to approve an amendment which has been added by the other body. Is it in order to request that that amendment, which

6. 96 CONG. REC. 4553, 4554, 81st Cong. 2d Sess.

has not been read to the House, be read at this time?

THE SPEAKER: It may be done by unanimous consent.

MR. YATES: Mr. Speaker, I ask unanimous consent that the amendment added by the other body be read to the House at this time.

THE SPEAKER: That will come out of the time of the gentleman from Illinois [Mr. Allen].

MR. ALLEN of Illinois: I yield for that purpose, Mr. Speaker.

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

There was no objection.

### *Senate Amendment Printed in Record*

**§ 5.47 Where the House adopts a resolution taking from the Speaker's table a House joint resolution with a Senate amendment and agreeing to the Senate amendment, the text of the Senate amendment is printed in the Record after the vote agreeing to the resolution.**

On Sept. 25, 1972,<sup>(7)</sup> Mr. William M. Colmer, of Mississippi, of the Committee on Rules, called up House Resolution 1133:

*Resolved*, That immediately upon the adoption of this resolution the joint

7. 118 CONG. REC. 31995-99, 92d Cong. 2d Sess.

resolution (H.J. Res. 1227) approval and authorization for the President of the United States to accept an Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, together with the Senate amendment thereto, be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment be, and the same is hereby, agreed to. . . .

THE SPEAKER:<sup>(8)</sup> The question is on the resolution. . . .

The question was taken; and there were—yeas 308, nays 4, answered “present” 2, not voting 116. . . .

So the resolution was agreed to. . . .

A motion to reconsider was laid on the table.

The Senate amendment, concurred in, reads as follows:<sup>(9)</sup>

Strike out all after the resolving clause and insert:

That the Congress hereby endorses those portions of the Declaration of Basic Principles of Mutual Relations Between the United States of America and the Union of Soviet Socialist Republics signed by President Nixon

8. Carl Albert (Okla.).

9. An effort is made in the House to assure that where the House concurs, or concurs with a further amendment, the Senate amendment is printed in the Record proceedings. If the Senate amendment is lengthy and has already been printed in the proceedings of that body, the House Record may refer to the Senate proceedings rather than reprinting.

and General Secretary Brezhnev at Moscow on May 29, 1972, which relate to the dangers of military confrontation and which read as follows: . . .

***Initial Consideration of Senate Amendments; in House or in Committee of the Whole***

§ 5.48 ***Parliamentarian's Note:*** Any amendment of the Senate to a House bill is subject to the point of order that it must first be considered in the Committee of the Whole House on the State of the Union, if, originating in the House, it would be subject to that point. However, a motion to disagree with the amendments of the Senate to a House bill or resolution and to request or agree to a conference with the Senate, or a motion to insist on the House amendments to a Senate bill or resolution and request or agree to a conference with the Senate, is always in order if the Speaker, in his discretion, recognizes for that purpose and if the motion is made by direction of the committee having jurisdiction of the subject mat-

ter of the bill or resolution.<sup>(10)</sup> And House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine.<sup>(11)</sup>

***Timing of Point of Order That Senate Amendment Requires Committee of the Whole Consideration***

§ 5.49 A point of order under Rule XX clause 1 that a particular Senate amendment should have been considered in the Committee of the Whole comes too late after conferees have been appointed and have reported.

On Oct. 20, 1966,<sup>(12)</sup> the House was considering the conference report on H.R. 13103, a bill to amend the Internal Revenue Code of 1954. Mr. Howard W. Smith, of Virginia, rose to a point of order against title III of the conference

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10. Rule XX clause 1, *House Rules and Manual* § 827 (1997); and *Deschler's Procedure* (93d Cong.), Ch. 32 § 5.1.
  11. Rule XXIV clause 2, *House Rules and Manual* § 882 (1997); and *Deschler's Procedure* (93d Cong.), Ch. 32 § 5.1.
  12. 112 CONG. REC. 28240, 28241, 89th Cong. 2d Sess.

report, which consisted entirely of a Senate amendment:

Mr. Speaker, I just want to ask this question:

If that amendment had been offered when the bill was under consideration in the House it would have had to be under rule XX, and considered under rule XX that I have just read.

Now, because it is a bill which is an appropriation bill we cannot consider it except in the Committee of the Whole House on the State of the Union. This rule provides that if there is put on it a Senate amendment and it comes back it is subject to a point of order that it has not been considered in the Committee of the Whole House on the State of the Union. . . .

THE SPEAKER:<sup>(13)</sup> The Chair is prepared to rule.

The gentleman from Virginia makes the point of order that title III of the conference report contravenes the first sentence of rule XX:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the State of the Union, if, originating in the House, it would be subject to that point:<sup>(14)</sup>

Without passing upon the germaneness of the amendment, because that point was not raised, the Chair calls attention to the fact that the Senate

13. John W. McCormack (Mass.).

14. The pertinent part of Rule XX clause 1, quoted by the Speaker, had been part of the rules since 1880. See *House Rules and Manual* § 827 (1997).

amendment went to conference by unanimous consent. Where unanimous consent was obtained, the effect of that is to circuit rule XX, in other words, to waive or vitiate that portion of rule XX.

If objection had been made at the point when the unanimous-consent request was made to send the bill to conference, then the bill could have been referred to the proper standing committee, and then, if and when reported out of the committee would have been brought up for consideration in the Committee of the Whole House on the State of the Union.

At this point, and under the parliamentary situation, the bill was sent to conference by unanimous consent; and this applies to all bills that go to conference by unanimous consent, if there be provisions therein that might be subject to the first sentence of rule XX. If there is no objection made at that time the bill goes to conference; which in this case had the effect of suspending that portion of rule XX. Therefore, it is properly before the House at the present time as part of the conference report and the Chair overrules the point of order.

### *—Debate in Committee of the Whole*

**§ 5.50 Senate amendments to an appropriation bill are considered in the Committee of the Whole under the five-minute rule.**

On July 12, 1945,<sup>(15)</sup> the following occurred in the House:

NATIONAL WAR AGENCIES APPROPRIATION BILL, 1946

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3368) making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes, with Senate amendments. Pending that motion, Mr. Speaker, I ask unanimous consent to dispense with general debate.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Missouri?

MR. [JOHN] TABER [of New York]: Mr. Speaker, reserving the right to object, that is satisfactory to me. That would not mean, of course, that there could be no debate on amendments?

MR. CANNON of Missouri: Amendments will be considered under the 5-minute rule.<sup>(17)</sup>

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

There was no objection.

15. 91 CONG. REC. 7474, 7493, 7494, 79th Cong. 1st Sess.

16. Sam Rayburn (Tex.).

17. For an example of the procedure in considering Senate amendments to a general appropriation bill in Committee of the Whole, see 91 CONG. REC. 7474, 7493, 7494, 79th Cong. 1st Sess., July 12, 1945.

THE SPEAKER: The question is on the motion of the gentleman from Missouri. The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3368) making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes, with Senate amendments, with Mr. Sparkman in the chair.

The Clerk read the title of the bill.

THE CHAIRMAN:<sup>(18)</sup> The Clerk will report the first Senate amendment.

The Clerk read the Senate amendment, as follows:

Senate amendment No. 1: Page 1, line 9, insert:

“COMMITTEE ON FAIR EMPLOYMENT PRACTICE

“Salaries and expenses: For all expenses necessary to enable the Committee on Fair Employment Practice to carry out any functions lawfully vested in it by Executive Orders Nos. 8802 and 9346, including salary of a Chairman at not to exceed \$8,000 per annum and 6 other members at not to exceed \$25 per diem when actually engaged; travel expenses (not to exceed \$63,800); expenses of witnesses in attendance at Committee hearings, when necessary; printing and binding (not to exceed \$4,800); purchase of newspapers and periodicals (not to exceed \$500); not to exceed \$694 for deposit in the general fund of the Treasury for cost of penalty mail as required by section 2 of the act of June 28, 1944 (Public Law 364); and the temporary employment of persons, by contract or otherwise, without regard to section

18. John J. Sparkman (Ala.).

3709 of the Revised Statutes and the civil-service and classification laws (not to exceed \$8,900); \$250,000: *Provided*, That no part of the funds herein appropriated shall be used to pay the compensation of any person to initiate, investigate, or prosecute any complaint against any defendant where such defendant does not have the same right to appeal an adverse decision of the Committee on Fair Employment Practice to the President of the United States, or to refer said complaint to the President of the United States for final disposition, as is asserted by or allowed the said Committee on Fair Employment Practice in cases where persons complained against refuse to abide by its orders: *Provided further*, That no part of this appropriation shall be used to pay the compensation of any person to initiate, investigate, or prosecute any proceedings against any person, firm, or corporation which seeks to effect the seizure or operation of any plant or other property of such person, firm, or corporation by Federal authority for failure to abide by any rule or regulation of the Committee on Fair Employment Practice, or for failure to abide by any order passed by the Committee on Fair Employment Practice: *Provided further*, That no part of the funds herein appropriated shall be used to pay the compensation of any person employed by said Committee on Fair Employment Practice who issues or attempts to enforce any rule, regulation, or order which repeals, amends, or modifies any law enacted by the Congress."

MR. CANNON of Missouri: Mr. Chairman, I offer an amendment, which I send to the desk.

The Clerk read as follows:

Mr. Cannon of Missouri moves that the House concur in Senate amend-

ment No. 1 with an amendment as follows:

"Strike out the matter proposed to be inserted by said amendment and insert the following in lieu thereof:

"COMMITTEE ON FAIR EMPLOYMENT PRACTICE

"Salaries and expenses: For completely terminating the functions and duties of the Committee on Fair Employment Practice, including such of the objects and limitations specified in the appropriation for such agency for the fiscal year 1945 as may be incidental to its liquidation, \$250,000: *Provided*, That if and until the Committee on Fair Employment Practice is continued by an act of Congress, the amount named herein may be used for its continued operation until an additional appropriation shall have been provided."

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Chairman, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mr. Colmer to the amendment offered by Mr. Cannon of Missouri: On line 7 of the committee substitute after the word "if", strike out the words "and until".

MR. COLMER: Mr. Chairman, this is a very important amendment. We might just as well understand that to begin with. If my amendment is adopted it means that the funds appropriated must be used for the liquidation of the FEPC. If my amendment is rejected it means that the \$250,000 thus appropriated can be used for the continued operation of the FEPC. . . .

THE CHAIRMAN: The time of the gentleman from Missouri has expired. All time has expired.

The question recurs on the amendment as amended by the amendment offered by the gentleman from Missouri.

The amendment as amended was agreed to.

MR. CANNON of Missouri: Mr. Chairman, I think there is no disagreement on the remaining amendments.

In order to conserve the time of the House and get the conference report back this afternoon, I ask unanimous consent that the remaining Senate amendments be taken up en bloc and that they be considered as read.

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

MR. [ANDREW J.] MAY [of Kentucky]: . . . What I am trying to get at is this: Did your statement to the effect that this is the only way by which a bill could be enacted which would take care of the several war agencies for which appropriations are carried in this bill, mean that the other body at the other end of the Capitol is so obstinate about the one proposition of the FEPC that it will block all of the war agencies rather than take it out?

MR. CANNON of Missouri: May I say to the gentleman from Kentucky that the intransigents were not confined to any one House.

MR. MAY: Then the gentleman proposes to surrender without a reason?

MR. CANNON of Missouri: We are not surrendering; we are winning.

MR. [HOWARD W.] SMITH of Virginia: Reserving the right to object, Mr. Chairman, I would like to understand from the gentleman from Missouri whether his unanimous-consent request is that we consider the amend-

ments en bloc and disagree to the Senate amendments and send them to conference? We do not agree by this to any Senate amendment?

MR. CANNON of Missouri: When we have secured consent to consider them simultaneously, I will then move to disagree to the Senate amendments and agree to the conference asked by the Senate.

MR. [VITO A.] MARCANTONIO [of New York]: Mr. Chairman, reserving the right to object, in reply to the gentleman from Virginia, so as to clear up any misunderstanding, we are not disagreeing to the Senate amendment on FEPC except by the action taken in the Committee of the Whole. The gentleman's motion refers merely to the remaining Senate amendments?

MR. CANNON of Missouri: The request refers to the remaining amendments only.

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

There was no objection.

MR. CANNON of Missouri: Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with Senate amendments, with recommendation in accordance with action taken by the Committee.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Sparkman, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate amendments to the bill (H.R. 3368) making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes,



directed him to report the same back to the House with the recommendation that the House concur in Senate amendment numbered 1, with an amendment, and that the House disagree to Senate amendments numbered 2 to 33, inclusive, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

MR. CANNON of Missouri: Mr. Speaker, I move the previous question.

THE SPEAKER: The Clerk will report the first recommendation of the Committee.

The Clerk read as follows:

The Committee of the Whole House on the State of the Union recommends that the House concur in Senate amendment No. 1, with the following amendment:

“Strike out the matter proposed to be inserted by Senate amendment No. 1 and insert in lieu thereof the following:

“‘COMMITTEE ON FAIR EMPLOYMENT PRACTICE

“Salaries and expenses: For completely terminating the functions and duties of the Committee on Fair Employment Practice, including such of the objects and limitations specified in the appropriation for such agency for the fiscal year 1945 as may be incidental to its liquidation, \$250,000: *Provided*, That if and until the Committee on Fair Employment Practice is continued by an act of Congress, the amount named herein may be used for its continued operation until an additional appropriation shall have been provided: *Provided further*, That in no case shall this fund be available for expenditure beyond June 30, 1946.’”

THE SPEAKER: The question is on agreeing to the recommendation.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: As I understand it, this entire amendment, beginning on line 9, page 1, and ending on line 14, page 3, as amended, is a Senate amendment. It is brought in here as a Senate amendment. Now the question is on adopting that Senate amendment, the entire amendment; not adopting the amendment offered by the gentleman from Missouri to the amendment, but on adopting the entire FEPC amendment?

THE SPEAKER: The question is on the motion agreed to in Committee of the Whole. That is, to agree to the Senate amendment with an amendment. There is no division of the question, if that is what the gentleman is asking.

MR. RANKIN: Then we have a right to vote on whether or not we will adopt the Senate amendment as amended.

THE SPEAKER: There is just one question before the House. That is, to concur in the recommendation of the Committee of the Whole.

MR. RANKIN: Mr. Speaker, I demand a separate vote on this entire Senate amendment. The rules of the House provide that when an amendment is brought in, even though it is amended in Committee of the Whole, when we get back to the House we do not vote on amendments to the amendment but we vote on the amendment as amended.

THE SPEAKER: We vote on the recommendation which the Committee of the Whole made to the House. That is

all there is before the House at this time.

MR. RANKIN: That is that the amendment as amended be adopted?

THE SPEAKER: That is the question. . . .

The yeas and nays were refused.

So the recommendation of the Committee of the Whole was agreed to.

On motion of Mr. Cannon of Missouri a motion to reconsider was laid on the table.

THE SPEAKER: The question is on the remainder of the recommendation of the Committee of the Whole that the House disagree to the Senate amendments numbered from 2 to 33, inclusive, and agree to the conference asked by the Senate.

The recommendation was agreed to and a motion to reconsider was laid on the table.

***—Voting on Recommendation of Committee of the Whole in the House***

**§ 5.51 The recommendation of the Committee of the Whole that the House concur in a Senate amendment with an amendment may not be divided for a vote in the House.**

On July 12, 1945,<sup>(19)</sup> the Committee of the Whole, having considered H.R. 3368, war agency appropriations for fiscal 1946, with Senate amendments thereto, rec-

19. 91 CONG. REC. 7494, 79th Cong. 1st Sess.

ommended that the House concur in Senate amendment No. 1 with an amendment.

THE SPEAKER:<sup>(20)</sup> The question is on agreeing to the recommendation.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: As I understand it, this entire amendment, beginning on line 9, page 1, and ending on line 14, page 3, as amended, is a Senate amendment. It is brought in here as a Senate amendment. Now the question is on adopting that Senate amendment, the entire amendment; not adopting the amendment offered by the gentleman from Missouri to the amendment, but on adopting the entire FEPC amendment?

THE SPEAKER: The question is on the motion agreed to in Committee of the Whole. That is, to agree to the Senate amendment with an amendment. There is no division of the question, if that is what the gentleman is asking.

MR. RANKIN: Then we have a right to vote on whether or not we will adopt the Senate amendment as amended.

THE SPEAKER: There is just one question before the House. That is, to concur in the recommendation of the Committee of the Whole.

MR. RANKIN: Mr. Speaker, I demand a separate vote on this entire Senate amendment. The rules of the House provide that when an amendment is brought in, even though it is amended in Committee of the Whole, when we

20. Sam Rayburn (Tex.).

get back to the House we do not vote on amendments to the amendment but we vote on the amendment as amended.

THE SPEAKER: We vote on the recommendation which the Committee of the Whole made to the House. That is all there is before the House at this time.

**—If House Rejects Committee of the Whole Recommendation**

**§ 5.52 If the House disagrees to the recommendation of the Committee of the Whole that the House concur in a Senate amendment with an amendment, such Senate amendment is before the House for consideration.**

On July 12, 1945,<sup>(1)</sup> the Committee of the Whole recommended that the House concur with an amendment to a Senate amendment to H.R. 3368, war agency appropriations for fiscal 1946. Speaker Sam Rayburn, of Texas, recognized Mr. Joseph W. Martin, Jr., of Massachusetts, to pose a parliamentary inquiry:

If we do not adopt the amendment which was just adopted in Committee of the Whole, we will then take the Senate amendment as it stands? . . .

1. 91 CONG. REC. 7494, 79th Cong. 1st Sess.

THE SPEAKER: The Senate amendment itself will be in order for consideration.

**—Senate Amendments Sent to Conference Do Not Thereafter Require Consideration in Committee of the Whole**

**§ 5.53 Amendments between the Houses that have been sent to conference do not require consideration in the Committee of the Whole in the event the conference report is ruled out of order.**

On Aug. 19, 1937,<sup>(2)</sup> the conference report on H.R. 7646, relating to flood walls and drainage structures in the Ohio River Basin, was ruled out on a point of order. Mr. Bertrand H. Snell, of New York, was recognized by Speaker William B. Bankhead, of Alabama, to raise a point of order:

When a conference report has been thrown out on a point of order is it not the same as if it had been rejected by the House?

THE SPEAKER: The gentleman from New York makes a parliamentary inquiry as to whether, when a point of order to a conference report is sustained ipso facto, the Senate amendments come before the House for fur-

2. 81 CONG. REC. 9376-79, 75th Cong. 1st Sess.

ther consideration. Is that the parliamentary inquiry?

MR. SNELL: Yes.

THE SPEAKER: In reply to the gentleman the Chair calls the gentleman's attention to section 3257, volume 8, Cannon's Precedents:

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

MR. SNELL: When this first came back from the Senate there was an important matter that should have gone before the committee for consideration because it entailed expenditure of large amounts of money, and is it a privileged motion to move to consider that in the House at the present time?

THE SPEAKER: It is in the opinion of the Chair, because by sending the bill and Senate amendments to conference, the provisions of the rules requiring consideration in Committee of the Whole were waived.

### *Consideration of Senate Amendments in the House*

**§ 5.54 The House may adopt a resolution taking a House bill with Senate amendments thereto from the Speaker's table and making it in order to consider the amendments in the House, rather than in Committee of the Whole, as required by Rule XX clause 1.**

On July 2, 1960,<sup>(3)</sup> Mr. Richard Bolling, of Missouri, reported House Resolution 596:

Mr. Bolling, from the Committee on Rules, reported the following privileged resolution (H. Res. 596—Rept. No. 2085), which was referred to the House Calendar and ordered to be printed:

*Resolved*, That immediately upon the adoption of this resolution, the bill H.R. 12740 making supplemental appropriations for the fiscal year ending June 30, 1961, and for other purposes, with the Senate amendments thereto, shall be taken from the Speaker's table and the Senate amendments considered in the House.

MR. BOLLING: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 596 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution, the bill H.R. 12740 making supplemental appropriations for the fiscal year ending June 30, 1961, and for other purposes, with the Senate amendments thereto, shall be taken from the Speaker's table and the Senate amendments considered in the House.

THE SPEAKER:<sup>(4)</sup> The question is, Will the House now consider the resolution?

The question was taken; and the Speaker announced that the yeas had it.

3. 106 CONG. REC. 15775, 15785, 15786, 86th Cong. 2d Sess.

4. Sam Rayburn (Tex.).

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GROSS: Mr. Speaker, does not consideration require unanimous consent?

THE SPEAKER: It requires a two-thirds vote.

MR. GROSS: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 291, nays 79, not voting 62. . . .

So (two-thirds having voted in favor thereof) the House agreed to consider the resolution.<sup>(5)</sup>

Debate then occurred on the resolution, it was agreed to, and the Senate amendments were considered.

### § 5.55 House bills with Senate amendments which do not require consideration in the Committee of the Whole may

5. *Parliamentarian's Note:* A two-thirds vote was required to consider this resolution from the Committee on Rules on the same day on which it was reported to the House. Only a majority vote was required for its adoption.

**at once be disposed of as the House may determine and are privileged matters on the Speaker's table.**

On Feb. 1, 1937,<sup>(6)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. John J. O'Connor, of New York:

Mr. Speaker, I call up House Joint Resolution 81, to create a Joint Congressional Committee on Government Organization, with a Senate amendment, for immediate consideration as a privileged resolution. . . .

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

THE SPEAKER: The gentleman will state it.

MR. SNELL: I understood the gentleman called this up as a privileged matter. On what ground is this a privileged matter?

THE SPEAKER: In reply to the inquiry of the gentleman from New York [Mr. Snell], under paragraph 2 of rule XXIV of the House Manual it is stated: . . .

But House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills.

MR. SNELL: I appreciate that, and I have no objection to the consideration of this matter, but I wonder if it was a matter that could be taken up without

6. 81 CONG. REC. 644, 645, 75th Cong. 1st Sess.

being referred back to the committee for consideration.

THE SPEAKER: Under the rule which the Chair has just read, the Chair is clearly of the opinion that it may be brought up in this manner.<sup>(7)</sup>

### *Debate in House*

#### **§ 5.56 Senate amendments considered in the House are debatable under the hour rule.**

On Feb. 1, 1937,<sup>(8)</sup> Mr. John J. O'Connor, of New York, had called up, and the House was considering, House Joint Resolution 81, to create a Joint Committee on Government Organization, with a Senate amendment thereto. Speaker William B. Bankhead, of Alabama, recognized Mr. John E. Rankin, of Mississippi:

If this matter is debatable, I want to be heard in opposition.

MR. O'CONNOR of New York: How much time does the gentleman desire?

MR. RANKIN: How much time has the gentleman at his disposal?

THE SPEAKER: The gentleman from New York [Mr. O'Connor] is entitled to 1 hour, and he may yield such part as he desires.<sup>(9)</sup>

7. See also 106 CONG. REC. 18357, 86th Cong. 2d Sess., Aug. 30, 1960.

8. 81 CONG. REC. 645, 75th Cong. 1st Sess.

9. See also 106 CONG. REC. 18357, 86th Cong. 2d Sess., Aug. 30, 1960.

### *Amendments Considered in Their Entirety*

#### **§ 5.57 Senate amendments are considered in their entirety and it is not in order to consider separate items contained therein.**

On May 20, 1936,<sup>(10)</sup> the House was considering the Senate amendments to the Interior Department appropriations bill for 1937 which had been reported back from conference in disagreement. After the Clerk read one amendment which contained seven separate projects, Mr. Fred Cummings, of Colorado, raised a parliamentary inquiry:

Will a motion be in order to consider these items separately?

THE SPEAKER:<sup>(11)</sup> No; there is only one Senate amendment.

### *—Unless Special Rule Permits Division*

#### **§ 5.58 Although House rules preclude dividing a Senate amendment which strikes House text and inserts new language, such a division can be made in order by a special order reported from the**

10. 80 CONG. REC. 7623, 7624, 74th Cong. 2d Sess.

11. Joseph W. Byrns (Tenn.).

### Committee on Rules and adopted by the House.

When the Senate considered for amendment H.R. 9209, the Emergency Unemployment Compensation Act Amendments of 1993, it struck out all after the enacting clause of the House bill and added a new text, consisting of seven sections. The House wished to address section 7 of the Senate amendment, which dealt with congressional pay, by a separate vote. The following special order was reported from the Committee on Rules, debated and agreed to on Mar. 4, 1993.<sup>(12)</sup> The rule, pertinent debate, and the procedure in the House are carried here.

#### EMERGENCY UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

Mr. Moakley, from the Committee on Rules, submitted a privileged report (Rept. No. 103-26) on the resolution (H. Res. 115) providing for the consideration of the Senate amendment to the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, which was referred to the House Calendar and ordered to be printed:

#### H. RES. 115

*Resolved*, That upon the adoption of this resolution it shall be in order to consider in the House, any rule of

the House to the contrary notwithstanding, a motion to take from the Speaker's table the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes, with the Senate amendment thereto, and to concur in the Senate amendment. The Senate amendment shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means or their respective designees. The previous question shall be considered as ordered on the motion to final adoption without intervening motion. The motion shall be divided for a separate vote on concurring in section 7 of the Senate amendment, any rule of the House to the contrary notwithstanding.

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 115 and ask for its immediate consideration.

The Clerk read the resolution. . . .

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The gentleman from Massachusetts [Mr. Moakley] is recognized for 1 hour.

MR. MOAKLEY: Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. Quillen], pending which I yield myself such time as I may consume. . . .

The rule provides 1 hour of general debate. The rule also automatically divides the question, allowing a separate vote on the last section of the bill, elimination of cost of living adjustment for Members of Congress in 1994. Mr. Speaker, the division is in order any

<sup>12</sup> 139 CONG. REC. 4157-59, 4163, 4164, 103d Cong. 1st Sess.

<sup>13</sup> Romano L. Mazzoli (Ky.).

rule of the House to the contrary notwithstanding. . . .

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table. . . .

MR. [ROBERT T.] MATSUI [of California]: Mr. Speaker, pursuant to House Resolution 115, I move to take from the Speaker's table the bill (H.R. 920) "An act to extend the emergency unemployment compensation program, and for other purposes," with the Senate amendment thereto, and to concur in the Senate amendment.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Under the rule, the Senate amendment is considered as read.

The text of the Senate amendment is as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Unemployment Compensation Amendments of 1993".

SEC. 2. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION PROGRAM.

(a) GENERAL RULE.—Sections 102(f)(1) and 106(a)(2) of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) are each amended by striking "March 6, 1993" and inserting "October 2, 1993". . . .

SEC. 7. ELIMINATION OF COST OF LIVING ADJUSTMENT FOR MEMBERS OF CONGRESS IN 1994.

(a) COST OF LIVING ADJUSTMENT.—Notwithstanding section 601(a)(2) of

the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)), the cost of living adjustment (relating to pay for Members of Congress) which would become effective under such provision of law during calendar year 1994 shall not take effect.

(b) SEVERABILITY.—If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman from California [Mr. Matsui] will be recognized for 30 minutes, and the gentleman from Pennsylvania [Mr. Santorum] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Matsui]. . . .

THE SPEAKER PRO TEMPORE: All time has expired.

Pursuant to House Resolution 115, the previous question is ordered on the motion, and pursuant to House Resolution 115, the question on concurring in the Senate amendment will be divided.

The first question before the House is on concurring in sections 1 through 6 of the Senate amendment. . . .

So sections 1 through 6 of the Senate amendment to H.R. 920 were concurred in. . . .

THE SPEAKER PRO TEMPORE: The Chair will advise the Members that the question, having been divided, now before the House is on concurring in section 7 of the Senate amendment. . . .



The question, therefore, is on concurring in section 7 of the Senate amendment to H.R. 920. . . .

So section 7 of the Senate amendment to H.R. 920 was concurred in.

### *Who May Call Up*

#### **§ 5.59 House bills with Senate amendments which do not require consideration in a Committee of the Whole may be called up for consideration by a Member authorized by the committee reporting the bill to take such action.**

On Aug. 24, 1935,<sup>(14)</sup> the following occurred on the floor of the House:

MR. [VIRGIL M.] CHAPMAN [of Kentucky]: Mr. Speaker, by direction of the Committee on Interstate and Foreign Commerce I call up from the Speaker's table the bill, H.R. 9070, the omnibus bridge bill, with Senate amendments thereto.

THE SPEAKER:<sup>(15)</sup> The gentleman from Kentucky, by direction of the Committee on Interstate and Foreign Commerce, calls up a bill with Senate amendments thereto.

The Clerk reported the title of the bill.

THE SPEAKER: The Clerk will report the Senate amendments. . . .

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, under what right is this bill called up?

THE SPEAKER: Under clause 2 of rule XXIV, which authorizes any member of a committee, when directed by the committee, to call up House bills with Senate amendments, on the Speaker's desk.

MR. MCFARLANE: Mr. Speaker, I raise the point that the committee has not had a meeting since the bill was passed.

THE SPEAKER: The Chair cannot go behind the statement of the gentleman from Kentucky.

MR. MCFARLANE: Then, I ask the gentleman from Kentucky whether the committee has met and considered this bill?

MR. CHAPMAN: Mr. Speaker, the gentleman from Kentucky will reply by repeating what he said in the beginning, that by the direction of the Committee on Interstate and Foreign Commerce I call this bill from the Speaker's table.

THE SPEAKER: Clause 2 of rule XXIV provides:

House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of as the House may determine, as may also Senate bills substantially the same as House bills already favorably reported by a committee of the House, and not required to be considered in Committee of the Whole [be disposed of in the same manner on motion directed to be made by such committee].

14. 79 CONG. REC. 14645, 74th Cong. 1st Sess.

15. Joseph W. Byrns (Tenn.).

***Motion To Disagree in House To Permit Reconsideration in Senate***

**§ 5.60 A Senate amendment was disagreed to by the House for the purpose of permitting the Senate to reconsider its action in amending a House bill.**

On Feb. 1, 1937,<sup>(16)</sup> Mr. John E. Rankin, of Mississippi, proposed an amendment to a Senate amendment to House Joint Resolution 81, creating a Joint Committee on Government Organization. Speaker William B. Bankhead, of Alabama, ruled out Mr. Rankin's amendment on the ground that it would have amended the text of the joint resolution, not the Senate amendment thereto. Mr. Marvin Jones, of Texas, then raised a parliamentary inquiry:

If it is not in order to offer an amendment such as the gentleman from Mississippi proposes, if the Senate amendment were rejected and sent back to the Senate the purpose of the amendment could be accomplished.

THE SPEAKER: The Chair will state to the gentleman that on the premise laid by him if the Senate amendment were voted down the Senate could reconsider

its action and increase the number of the House committee.

MR. JONES: If it were sent back to the Senate would not it go as an original proposition so they could recede from their amendment and take up the bill as an original measure and put in nine Members of the House?

THE SPEAKER: The Senate could reconsider its action. . . .

MR. [JOHN J.] O'CONNOR of New York: I think I can solve this by proceeding in accordance with my heart.

I will withdraw my motion to concur in the Senate amendment and move to disagree to the Senate amendment. . . .

THE SPEAKER: The gentleman from New York [Mr. O'Connor] withdraws his motion to agree to the Senate amendment and now moves to disagree to the Senate amendment.

The question is on the motion of the gentleman from New York.

The motion was agreed to.

***Considering Senate Amendment to House Joint Resolution Amending Constitution***

**§ 5.61 Senate amendments to a House joint resolution proposing a constitutional amendment are considered in the House.**

On Mar. 21, 1947,<sup>(17)</sup> Mr. Earl C. Michener, of Michigan, called up House Joint Resolution 27, with the Senate amendments thereto.

16. 81 CONG. REC. 646-48, 75th Cong. 1st Sess.

17. 93 CONG. REC. 2389, 2392, 80th Cong. 1st Sess.

Since the matter did not require consideration in the Committee of the Whole, the matter could be disposed of by motion under Rule XXIV clause 2:

Mr. Speaker, I ask the Speaker to lay before the House for immediate consideration House Joint Resolution 27, a joint resolution proposing an amendment to the Constitution of the United States relating to the terms of office of the President, with Senate amendments.

THE SPEAKER:<sup>(18)</sup> The Clerk will report the title of the joint resolution and the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

Page 1, line 9, strike out all after "SECTION 1." over to and including "term." in line 4, page 2, and insert "No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than 2 years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term."

18. Joseph W. Martin, Jr. (Mass.).

MR. MICHENER: Mr. Speaker, this bill with the Senate amendment was returned to the House on March 13. It was taken informally before the full Committee on the Judiciary, and I am instructed by that committee to call the resolution up at this time for the purpose of agreeing to the Senate amendment. I have followed precedent and cleared through the majority leader and the minority leader.

I therefore move that the House concur in the Senate amendment.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Michener moves that the House concur in the Senate amendment.

THE SPEAKER: The gentleman from Michigan is recognized for 1 hour. . . .

MR. MICHENER: Mr. Speaker, I move the previous question.

The previous question was ordered.

The question was taken; and on a division (demanded by Mr. Thomason) there were—ayes 81, noes 29.

MR. [AIME J.] FORAND [of Rhode Island]: Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count.

MR. FORAND: Mr. Speaker, I withdraw the point of order.

So (two-thirds having voted in favor thereof) the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

*Senate Amendment to Concurrent Resolution for Adjournment*

§ 5.62 A concurrent resolution providing that the two Houses adjourn to a day certain is not operative until agreed to by both, and where the Senate amends the resolution changing the date, such amendment must be concurred in before the adjournment can take place.

On Mar. 30, 1944,<sup>(19)</sup> the following took place in the House:

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> The Chair lays before the House, House Concurrent Resolution No. 75, with a Senate amendment, which the Clerk will report.

The Clerk read as follows:

Senate amendment: On page 2, line 3, strike out "Thursday, March 30" and insert "Saturday, April 1."

Amend the title so as to read: "Concurrent resolution providing for the adjournment of Congress from Saturday, April 1, 1944, to Wednesday, April 12, 1944."

THE SPEAKER PRO TEMPORE: Without objection, the amendment is agreed to.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, reserving the right

19. 90 CONG. REC. 3318, 78th Cong. 2d Sess.

20. John W. McCormack (Mass.).

to object, I make a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN: What is the procedure?

MR. [ROBERT] RAMSPECK [of Georgia]: Mr. Speaker, I move that the House concur in the Senate amendment.

MR. HOFFMAN: Well, Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Is the gentleman propounding a parliamentary inquiry?

MR. HOFFMAN: Yes, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN: What is the procedure on this resolution?

THE SPEAKER PRO TEMPORE: It is a privileged resolution, and the procedure would be for some Member—and the gentleman from Georgia [Mr. Ramspeck] has done so—to make a motion that the House concur in the Senate amendment.

MR. HOFFMAN: And then a vote is taken on the motion?

THE SPEAKER PRO TEMPORE: That is correct.

MR. HOFFMAN: Does that require a quorum?

THE SPEAKER PRO TEMPORE: Any action by the House requires a quorum if the one who takes such step raises that question.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. RANKIN: As I understand the situation, whether there is a quorum present or not, unless this amendment

is agreed to the resolution does not become final until this amendment is disposed of. That is correct, is it not?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

### ***Procedure Leading to Correction of Error in Senate Amendment***

#### **§ 5.63 A concurrent resolution may authorize the Secretary of the Senate to reengross the amendment of the Senate to a House bill and make a correction in such reengrossment.**

On June 27, 1951,<sup>(1)</sup> the following occurred on the floor of the House:

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (S. Con. Res. 35) ordering the reengrossment of the Senate amendment to H.R. 3880, the independent offices appropriation bill for 1952.

The Clerk read the concurrent resolution, as follows:

*Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate be, and he is hereby, authorized and directed to reengross the amendments of the Senate to the bill (H.R. 3880) making appropriations for the Executive Office and sundry independent execu-*

tive bureaus, boards, commissions, corporations, agencies, and offices for the fiscal year ending June 30, 1952, and for other purposes; and to reengross Senate amendment numbered 79 so as to read as follows:

On page 35, line 23, strike out "\$875,163,335" and insert "\$873,105,770."

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from Texas?

MR. [JOHN] PHILLIPS [of California]: Mr. Speaker, reserving the right to object, will the gentleman from Texas [Mr. Thomas] please explain the reason for the request on the part of the other body?

MR. THOMAS: Mr. Speaker, this resolution authorizes reengrossment of amendment No. 79 of the independent offices appropriation bill. It all adds up to this: Apparently the other body has made a mistake in printing or engrossing this amendment. Amendment No. 79 deals with salaries and expenses for the Veterans' Administration. What happened was that they show a reduction in that appropriation of about \$1,200,000 more than the figure actually agreed upon by the Senate.

### **§ 6. —Amending Senate Amendments; Degree of Amendment**

When amending a Senate amendment the House need not confine itself within the limits set

1. 97 CONG. REC. 7254, 82d Cong. 1st Sess.

2. Sam Rayburn (Tex.).

by its bill and the Senate amendment,<sup>(3)</sup> but the House amendment must be germane to the Senate amendment and not merely to the provisions of the House bill.<sup>(4)</sup>

A House bill with a Senate amendment is considered as the original text of a Senate proposal, according to Jefferson's Manual.<sup>(5)</sup> Therefore, an amendment of the House to a Senate amendment to a House bill is an amendment in the first degree which may be amended further by the Senate. However, a House amendment to this further Senate amendment would be in the third degree and therefore not in order.<sup>(6)</sup>

The principle set forth in Jefferson's Manual<sup>(7)</sup> touching on the permissible degree of amendments between the Houses is as follows:

"A bill originating in one House is passed by the other with an amendment.

"The originating House agrees to their amendment with an amendment. The other may agree to their amendment with an amendment, that being only in the second and not the third degree; for, as to the amending House, the first amendment with which they passed the bill is a part of its text. It is the only text they have agreed to. The amendment to that text by the originating House therefore is only in the first degree, and the amendment to that again by the amending House is only in the second degree, to wit, an amendment to an amendment and so admissible."

The proscription against extending the amendment process beyond the second degree may be waived in the House by a special rule, a motion under the suspension procedure, or unanimous consent.<sup>(8)</sup>

3. 8 Cannon's Precedents § 3189, cited at § 6.12, *infra*.

4. See §§ 6.13–6.16, *infra*.

5. *House Rules and Manual*, Jefferson's Manual § 529 (1997). See § 6.3, *infra*, especially the *Parliamentarian's Note*, for a discussion of the degree of amendments between the Houses and within a particular House.

6. See §§ 6.4, 6.5, *infra*.

7. *House Rules and Manual* § 529 (1997).

### *Immediate Consideration of Senate Amendment to House Substitute for Senate Measure*

#### **§ 6.1 Senate amendments to a House amendment in the nature of a substitute for a Senate bill which do not**

8. See §§ 6.5–6.11, *infra*.

**require consideration in a Committee of the Whole may be called up and be at once disposed of as the House may determine pursuant to Rule XXIV clause 2.**<sup>(9)</sup>

On Aug. 30, 1960,<sup>(10)</sup> Mr. Oren Harris, of Arkansas, was recognized by Speaker Sam Rayburn, of Texas:

Mr. Speaker, I call up from the Speaker's desk the bill (S. 1898) to amend the Communications Act of 1934 with respect to the procedure in obtaining a license and for rehearings under such act, with Senate amendments thereto to the House amendments, and ask for its immediate consideration.

After the Clerk read the Senate amendments, Mr. Harris offered the following motion:

Mr. Harris moves that the House concur in the Senate amendments to the House amendments. . . .

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HALLECK: I would like to know what the request of the gentleman was, whether it was for the immediate consideration of the Senate amendments.

9. *House Rules and Manual* § 882 (1997).

10. 106 CONG. REC. 18357, 18358, 86th Cong. 2d Sess.

THE SPEAKER: The gentleman called up from the Speaker's table a Senate bill with Senate amendments to the House amendments. . . .

MR. HALLECK: I might say to the gentleman, as I understand under the parliamentary situation, it is now a matter before the House to be acted upon one way or the other and that no objection could be made. I have learned since the gentleman called it up that the members on my side on the committee were consulted with reference to this procedure, and as I understand have no objection to it now.

### *Suspension of the Rules*

**§ 6.2 The House adopted a motion to suspend the rules and agree to a resolution which provided for taking a House bill with a Senate amendment from the Speaker's table and agreeing to the Senate amendment with a designated amendment.**

On Oct. 14, 1972,<sup>(11)</sup> Mr. Harold T. Johnson, of California, was recognized to offer the following motion:

Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1166) providing for concurring the Senate amendment to H.R. 16071, to amend the Public Works and Economic

11. 118 CONG. REC. 36477-83, 92d Cong. 2d Sess.

Development Act of 1965, with an amendment.<sup>(12)</sup>

After the motion was read and debated, Speaker Carl Albert, of Oklahoma, put the question thereon:

The question is on the motion offered by the gentleman from California (Mr. Johnson) that the House suspend the rules and pass House Resolution 1166. . . .

The question was taken; and there were—yeas 155, nays 64, not voting 212. . . .

So the resolution was agreed to.

### *Degree of Amendment*

#### **§ 6.3 Where a bill of one House is passed in the other House with an amendment,<sup>(13)</sup> the originating House may concur therein with an amendment, whereupon the second**

12. H. Res. 1166 provided for concurring in the Senate amendment with a lengthy amendment in the nature of a substitute. The proposed amendment was included in the text of H. Res. 1166.

13. Jefferson's Manual states that when calculating the degree of amendments between the Houses, an amendment of one House resulting from its initial consideration of a bill of the other House is not considered an amendment, but is construed to be the original text of the amending House. *House Rules and Manual* § 529 (1997).

**House may concur with still another amendment; but here the process stops, for a further amendment between the Houses would be in the third degree.**

On June 17, 1959,<sup>(14)</sup> Mr. Oren Harris, of Arkansas, called up the conference report in total disagreement on S. 1, to amend the Federal Airport Act. After the Clerk read the conference report, Speaker Sam Rayburn, of Texas, directed the Clerk to read the amendment in disagreement.

The Clerk read as follows:

*Resolved*, That the Senate recede from its disagreement to the amendment of the House of Representatives to the above-entitled bill and agree to the same with an amendment. . . .

After the reading of the Senate amendment to the House amendment in the nature of a substitute to S. 1, the Speaker again recognized Mr. Harris.

MR. HARRIS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Harris moves to concur in the Senate amendment with an amendment. . . .

*Parliamentarian's Note:* After Mr. Harris offered his motion to

14. 105 CONG. REC. 11108, 86th Cong. 1st Sess.



concur with an amendment in the Senate amendment to the House amendment to the Senate bill, an issue arose concerning the possibility of introducing a substitute for Mr. Harris' motion. The Speaker indicated erroneously that such a substitute would be in the third degree, and hence not in order. The Speaker did indicate correctly, however, that the substitute would be in order if Mr. Harris' motion were defeated. Amendments between the Houses may not go beyond the second degree, nor may they do so internally within either House. However, an amendment pending in one House to the original text of the other House or to an amendment in the first degree of that other House, may itself be amended to the second degree. *Contra*, 5 Cannon's Precedents § 6176 (Senate precedent).

**§ 6.4 Where a Senate amendment to a House bill had been reported from conference in disagreement and the Senate had amended a further House amendment thereto, motions in the House to agree or disagree to the Senate amendment to the House amendment are privileged in the House (the stage**

**of disagreement having been reached on the initial Senate amendment); but in response to a parliamentary inquiry, the Chair implied that a motion to concur with a further amendment would be in the third degree and not in order.**

On Oct. 18, 1973,<sup>(15)</sup> Mr. Carl D. Perkins, of Kentucky, offered the following motion:

Mr. Speaker, I move to take from the Speaker's desk the bill (H.R. 9639) to amend the National School Lunch and Child Nutrition Acts for the purpose of providing additional Federal financial assistance to the school lunch and school breakfast programs, with a Senate amendment to the House amendment to the Senate amendment No. 5 thereto, and concur in the Senate amendment No. 5. . . .

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman will state it.

MR. QUIE: Mr. Speaker, since the House has already adopted the conference report and since the other body added an amendment afterward when they adopted the conference report, is there anything we can do other than defeat the motion before us? Is there any way we can have a separate amendment to strike out?

15. 119 CONG. REC. 34699, 93d Cong. 1st Sess.

16. Carl Albert (Okla.).

THE SPEAKER: The House can either accept or reject the Senate amendment.

### *Third Degree by Special Order*

#### **§ 6.5 A special order can make in order the consideration of amendments in the third degree as a way of resolving differences on amendments in disagreement between the House and Senate.**

The special order in this instance made it in order in the House to consider motions to concur in Senate amendments to House amendments to a Senate amendment in disagreement between the Houses, with further amendments. In this situation,<sup>(17)</sup> the amendments in the third degree were spelled out in the report of the Committee on Rules, and the resolution provided for one hour of debate on each motion and ordered the previous question, without intervening motion, to prevent other amendments.

MR. [BART] GORDON [of Tennessee]: Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 260 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

<sup>17</sup>. See 139 CONG. REC. 23061, 103d Cong. 1st Sess., Sept. 29, 1993.

#### H. RES. 260

*Resolved*, That upon the adoption of this resolution it shall be in order, any rule of the House to the contrary notwithstanding, to take from the Speaker's table the bill (H.R. 2493) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1994, and for other purposes, with the Senate amendments to the House amendments to the Senate amendments numbered 29 and 164 thereto, and to consider: (1) a motion that the House concur in the Senate amendment to the House amendment to the Senate amendment numbered 29 with the amendment printed in section 2 of this resolution; and (2) a motion that the House concur in the Senate amendment to the House amendment to the Senate amendment numbered 164 with the amendment printed in section 3 of this resolution. Each Senate amendment shall be considered as read. Each motion shall be debatable for one hour, equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The previous question shall be considered as ordered on each motion to final adoption without intervening motion.

SEC. 2. The House amendment to the Senate amendment to the House amendment to the Senate amendment numbered 29 is as follows: In the matter proposed to be added by the Senate amendment, insert after the word "operations" the following: ", except for marketing year 1993".

After debate, the resolution was agreed to. The two motions permitted by the rule were debated and agreed to.

***Third Degree Amendments Between the Houses***

**§ 6.6 Example of a special order providing that on its adoption, the House shall be considered to have receded from its disagreement to a third degree Senate amendment to a House amendment to a Senate amendment, and concurred in the final Senate amendment with a new House amendment.**

In the 99th Congress,<sup>(18)</sup> the Committee on Rules reported several “hereby” resolutions, designed to accomplish a legislative objective by their adoption rather than making in order motions to accomplish the same result.

The special order on this occasion<sup>(19)</sup> permitted the House to dispose of an amendment between the Houses by a further amendment in the third degree.

Proceedings were as indicated below:

18. See 131 CONG. REC. 4347, 4361, 99th Cong. 1st Sess., Mar. 5, 1985 (H. Res. 92); 132 CONG. REC. 3783, 99th Cong. 2d Sess., Mar. 6, 1986 (H. Res. 390); 132 CONG. REC. 29608, 99th Cong. 2d Sess., Oct. 8, 1986.

19. 132 CONG. REC. 3783, 99th Cong. 2d Sess., Mar. 6, 1986.

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 390, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

*Resolved*, That upon the adoption of this resolution the House shall be considered to have taken from the Speaker's table the bill (H.R. 3128) to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1986 (S. Con. Res. 32, Ninety-ninth Congress), with the Senate amendment to the House amendment to the Senate amendment thereto, to have receded from its disagreement to the Senate amendment, and to have concurred in the Senate amendment with an amendment printed in the *Congressional Record* of March 4, 1986, by Representative Gray of Pennsylvania.

THE SPEAKER:<sup>(20)</sup> The gentleman from South Carolina [Mr. Derrick] is recognized for 1 hour.

MR. DERRICK: Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Tennessee [Mr. Quillen], and pending that, I yield myself such time as I may consume.

After debate, the resolution was agreed to.

Since the special resolution was drafted as a “self-executing” motion, its adoption concluded the disposition of the amendment.

20. Thomas P. O'Neill, Jr. (Mass.).

*Disposing of Amendments in Third Degree and Beyond*

§ 6.7 A motion in the House to concur in a Senate amendment (even in the fourth degree) is privileged if offered by any Member, the stage of disagreement having been reached, but is subject to a motion to table.

On Mar. 18, 1986,<sup>(1)</sup> the House considered a series of motions dealing with the final amendment in disagreement on H.R. 3128, the deficit reduction amendments of 1985.

The admonition in section 526 of Jefferson's Manual is not an absolute prohibition against amendments between the Houses progressing beyond the second degree. The rationale for the limit on amendments is that it provides a procedural signal that it is time to compromise. Once that threshold has been passed, where the House has waived the rule to amend in the third degree and the Senate has done likewise, no point of order lies in the House against a privileged motion to agree to the Senate amendment.

1. 132 CONG. REC. 5195, 5205, 5206, 5210, 5216, 5217, 99th Cong. 2d Sess.

When the Speaker recognized Mrs. Lynn Martin, of Illinois, to offer the initial motion to concur in the fourth degree Senate amendment, the proceedings were as follows:

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate agrees to the amendment of the House to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3128) "An Act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process," with an amendment. . . .

DEFICIT REDUCTION AMENDMENTS OF 1985

MRS. MARTIN of Illinois: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mrs. Martin of Illinois moves to take from the Speaker's table the bill, H.R. 3128, with the Senate amendment to the House amendment to the Senate amendment to the House amendment to the Senate amendment thereto, and to concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment to the House

2. William V. Alexander (Ark.).

amendment to the Senate amendment, as follows:

In lieu of the matter proposed to be inserted by the said amendment, insert:

*In section 4016, insert "or seasonal suspension" after "adjustment in frequency"; and insert "adjustment or" after "service unless such".*

*In subparagraph (F)(ii) of paragraph (10) of section 204(b) of the Magnuson Fishery Conservation and Management Act, as proposed to be amended by section 6021, strike out "from such nations". . . .*

THE SPEAKER PRO TEMPORE: The gentlewoman from Illinois [Mrs. Martin] will be recognized for 30 minutes and the gentleman from Pennsylvania [Mr. Gray] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mrs. Martin]. . . .

MR. [WILLIAM H.] GRAY [III] of Pennsylvania: Mr. Speaker, I would inquire of the gentlewoman from Illinois how many speakers the gentlewoman has remaining.

THE SPEAKER PRO TEMPORE: Under the rules, the gentlewoman from Illinois [Mrs. Martin] is entitled to close the debate.

MRS. MARTIN of Illinois: I will be closing, Mr. Speaker. That will be the last speaker, Mr. Speaker. . . .

Please vote to concur and not to table.

I yield back the balance of my time.

MOTION TO TABLE OFFERED BY MR. GRAY  
OF PENNSYLVANIA

MR. GRAY of Pennsylvania: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Gray of Pennsylvania moves to table the motion to concur.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Pennsylvania [Mr. Gray] to table the motion to concur offered by the gentlewoman from Illinois [Mrs. Martin].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MRS. MARTIN of Illinois: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 217, nays 192, not voting 25. . . .

### *Instance Where House Agreed to Amendment in Third Degree Between the Houses*

**§ 6.8 Instance where, by unanimous consent, the House agreed to an amendment in the third degree to a Senate amendment.**

In the 95th Congress, on Sept. 30, 1977,<sup>(3)</sup> the House by unanimous consent, took from the Speaker's table a House bill, with a Senate amendment to the House

3. 123 CONG. REC. 31704, 31705, 95th Cong. 1st Sess.

amendment to the Senate amendment and concurred therein with a further amendment. The request by the bill manager is shown below.

AUTHORIZING APPROPRIATIONS FOR  
TERRITORIES OF THE UNITED STATES

MR. PHILLIP BURTON [of California]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6550) to authorize certain appropriations for the territories of the United States, to amend certain acts relating thereto, and for other purposes, with a Senate amendment to the House amendment to the Senate amendment No. 10 thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(4)</sup> The Clerk will report the Senate amendment to the House amendment to the Senate amendment No. 10. . . .

The Clerk will report the House amendment to the Senate amendment to the House amendment to Senate amendment No. 10.

The Clerk read the House amendment to the Senate amendment to the House amendment to Senate amendment No. 10, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: . . .

MR. DON H. CLAUSEN [of California]: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

*Amendment in Third Degree  
Between Houses*

**§ 6.9 The stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House, by motion, receded from its last amendment and, having receded, then concurred in the Senate amendment with a different amendment.**

The proceedings of Oct. 12, 1977,<sup>(5)</sup> relating to Senate amendment 82, reported in disagreement from the conference on H.R. 7555, the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, show one method which has been used on rare occasions when the House was faced with a problem of an amendment in the third degree. The Parliamentarian's note which follows the Record proceedings provides some historical insight into this rarely used practice.

4. Thomas P. O'Neill, Jr. (Mass.).

5. 123 CONG. REC. 33445, 33447, 33448, 33454, 95th Cong. 1st Sess.

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I call up the conference report on Senate amendment No. 82 to H.R. 7555 making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies for the fiscal year ending September 30, 1978, and for other purposes.

The Clerk read the title of the bill.

(For conference report and statement, see proceedings of the House of August 2, 1977.)

After the conference report was agreed to, the remaining Senate amendment in disagreement was reported:

THE SPEAKER:<sup>(6)</sup> The Clerk will report the House amendment to the Senate amendment.

The Clerk read as follows:

House amendment to Senate amendment No. 82: Insert the following:

SEC. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Motion offered by Mr. Flood: Mr. Flood moves that the House recede from its amendment to the amendment of the Senate numbered 82.

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6. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) and the gentleman from Illinois (Mr. Michel) will be recognized for 30 minutes each.

The Chair recognizes the gentleman from Pennsylvania (Mr. Flood).

MR. FLOOD: . . . The House conferees suggested new language to accommodate the view of the Senate, especially the many Senators who were concerned over rape and incest, but again this proposal was rejected.

At this point it became very apparent that nothing could be accomplished by further conference and the conferees decided to report that they could not agree.

Mr. Speaker, if the motion I just offered is agreed to, I shall then offer the following language:

SEC. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. This section does not prohibit payment for medical procedures, nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

We hope the Senate will accept this language today and clear this bill for the President. I would urge the Members to vote for the pending motion and to vote for the motion which I shall offer if the pending motion is agreed to. . . .

Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Pennsylvania (Mr. Flood).

The question was taken; and on a division (demanded by Mr. Bauman) there were—yeas 80, nays 62.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 209, nays 206, not voting 19 . . .

So the motion [to recede] was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Flood moves that the House concur in the amendment of the Senate numbered 82 with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert the following:

SEC. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term. This section does not prohibit payment for medical procedures, performed before the fact of pregnancy is established, necessary for the prompt treatment of the victims of forced rape or incest reported to a law enforcement agency. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures nec-

essary for the termination of an ectopic pregnancy.

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) and the gentleman from Illinois (Mr. Michel) are recognized for 30 minutes each.

The Chair recognizes the gentleman from Pennsylvania (Mr. Flood). . . .

MR. FLOOD: Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> The question is on the motion offered by the gentleman from Pennsylvania (Mr. Flood).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 263, nays 142, answered “present” 1, not voting 28.

*Parliamentarian's Note:* Section 526 of Jefferson's Manual, states as a principle of parliamentary law that the House may not recede from or insist on its own amendment with a further amendment.

7. John Brademas (Ind.).



The precedents cited there (5 Hinds' Precedents §§ 6216–6218) all involved situations where the Speaker ruled that the House could not, in a single motion, recede from its amendment with an amendment. The more recent practice in the House has been to permit the two-step approach suggested in 8 Cannon's Precedents § 3199, on the theory that a motion to recede from a House amendment and concur in the Senate amendment was divisible, and that if the question were divided and the House receded from its amendment, the Senate amendment was not thereby agreed to but that a further motion to concur with an amendment could be offered.

*Senate Action When Faced With Amending in Third Degree*

**§ 6.10 Instance where the Senate, faced with a situation where any further amendment between the Houses on an amendment in disagreement would be in the third degree, adopted a unanimous consent agreement to permit it to recede from its last amendment and, if that mo-**

**tion were agreed to, to concur with a new amendment.**

On Nov. 29, 1977,<sup>(8)</sup> a unanimous-consent request relating to an amendment in the third degree was made in the Senate, as indicated below:

MR. ROBERT C. BYRD [of West Virginia]: Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 7555.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 82 to the bill (H.R. 7555) entitled "An Act making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1978, and for other purposes."

MR. ROBERT C. BYRD: Mr. President, anent the unanimous-consent agreement that was entered into a moment ago with respect to the message from the House of Representatives on H.R. 7555, I ask unanimous consent that at 3:55 p.m. today the distinguished Senator from South Carolina be allowed to make a motion to recede with respect to the Senate amendment to the House amendment, which motion shall be decided without debate, and if that motion is agreed to Mr. Brooke will then

8. 123 CONG. REC. 37981, 37982, 95th Cong. 1st Sess.

be allowed to move to concur in the House amendment with an amendment.

THE PRESIDING OFFICER: Is there objection?

Without objection, it is so ordered.

In 1977, the bill H.R. 7555, making appropriations for the Departments of Labor and Health, Education, and Welfare never did become law. The dispute between the House and Senate over Senate amendment 82, dealing with the restriction of funds for abortions, could not be resolved and remained in disagreement at *sine die* adjournment.

### *Amendment Between Houses in Third Degree*

**§ 6.11 On occasion, by unanimous consent, the House progresses to a third degree amendment—in this instance by amending a Senate amendment to a House amendment to a Senate amendment to a House bill.**

The proceedings excerpted from the Record of Dec. 19, 1979,<sup>(9)</sup> and carried here are self-explanatory but illustrate the type of request that is sometimes entertained to

9. 125 CONG. REC. 36903, 36906, 96th Cong. 1st Sess.

expedite consideration of a measure and avoid the time delays involved in the various steps required to proceed through a conference.

MR. [FERNAND J.] ST GERMAIN [of Rhode Island]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 4998) to amend the Federal Reserve Act to require that detailed minutes of Federal Open Market Committee meetings shall be published on a deferred basis, with a Senate amendment to House amendments to Senate amendments, and concur in the Senate amendment to House amendments to Senate amendments with an amendment.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Clerk will report the Senate amendment to House amendments to Senate amendments and the proposed House amendment.

The Clerk read as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate amendment to the text of the bill, insert: . . .

[The Senate amendment was reported.]

The House amendment to the Senate amendment in the second degree was as follows:

SEC. 106. The President shall convene an interagency task force consisting of the Secretary of the Treasury, the Secretary of Housing and Urban Development, the Federal Home Loan Bank Board, the Board of

10. Joseph G. Minish (N.J.).

Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the National Credit Union Administration Board. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

A motion to reconsider was laid on the table.

### *Scope of Amendment*

**§ 6.12 In amending a Senate amendment to an appropriation bill, reported from conference in disagreement, the House is not confined within the limits of amount set by the original bill and the Senate amendment.**

On May 15, 1940,<sup>(11)</sup> the House was considering the amendments in disagreement to H.R. 8202, the agriculture appropriation bill. Mr. Clarence Cannon, of Missouri, offered a motion to recede and concur with an amendment.

The Clerk read as follows:

Mr. Cannon of Missouri moves that the House recede from its disagreement to the amendment of the Senate No. 110 and agree to the same with an amendment as follows: In lieu of the sum of \$40,000,000 named

in said amendment insert "\$100,000,000."

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make the point of order that this amount exceeds the amount carried in the Senate amendment and is not in order at this time.

MR. CANNON of Missouri: Mr. Speaker, the only requirement is that it be germane, and this is certainly germane to the Senate amendment to which it is offered. The gentleman's point of order is not well taken.

THE SPEAKER:<sup>(12)</sup> The point of order raised by the gentleman from New York [Mr. Taber] has heretofore been very thoroughly passed upon. The Chair cites section 3189, of Cannon's Precedents, volume 8:

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

The Chair therefore overrules the point of order.

### *Amendment to Senate Amendment Must Be Germane*

**§ 6.13 A motion to recede from disagreement to a Senate amendment and to concur therein with a further amendment must be germane to the Senate amendment; and the proper rule to cite in expressing a point of order that the test has not been met is Rule XVI clause 7, and**

11. 86 CONG. REC. 6184, 6185, 76th Cong. 3d Sess.

12. William B. Bankhead (Ala.).

**not the more complicated mechanism of Rule XXVIII clause 5.**

On June 30, 1987,<sup>(13)</sup> during consideration of the supplemental appropriation bill for fiscal year 1987, Mr. Bill Frenzel, of Minnesota, raised a point of order against the motion offered by Chairman Jamie L. Whitten, of Mississippi, to recede and concur with an amendment in one of the Senate amendments reported from conference in disagreement.

The proceedings were as shown:

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 5: Page 3, after line 7, insert:

ADMINISTRATIVE PROVISION

Notwithstanding any other provision of law, none of the funds appropriated for fiscal year 1987 shall be used for the purpose of granting any patent for vertebrate or invertebrate animals, modified, altered, or in any way changed through engineering technology, including genetic engineering.

MOTION OFFERED BY MR. WHITTEN

MR. WHITTEN: Mr. Speaker, I offer a motion.

13. 133 CONG. REC. 18294, 18295, 100th Cong. 1st Sess.

14. Daniel R. Glickman (Kans.).

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 5 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

ECONOMIC DEVELOPMENT  
ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE  
PROGRAMS

Not to exceed \$14,100,000 appropriated and available for obligation and expenditure under section 108(a)(1) of Public Law 99-190, as amended, shall remain available for obligation through September 30, 1988: *Provided*, That the Economic Development Administration shall close out the audits concerning grants to New York, New York pursuant to title I of the Local Public Works Capital Development and Investment Act of 1976, not later than August 1, 1987.

PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

None of the funds appropriated by this or any prior Act to the Patent and Trademark Office shall be used to purchase the mass storage requirement (PTO-10) portion of the U.S. Patent and Trademark Office Automation Project.

POINT OF ORDER

MR. FRENZEL: Mr. Speaker, I make a point of order against Senate amendment No. 5.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. FRENZEL: Mr. Speaker, I make a point of order against [the proposed House amendment to] amendment No. 5 reported in disagreement of the supplemental appropriation conference report on page 13 of the report, and on page 3 lines 19 through 23 of the printed bill now before us which relates to procurement by the U.S. Patent and Trademark Office automation project pursuant to rule XXVIII, clause 5(a)(1). This rule relates to nongermane matter in amendments in disagreement.

As I interpret it, the rule states that any matter introduced as a new issue in a conference committee which would have been otherwise ruled out of order if it came before the House, would likewise be made eligible for a point of order as reported in amendments in disagreement from the conference committee should there be a motion from the House to recede from its disagreement with the Senate. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota [Mr. Frenzel] is raising a point of order against the motion, is that correct as being not germane to the Senate amendment under rule XVI, clause 7?

MR. FRENZEL: Yes, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Does anybody else desire to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Smith] concedes the point of order and the point of order is sustained against the motion.

### *Proper Time To Raise a Point of Order That Senate Amendment Is Not Germane*

**§ 6.14 Pending a unanimous-consent request to concur with an amendment in a Senate amendment, no point of order lies against the Senate amendment on the ground it is not germane.**

In response to a parliamentary inquiry, the Speaker Pro Tempore<sup>(15)</sup> explained the alternatives available to a Member where a unanimous-consent request was pending to take H.R. 5398, the Emergency Homeowners' Relief Act, to which the Senate had appended an amendment that was not germane, from the table and concur with a further amendment.<sup>(16)</sup>

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5398) to authorize temporary assistance to help defray mortgage payments on homes owned by persons who are temporarily unemployed or underemployed as the result of adverse economic conditions, with a Senate amendment thereto, as printed in the *Congressional Record* dated June 25,

15. John J. McFall (Calif.).

16. 121 CONG. REC. 20977, 20979, 20980, 94th Cong. 1st Sess., June 26, 1975.

1975, at pages 20794–97, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Strike out all after the enacting clause and insert the following:

SHORT TITLE

SECTION 1. That this Act may be cited as the “Emergency Housing Act of 1975” . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the House amendment to the Senate amendment.

The Clerk read the House amendment to the Senate amendment, as follows:

Section 203, strike the whole section and renumber accordingly.

Section 205, strike the whole section and renumber accordingly.

Section 303, insert a new section 303.

SEC. 303. Section 202(b) of the Flood Disaster Protection Act of 1973 is amended by inserting before the period at the end thereof a comma and the following: “except that the prohibition contained in this sentence shall not apply to any loan made prior to January 1, 1976, to finance the acquisition of a previously occupied residential dwelling”.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Wisconsin (Mr. Reuss)? . . .

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, I would like to ask the Chair whether or not there is any way an individual Member can attack the nongermaneness of that particular amendment, or is it included in the unanimous-consent request, which would mean that one would have to object to the request in order to request a division on the nongermane provisions.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman, in answer to his parliamentary inquiry, that it is all under one unanimous-consent request; it is all one package.

MR. BAUMAN: But the gentleman could withdraw from his request concerning that amendment, could he not?

THE SPEAKER PRO TEMPORE: If there was an objection, the gentleman then could ask unanimous consent for something else. That is correct.

*Amendments to Senate Amendments to Appropriation Bills; Germaneness Requirements*

**§ 6.15 Senate amendments proposing legislation on an appropriation bill may be amended by germane amendments.**

On June 15, 1943,<sup>(17)</sup> the House was considering the amendments in disagreement to H.R. 1648, Treasury and Post Office appropriations for 1944. A motion offered by Mr. Louis Ludlow, of

17. 89 CONG. REC. 5899, 5900, 78th Cong. 1st Sess.

Indiana, to recede and concur was divided on demand of Mr. John Taber, of New York, and the House voted to recede. Mr. Frank B. Keefe, of Wisconsin, then offered a preferential motion to concur with an amendment which included a provision prohibiting the use of funds for certain purposes after Jan. 1, 1944. Mr. Emmet O'Neal, of Kentucky, then raised a point of order:

Mr. Speaker, I make the point of order that the amendment is not germane to the paragraph under discussion. It goes beyond the matters considered in the paragraph.

MR. LUDLOW: I supplement that with the suggestion, Mr. Speaker, also that it is legislation on an appropriation bill.

THE SPEAKER:<sup>(18)</sup> But the Senate amendment is legislation on an appropriation bill, or the matter would not be here. The only difference that the Chair can see is that there is a further proviso—a difference in the date.

MR. O'NEAL: Which is beyond the scope of the paragraph and, therefore, is not germane. . . .

THE SPEAKER: The Chair has great respect for the opinion of the gentleman from Kentucky upon this and all other matters, but he cannot agree with the point that the gentleman makes. The only difference that the Chair can see between the motion of the gentleman from Wisconsin, and what was in the House bill and is now in the bill as

it comes from the Senate is fixing the dates January 1, 1944, and June 30, 1944. The Chair, therefore, overrules the point of order.

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

On Feb. 8, 1937,<sup>(19)</sup> the House was considering amendments in disagreement to H.R. 3587, a deficiency appropriation bill. A motion was offered by Mr. Clifton A. Woodrum, of Virginia, to recede and concur in the Senate amendment with an amendment. Mr. Henry Ellenbogen, of Pennsylvania, offered a preferential motion to recede and concur, and Mr. Woodrum demanded a division of that question. The motion to recede was agreed to, whereupon Mr. Woodrum moved to concur in the Senate amendment with an amendment. After the Clerk read Mr. Woodrum's motion, Mr. Ellenbogen rose with a point of order:

<sup>19</sup>. 81 CONG. REC. 975, 976, 75th Cong. 1st Sess.

<sup>18</sup>. Sam Rayburn (Tex.).

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

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> The Chair will state that the Senate amendment is legislation and the amendment to that amendment offered by the gentleman from Virginia is not out of order because it contains legislation. The Chair therefore overrules the point of order.

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

THE SPEAKER PRO TEMPORE: The gentleman will state it.

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

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

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



## B. DISPOSING OF AMENDMENTS BETWEEN THE HOUSES; MOTIONS

### § 7. In General; Precedence

When an amendment of one House is first considered in the other, that body has the opportunity to perfect the amendment by adopting a motion to concur (agree) with an amendment. At this stage, this motion has priority over a motion simply to concur.<sup>(1)</sup> However, when one House informs the other of its disagreement to an amendment of that House, the stage of disagreement is reached,<sup>(2)</sup> the precedence of these motions is reversed, and a motion which tends to bring the two Houses into agreement most promptly (to concur) is preferential.<sup>(3)</sup>

When the stage of disagreement is reached on a particular amendment, that motion which tends most quickly to bring the Houses into agreement is preferential. Thus, where Senate amendments are taken up in the House for the first time (before the stage of disagreement has been reached on those amendments), the motion to

concur with an amendment takes precedence over the motion to concur; but where the stage of disagreement between the two Houses has been reached, the precedence of the motions is reversed and the motion to recede and concur then takes precedence over a motion to recede and concur with an amendment, since such a motion most promptly tends to bring the two Houses together. However, the motion to recede and concur (with or without an amendment) is divisible on demand by any Member,<sup>(4)</sup> and upon such demand the House first votes on the question of receding. If the House votes to recede from its disagreement, a motion to concur with an amendment again takes precedence over a motion to concur.<sup>(5)</sup>

1. § 7.1, *infra*.

2. 6 Cannon's Precedents §§ 756, 757.

3. §§ 7.1, 7.8, *infra*.

4. Rule XVI clause 6, *House Rules and Manual*, § 791 (1997). See §§ 10.10, 10.11, 11.6, 11.7, *infra*.

The propositions which are distinct and hence divisible are first to recede and second to concur (with or without amendment). The motion to concur with an amendment contains one proposition only, and is not divisible. § 11.9, *infra*.

5. § 7.18, *infra*.

Under the earlier practice, the Member<sup>(6)</sup> who offered a motion to dispose of an amendment in disagreement was recognized to control an hour of debate thereon, and he or she could allocate the time at his or her discretion.<sup>(7)</sup> The modern practice is to divide the time, as explained in § 8, *infra*. If this motion is displaced by a preferential motion the proponent of the original motion still controls debate on the preferential motion<sup>(8)</sup> and on the original motion should the preferential motion fail.<sup>(9)</sup>

One House may recede from its amendment to a bill of the other, and that bill is considered as passed.<sup>(10)</sup> However, when the House recedes from an amendment with which it had agreed to a Senate amendment, it does

not thereby agree to the Senate amendment.<sup>(11)</sup>

In the past, one House could recede from its own amendment to a bill of the other after that other House had concurred in the amendment with an amendment,<sup>(12)</sup> but more recently it has been held that the bill is not passed until further action by the House which had concurred in the amendment with an amendment.<sup>(13)</sup>

When the House recedes from its disagreement to a Senate amendment, such amendment is not thereby agreed to, as a motion to concur with an amendment is still in order.<sup>(14)</sup> The House may not recede from its own amendment with an amendment.<sup>(15)</sup>

Although it has been held that a negative vote on a motion to recede from disagreement to a Senate amendment is tantamount to

6. Usually the chairman of the committee which considered the legislation, or a Member designated by the chairman, is recognized to offer motions to dispose of amendments in disagreement. See §§ 8.22, 8.23, *infra*.  
7. § 8.5, *infra*.  
8. §§ 8.2, 8.9, 8.15, 8.18, *infra*.  
9. See text accompanying § 8.18, *infra*.  
10. §§ 10.2, 10.3, *infra*. See also Jefferson's Manual, *House Rules and Manual* § 524 (1997).

11. 8 Cannon's Precedents § 3199.

12. 5 Hinds' Precedents § 6226.

13. § 10.9, *infra*; and 8 Cannon's Precedents § 3177.

14. See § 7.18, *infra*; and Jefferson's Manual, *House Rules and Manual* § 525 (1997).

15. Jefferson's Manual, *House Rules and Manual* § 526 (1997); and § 7.24, *infra*. But see § 10.5, *infra*, for special case. See also 5 Hinds' Precedents §§ 6216-6218.

insisting on disagreement to that amendment<sup>(16)</sup> the weight of authority holds that the defeat of a motion to recede or recede and concur is not the equivalent of insisting on disagreement, since the House may also vote to adhere to its disagreement.<sup>(17)</sup>

When both Houses insist and neither of them asks for a conference or recedes, the bill fails.<sup>(18)</sup> When both Houses adhere the bill fails.<sup>(19)</sup> A House may recede from adherence<sup>(20)</sup> or reconsider its adherence.<sup>(1)</sup>

### *Stage of Disagreement as Affecting Precedence*

**§ 7.1 Where the House has receded from its disagreement to a Senate amendment and has then concurred therein with an amendment, it was held in the Senate that a motion to concur in the House amendment with a further amendment took**

16. § 10.24, *infra*.

17. §§ 10.29, 12.5, 12.8, *infra*.

18. 5 Hinds' Precedents § 6228.

19. *Id.* at §§ 6163, 6313, 6324, 6325.

20. *Id.* at §§ 6252, 6401.

1. *Id.* at § 6253.

### **precedence over a pending motion to concur.**

On Dec. 30, 1970,<sup>(2)</sup> the Senate was considering House action on Senate amendments to H.R. 17867, foreign assistance appropriations for fiscal 1971.

MR. [GALE W.] MCGEE [of Wyoming]: Mr. President, amendment No. 19 is the one that relates to foreign military credit sales. The House has concurred in a motion by the Chairman of the House managers to recede from its disagreement to the amendment of the Senate, and to concur with an amendment to fix the sum, as the Senate did on foreign military credit sales, at \$200 million.<sup>(3)</sup> . . .

I would, therefore, move that the Senate concur in the amendment of the House to the amendment of the Senate amendment No. 19. . . .

MR. [MICHAEL J.] MANSFIELD [of Montana]: . . . Mr. President, I move that the Senate concur in the House amendment to the Senate amendment numbered 19, with an amendment as follows:

*Provided, however,* That none of these funds may be obligated or ex-

2. 116 CONG. REC. 44116, 44117, 44123, 44124, 91st Cong. 2d Sess.

3. This was a new amendment to Senate amendment No. 19, and was being considered for the first time in the Senate. Thus, the stage of disagreement on this particular amendment to Senate amendment No. 19 had not yet been reached.

pending until an authorization shall have been enacted into law.

THE PRESIDING OFFICER:<sup>(4)</sup> The question is on the amendment. Would the Senator send the motion to the desk?

The motion will be stated.

The assistant legislative clerk read as follows:

That the Senate concur in the House amendment to the Senate amendment numbered 19, with an amendment as follows:

*Provided, however,* That none of these funds may be obligated or expended until an authorization shall have been enacted into law.

MR. MANSFIELD: Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

MR. MCGEE: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. MCGEE: Mr. President, are we dealing with an amendment to the pending motion?

THE PRESIDING OFFICER: The motion of the Senator from Montana is that the Senate concur in the House amendment to the Senate amendment with an amendment.

MR. MCGEE: Mr. President, what I am questioning in a parliamentary sense is the redundancy. Was not my motion the pending motion?

THE PRESIDING OFFICER: The Senator from Montana has offered a motion to concur with an amendment. That takes precedence over a straight motion to concur.

4. Carl T. Curtis (Nebr.).

MR. MCGEE: That still does not address itself to my question. My motion takes precedence as the primary motion. My motion is to concur in the amendment of the House to the amendment of the Senate numbered 19.

THE PRESIDING OFFICER: Should the amendment of the Senator from Montana fail, then we will return to the motion of the Senator from Wyoming. . . .

THE PRESIDING OFFICER:<sup>(5)</sup> The question is on agreeing to the motion of the Senator from Montana (Mr. Mansfield) that the Senate concur in the House amendment to the Senate amendment No. 19, with an amendment.

On this question the yeas and nays have been ordered, and the clerk will call the roll. . . .

The result was announced—yeas 60, nays 12. . . .

So Mr. Mansfield's motion was agreed to.

### *Precedence of Senate Motions*

**§ 7.2 In the Senate, a motion to concur with an amendment in a House amendment to a Senate bill takes precedence over the privileged motion to disagree to the amendment and agree to the conference requested by the House.**

5. Theodore F. Stevens (Alaska).

The proceedings in the Senate on Feb. 1, 1977,<sup>(6)</sup> demonstrate the precedence of motions which are in order under the rules of the Senate before the Senate has reached the stage of disagreement and show that the motion to amend the House amendment is more privileged than the motion to disagree; but the motion to concur is itself subject to the motion to table.

The Chair laid before the Senate the following message from the House:

FEBRUARY 1, 1977.

*Resolved*, That the House insist upon its amendment to the bill (S. 474) entitled "An Act to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

*Ordered*, That Mr. Staggers, Mr. Dingell, Mr. Eckhardt, Mr. Sharp, Mr. Moffett, Mr. Broyhill, and Mr. Brown of Ohio be the managers of the conference on the part of the House. . . .

MR. ROBERT C. BYRD [of West Virginia]: Mr. President, I move that the Senate disagree with the amendment by the House, agree with the request for a conference, and that the Chair

appoint the conferees on the part of the Senate. . . .

THE PRESIDING OFFICER:<sup>(7)</sup> The question is on the motion of the Senator from West Virginia to disagree with the amendment of the House and request a conference with the House. . . .

MR. [EDWARD W.] BROOKE [of Massachusetts]: Mr. President, is an amendment now in order?

THE PRESIDING OFFICER: A motion to concur in the House amendment with an amendment takes precedence over the pending motion. The answer is yes.

MR. BROOKE: All right. Then, Mr. President, I send to the desk an amendment and ask for its immediate consideration.

THE PRESIDING OFFICER: The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. Brooke) proposes an unprinted amendment numbered 20 to the House amendment to the Senate bill. . . .

MR. [ADLAI E.] STEVENSON [III, of Illinois]: . . . So, Mr. President, unless there is anything further to be said, I move to table the amendment.<sup>(8)</sup>

MR. BROOKE: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

7. Dale Bumpers (Ark.).

8. It was the motion to concur with an amendment that was tabled, not just the amendment.

6. 123 CONG. REC. 2948, 2950, 2951, 95th Cong. 1st Sess.

THE PRESIDING OFFICER: The question is on agreeing to the motion to table the amendment of the Senator from Massachusetts. The yeas and nays have been ordered and the clerk will call the roll. . . .

So the motion to lay on the table was agreed to.

MR. ROBERT C. BYRD: Mr. President, I move to reconsider the vote by which the motion was agreed to.

MR. STEVENSON: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE PRESIDING OFFICER: The question recurs on the motion of the Senator from West Virginia.

The motion was agreed to and the Chair appointed Mr. Stevenson, Mr. Hollings, Mr. Johnston, Mr. Pearson, and Mr. Stevens conferees on the part of the Senate.

*Parliamentarian's Note:* The stage of disagreement in either House is not reached until the House in possession of the papers has disagreed with the amendment of the other House (or has insisted on its own amendment to a bill of the other) and has notified the other body of that action. Before the stage of disagreement is reached, the only motion in the House is the one provided in Rule XX clause 1, which permits a motion to disagree to an amendment of the other House and ask or agree to a conference. This motion is in order if the Speaker

in his discretion agrees to recognize for that purpose and if the committee of jurisdiction authorizes the motion to be made.

### *Privilege of Motions Resolving Disagreement*

**§ 7.3 *Parliamentarian's Note:* Once the stage of disagreement has been reached, motions in the House to resolve the matter in disagreement are privileged and do not require unanimous consent for their consideration.**

The proceedings of Nov. 9, 1967,<sup>(9)</sup> demonstrate this principle.

Speaker John W. McCormack, of Massachusetts, recognized Mr. Michael J. Kirwan, of Ohio.

MR. KIRWAN: Mr. Speaker, I call up the bill (H.R. 11641), making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Authority, and the Water Resources Council, for the fiscal year ending June 30, 1968, and for other purposes; with Senate amend-

9. 113 CONG. REC. 31878, 31880, 90th Cong. 1st Sess.

ment No. 2 thereon, and ask for its immediate consideration.

The Clerk read the title of the bill.

The Clerk read the Senate amendment [to the House amendment to Senate amendment number 2], as follows:

Strike out "\$967,599,000" and insert "\$968,474,000".

MR. KIRWAN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Kirwan moves that the House disagree to the amendment of the Senate to the House amendment to Senate amendment No. 2.

MR. [WILLIAM D.] HATHAWAY [of Maine]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Hathaway moves that the House concur in the amendment of the Senate to the House amendment to Senate amendment No. 2.

THE SPEAKER: The gentleman from Ohio [Mr. Kirwan] is recognized for 1 hour.

MR. KIRWAN: Mr. Speaker, I yield 1 minute to the distinguished gentleman from Massachusetts [Mr. Boland]. . . .

Mr. Speaker, I move the previous question on the preferential motion offered by the gentleman from Maine [Mr. Hathaway].

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The question is on the preferential motion offered by the gentleman from Maine [Mr. Hathaway] that the House concur in the amendment of the Senate to the

House amendment to Senate amendment No. 2.

***Precedence of Motions To Dispose of Senate Amendments After the Stage of Disagreement Is Reached***

**§ 7.4 Where the stage of disagreement on a House bill with Senate amendments has been reached and the Senate has then messaged to the House a new amendment to a House amendment to an earlier Senate amendment, a motion to concur in the new amendment is privileged and takes precedence over a motion to disagree and request a further conference.**

Once the stage of disagreement is reached on a House bill and the Senate amendments thereto, motions to dispose of further degrees of amendments on the bill, when before the House, remain privileged, and when a motion is made to dispose of such an amendment, the proponent of the motion is recognized for an hour. Rule XXVIII clause 2(b),<sup>(11)</sup> specifying the division of time between the two parties on "an amendment

10. Charles M. Price (III.).

11. *House Rules and Manual* § 912b (1997).

reported from conference in disagreement" is no longer applicable. An illustration of this practice is shown by the following proceedings:<sup>(12)</sup>

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 9861) making appropriations for the Department of Defense for the fiscal year ending June 30, 1976, and the period beginning July 1, 1976, and ending September 30, 1976, and for other purposes, together with the Senate amendment to the House amendment to the Senate amendment No. 75 thereto, disagree to the Senate amendment to the House amendment to Senate amendment No. 75, and request a conference with the Senate thereon.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to Senate amendment No. 75 as follows:

Strike out "\$205,600,000" and insert: "\$205,600,000, none of which, nor any other funds appropriated in this Act may be used for any activities involving Angola other than intelligence gathering, and which funds are".

PREFERENTIAL MOTION OFFERED BY  
MR. GIAIMO

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, on behalf of the gentleman from New York (Mr. Ad-

12. 122 CONG. REC. 1035, 1036, 1056, 1057, 94th Cong. 2d Sess., Jan. 27, 1976.

dabbo) and myself, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House concur with the Senate amendment to the House amendment to Senate amendment numbered 75.

THE SPEAKER:<sup>(13)</sup> The gentleman from Texas (Mr. Mahon) is recognized for 1 hour. . . .

MR. MAHON: Mr. Speaker, I move the previous question on the preferential motion.

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Connecticut (Mr. Giaimo).

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. GIAIMO: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 323, nays 99, not voting 10. . . .

So the preferential motion was agreed to.

***Stage of Disagreement, Once Reached, Continues as Additional Amendments Are Considered***

13. Carl Albert (Okla.).



§ 7.5 A motion in the House to dispose of a further amendment of the Senate to a House amendment to a Senate amendment, the stage of disagreement having been reached, is privileged.

Where the House, pursuant to a rule, amended a Senate amendment to a House bill, then insisted on its amendment and requested a conference, the stage of disagreement was reached; and when the Senate ignored a request for a conference and sent the House a further amendment to the House amendment to the Senate amendment, the motion to concur in the House was deemed privileged and more preferential than a motion to commit under Rule XVI clause 4.<sup>(14)</sup>

Where the final stage of amendment is reached between the Houses, the motion which tends to bring the matter to closure most quickly is the most preferential.

14. For further discussion, see footnotes in § 10.16, *infra*.

On Sept. 16, 1976,<sup>(15)</sup> when the House had before it the final Senate amendment to the House amendment to the Senate amendment to a House bill, the options available to the House were limited. When the manager of the bill<sup>(16)</sup> moved to concur in the final Senate amendment, a series of inquiries and alternatives were broached, including a specific inquiry regarding the applicability of a motion to refer under Rule XVII<sup>(17)</sup> in the pending situation:

MR. RODINO: Mr. Speaker, I move to take from the Speaker's desk the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with a Senate amendment to the House amendment to the Senate amendments thereto, and concur in the Senate amendment to the House amendment to the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendments, as follows:

In lieu of the matter proposed to be inserted by the House engrossed

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15. 122 CONG. REC. 30868, 30872, 30873, 30887, 30888, 94th Cong. 2d Sess.  
 16. Peter W. Rodino, Jr. (N.J.), Chairman of the Committee on the Judiciary.  
 17. *House Rules and Manual* § 804 (1997).

amendment to the Senate engrossed amendments, insert;

That this Act may be cited as the "Hart-Scott-Rodino Antitrust Improvements Act of 1976". . . .

MR. RODINO (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment be dispensed with.

THE SPEAKER:<sup>(18)</sup> Is there objection to the request of the gentleman from New Jersey?

PARLIAMENTARY INQUIRIES

MR. [ROBERT] MCCLORY [of Illinois]: Mr. Speaker, I have several parliamentary inquiries.

THE SPEAKER: The gentleman will state them.

MR. MCCLORY: Mr. Speaker, is the motion of the gentleman from New Jersey privileged because the stage of disagreement has been reached?

THE SPEAKER: The gentleman is correct.

MR. MCCLORY: Mr. Speaker, my next parliamentary inquiry is, was the stage of disagreement reached when the House insisted on its amendment to the first Senate amendment and requested a conference thereon, even though the Senate had not previously or has not subsequently voted its disagreement?

THE SPEAKER: That is correct.

MR. MCCLORY: Mr. Speaker, my third parliamentary inquiry is this: Is the House still in disagreement even though it has not acted upon the Senate amendment now before the House?

THE SPEAKER: The stage of disagreement is still in effect.

MR. MCCLORY: I thank the Speaker.

THE SPEAKER: Is there objection to the request of the gentleman from New Jersey? . . .

There was no objection.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Rodino moves that the House concur in the Senate amendment to the House amendment to the Senate amendments. . . .

MR. RODINO: Mr. Speaker, I allot myself such time as I may consume. . . .

I move the previous question on the motion.

PARLIAMENTARY INQUIRY

MR. MCCLORY: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCCLORY: Mr. Speaker, in view of the fact that rule XVII states that "It shall be an order—after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee," and in view of the fact that motions to commit are permitted when the stage of disagreement has been reached in the context of the consideration of conference reports, and in view of the fact that prior precedents indicate that a motion to commit is in order after the previous question has been ordered on a motion to concur in a Senate amendment (V, 5575), is it absolutely necessary to first vote down the previous question before I may be recognized to offer a motion to commit?

18. Carl Albert (Okla.).

THE SPEAKER: The answer to the specific question is "yes," but the precedent cited by the gentleman is not applicable in the present situation, since in this case the stage of disagreement has been reached and therefore the pending motion is most preferential as tending to resolve the differences between the House most quickly.

MR. MCCLORY: I thank the Chair. . . .

THE SPEAKER: The question is on ordering the previous question.<sup>(19)</sup>

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

MR. MCCLORY: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 215, noes 177, not voting 38. . . .

**§ 7.6 When a conference report is ruled out of order the prerequisite stage of disagreement continues, the bill and amendments are again before the House, and motions relating to amendments and**

19. If the previous question on Mr. Rodino's motion had been voted down, a motion to refer under Rule XVI clause 4 (*House Rules and Manual* § 782 (1997)) would have been in order. But a motion which would further amend would not have been in order since it would have been in the third degree.

**conference remain privileged.**

On May 22, 1936,<sup>(20)</sup> Speaker Joseph W. Byrns, of Tennessee, sustained a point of order raised by Mr. James P. Buchanan, of Texas, against the conference report on H.R. 9496, a bill to protect the United States against loss suffered in postal delivery of checks for veterans' benefits.

THE SPEAKER: . . . The Clerk will report the first amendment in disagreement.

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

THE SPEAKER: The gentleman will state it.

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

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

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

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

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

20. 80 CONG. REC. 7790-92, 74th Cong. 2d Sess.

THE SPEAKER: The gentleman will state it.

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

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

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

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

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

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

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

The Chair thinks that completely answers the gentleman from Michigan.

MR. MAPES: That seems to cover the matter.

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

THE SPEAKER: The gentleman will state it.

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

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

### *Recognition Following Rejection of Conference Report*

**§ 7.7 Upon rejection of a conference report on a House bill with Senate amendments, the manager is entitled to priority in recognition to offer a motion to dispose of the amendments; and he may move to disagree with all the amendments and request a further conference, although this motion is not of the highest priority.**

On Oct. 20, 1990,<sup>(1)</sup> the House ordered the previous question on, and then rejected, the conference report on H.R. 5311, the District

1. 136 CONG. REC. 31493, 101st Cong. 2d Sess.

of Columbia Appropriations Act, 1991. Control of the floor did not shift in this situation, as shown by the proceedings carried here.

Mr. Frenzel and Mr. Fazio changed their vote from "no" to "aye."

So the conference report was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table. . . .

APPOINTMENT OF CONFEREES ON H.R. 5311, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1991

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I move to insist on the disagreement to all Senate amendments to the bill, H.R. 5311, and request a further conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The question is on the motion offered by the gentleman from California [Mr. Dixon].

The motion was agreed to.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Dixon, Natcher, Stokes . . . and Conte.

There was no objection.

*Parliamentarian's Note:* Chairman Dixon could have been preempted by a more preferential motion. The stage of disagreement having been reached when the House initially disagreed to the Senate amendments and agreed to

2. William H. Gray III (Pa.).

the conference, the following motions are privileged and have the precedence indicated: (1) to recede and concur; (2) to recede and concur with amendment; (3) to insist on disagreement and request a further conference; (4) to insist on disagreement; and (5) to adhere.

***Precedence of Motions Bringing Houses Into Agreement***

**§ 7.8 The stage of disagreement having been reached, that motion that tends most quickly to bring the House into agreement is preferential.**

On Dec. 10, 1963,<sup>(3)</sup> the House was considering the amendments in disagreement to H.R. 8747, appropriations for certain independent offices for fiscal 1964. Speaker John W. McCormack, of Massachusetts, directed the Clerk to read the next amendment in disagreement.

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

The Clerk read as follows:

Senate amendment No. 92: Page 46, line 19, insert: "*Provided further,* That \$1,722,000 shall be used for the sites and planning expenses involved in the construction of a Veterans'

3. 109 CONG. REC. 23950, 23952, 23953, 88th Cong. 1st Sess.

Administration hospital at Bay Pines, Florida.”

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Thomas moves that the House insist upon its disagreement to the amendment of the Senate numbered 92.

MR. [HAROLD C.] OSTERTAG [of New York]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Ostertag moves that the House recede from its disagreement to the amendment of the Senate numbered 92 and concur therein. . . .

THE SPEAKER: The question is on the preferential motion offered by the gentleman from New York [Mr. Ostertag]. . . .

The question was taken; and there were—yeas 171, nays 204, not voting 59. . . .

So the preferential motion was rejected. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Texas [Mr. Thomas].

The motion was agreed to.<sup>(4)</sup>

*Parliamentarian's Note:* In the 103d Congress, a new paragraph was added to Rule XXVIII, clause 2, giving one motion to insist on disagreement to a Senate amendment preferential standing where the original motion offered by the

4. See also 111 CONG. REC. 8861, 8866, 8867, 89th Cong. 1st Sess., Apr. 29, 1965.

floor manager proposes a change in existing law.<sup>(5)</sup> The new rule applies only to amendments in disagreement on a general appropriation bill.<sup>(6)</sup>

### *Consequences of Dividing Motion To Recede and Concur*

§ 7.9 Where a division of the question was demanded on a preferential motion to recede from disagreement and concur in a Senate amendment (offered while a motion to insist was pending), the Speaker indicated: (1) that if the motion to recede were agreed to, a motion to concur with a germane amendment would take precedence over the pending motion to concur; but (2) that if the motion to recede were disagreed to, the question would recur on the initial motion to insist on disagreement to the Senate amendment.

On Aug. 10, 1976,<sup>(7)</sup> when the House had under consideration

5. Rule XXVIII clause 2(b)(2), *House Rules and Manual* § 912c (1997), adopted as part of H. Res. 5, Jan. 5, 1993.

6. See § 12.3, *infra*.

7. 122 CONG. REC. 26781, 26783, 26792, 26793, 94th Cong. 2d Sess.

the final amendment remaining in disagreement following adoption of the conference report on an appropriation bill,<sup>(8)</sup> the manager<sup>(9)</sup> of the bill offered a motion that the House insist on its disagreement. A preferential motion to recede and concur was then offered, followed by a demand that that motion be divided. The proceedings and inquiries are carried below:

THE SPEAKER:<sup>(10)</sup> The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 68: Page 39, line 5, strike out: "Sec. 209. None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions."

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Flood moves that the House insist on its disagreement to the amendment of the Senate numbered 68.

- 
8. H.R. 14232 (Labor and Health, Education, and Welfare appropriations for fiscal 1977).
  9. Daniel J. Flood (Pa.).
  10. Carl Albert (Okla.).

PREFERENTIAL MOTION OFFERED BY  
MR. PRITCHARD

MR. [JOEL] PRITCHARD [of Washington]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Pritchard moves that the House recede from its disagreement to the amendment of the Senate numbered 68 and concur therein.

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, if this is the correct time to make this request, I ask that that question be divided.

THE SPEAKER: The Chair will inform the gentleman that the question will be divided on the preferential motion. . . .

PARLIAMENTARY INQUIRY

MR. [JEROME A.] AMBRO [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. AMBRO: Mr. Speaker, as I understand the situation, the gentleman from Pennsylvania is making a motion to insist on the House language incorporated in the Hyde amendment. The gentleman from Washington (Mr. Pritchard) now asks us to recede and concur with the Senate language.

THE SPEAKER: The gentleman is right.

MR. AMBRO: The gentleman then said that this was divisible, which means that we can take a vote on the motion to recede.

THE SPEAKER: To recede from disagreement to the Senate amendment.

MR. AMBRO: Yes. If the motion to recede passes, can we then go on with a

vote to concur with the Senate language? Is that the next step?

THE SPEAKER: Yes. But if the House recedes, any germane motion to concur with an amendment would be in order before the House votes on the pending motion to concur.

MR. AMBRO: To concur with an amendment will be in order. If the motion to recede fails, is another preferential motion to recede and amend in order?

THE SPEAKER: No.

MR. AMBRO: Do we then move to a vote on the Flood language?

MR. FLOOD: Pro forma.

THE SPEAKER: The gentleman is correct.

MR. AMBRO: That is correct?

THE SPEAKER: Yes.

MR. AMBRO: I thank the Speaker. . . .

MR. FLOOD: Mr. Speaker, I move the previous question on the motion to insist on its disagreement and on the preferential motion.

THE SPEAKER: Without objection, the previous question is ordered.

There was no objection.

#### PARLIAMENTARY INQUIRY

MS. [BELLA S.] ABZUG [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentlewoman will state it.

MS. ABZUG: Mr. Speaker, if as the chairman has indicated he moves the previous question, if one intends to concur with the Senate amendment one would vote "yea" and if one opposes the Senate amendment, which is to eliminate the Hyde amendment, then one would vote "nay." Is that correct?

THE SPEAKER: The question will be on whether the House shall recede

from its disagreement. If the House does not recede, then the motion of the gentleman from Pennsylvania will be voted upon, and then the House could insist on its position and then the matter will go back to the Senate.

#### PARLIAMENTARY INQUIRY

MR. [JOE] SKUBITZ [of Kansas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. SKUBITZ: Mr. Speaker, if the House votes to recede, would a motion have precedence?

THE SPEAKER: A motion will be in order.

MR. SKUBITZ: I thank the Chair.

THE SPEAKER: The question is on the motion offered by the gentleman from Washington (Mr. Pritchard) that the House recede from its disagreement to the amendment of the Senate numbered 68. . . .

So the motion to recede was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is on the motion offered by the gentleman from Pennsylvania (Mr. Flood).

The motion was agreed to.

A motion to reconsider the vote by which action was taken on the several motions was laid on the table.

### *Precedence of Motion To Disagree and Request Further Conference*

**§ 7.10 The stage of disagreement having been reached on a Senate amendment (to which the House has refused**



**to agree), the compound motion to disagree to the Senate amendment and request a further conference takes precedence over the simple motion to disagree to the Senate amendment, since tending to bring the two Houses together.**

The final Senate amendment to the Deficit Reduction Act of 1985 remained in contention between the two Houses. In the House, a motion to table an effort to recede and concur had just been agreed to.

The chairman of the Committee on the Budget,<sup>(11)</sup> then offered a motion to disagree with the final Senate amendment. The proceedings which followed are carried here.<sup>(12)</sup>

So the motion to table [the motion to recede and concur] was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. GRAY OF  
PENNSYLVANIA

MR. GRAY of Pennsylvania: Mr. Speaker, I offer a motion.

11. William H. Gray III (Pa.).

12. 132 CONG. REC. 5218-20, 99th Cong. 2d Sess., Mar. 18, 1986.

PARLIAMENTARY INQUIRY

MR. [TRENT] LOTT [of Mississippi]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The gentleman will state it.

MR. LOTT: Mr. Speaker, I understand the gentleman from Pennsylvania has offered a motion to disagree. My parliamentary inquiry is, would a motion to disagree to the last amendment of the Senate and request a conference thereon be a preferential motion to the motion to disagree, that is, more preferential?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman in the affirmative, that is correct.

MR. LOTT: Then Mr. Speaker, I have a privileged resolution which I send to the desk.

THE SPEAKER PRO TEMPORE: If the gentleman will hold, the Clerk will first report the motion of the gentleman from Pennsylvania.

The Clerk read as follows:

Motion offered by Mr. Gray of Pennsylvania: Mr. Gray of Pennsylvania moves to take from the Speaker's table the bill H.R. 3128 with the Senate amendment to the House amendment to the Senate amendment to the House amendment to the Senate amendment thereto and to disagree to the Senate amendment.

THE SPEAKER PRO TEMPORE: The Chair would advise the Members that this is a very important matter. It is a very detailed parliamentary situation, and I am sure the Members would like

13. William V. Alexander (Ark.).

to know what they are going to be voting on.

PARLIAMENTARY INQUIRY

MR. GRAY of Pennsylvania: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. GRAY of Pennsylvania: Mr. Speaker, which motion was read, was it my motion or that of the gentleman from Mississippi?

THE SPEAKER PRO TEMPORE: The Clerk has just read the motion of the gentleman from Pennsylvania.

The Clerk will now report the preferential motion of the gentleman from Mississippi.

PREFERENTIAL MOTION OFFERED BY  
MR. LOTT

MR. LOTT: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Preferential motion offered by Mr. Lott: Mr. Lott moves to disagree to the last amendment of the Senate and request a conference thereon.

MR. GRAY of Pennsylvania: Mr. Speaker, I move to table the motion.

THE SPEAKER PRO TEMPORE: The Chair would ask which motion, the motion of the gentleman from Mississippi [Mr. Lott]?

MR. GRAY of Pennsylvania: Yes, Mr. Speaker.

Mr. Speaker, I move to table the motion of the gentleman from Mississippi [Mr. Lott].

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Pennsylvania [Mr.

Gray] to table the motion offered by the gentleman from Mississippi [Mr. Lott].

PARLIAMENTARY INQUIRY

MR. LOTT: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. LOTT: As the Chair has stated, this is a complicated parliamentary process we have here.

Mr. Speaker, I would like to make sure that Members understand what they are about to vote on and that I understand what we are about to vote on.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania [Mr. Gray] made a motion to disagree to the Senate amendment. The gentleman from Mississippi [Mr. Lott] made a motion to instruct—excuse the Chair—to disagree to the Senate amendment and to go to conference. The gentleman from Pennsylvania now has moved to lay that on the table. . . .

MR. LOTT: So that we do not send this off into some dark hole, but so that we could have a conference to try to further work out the difficulties.

So my parliamentary inquiry is this: Is the vote at this time then on the motion to table the motion for a conference on this most important reconciliation bill?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. LOTT: So if you vote for the motion to table you are saying you do not even want to go to conference, is that correct?

THE SPEAKER PRO TEMPORE: The regular order is that the gentleman from Pennsylvania has made a motion

to lay on the table the motion of the gentleman from Mississippi, and the question occurs on the motion of the gentleman from Pennsylvania.

PARLIAMENTARY INQUIRY

MRS. [LYNN] MARTIN of Illinois: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentlewoman from Illinois will state it.

MRS. MARTIN of Illinois: Mr. Speaker, I am sure it was the noise of the body, but I did not hear the answer to the question that was posed by the Republican whip.

The question I believe was: When we vote on the motion to table going to conference a "yes" vote to table would mean you did not wish to go to conference on this important item, is that correct?

THE SPEAKER PRO TEMPORE: At this stage that would be an accurate statement.

MRS. MARTIN of Illinois: I thank the Speaker.

THE SPEAKER PRO TEMPORE: The question is on the motion to table offered by the gentleman from Pennsylvania [Mr. Gray].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. LOTT: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 223, noes 186, not voting 25. . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The pending business is the motion offered by the gentleman from Pennsylvania [Mr. Gray] to disagree to the Senate amendment.

The gentleman from Pennsylvania [Mr. Gray] will be recognized for 30 minutes and the gentlewoman from Illinois [Mrs. Martin] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. Gray]. . . .

The question is on the motion offered by the gentleman from Pennsylvania [Mr. Gray].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. GRAY of Pennsylvania: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 331, nays 76, not voting 27. . . .

***Motion To Concur and Motion To Disagree***

§ 7.11 **A motion that the House concur in a Senate amendment to a House amendment to an amendment of the Senate (in disagreement between the two Houses) takes precedence over a motion to disagree to the Senate's amendment.**

On Nov. 9, 1967,<sup>(14)</sup> the House was considering a [new] Senate amendment to a House amendment to a Senate amendment to H.R. 11641, civil functions appropriations for 1968. Speaker John W. McCormack, of Massachusetts, recognized Mr. Michael J. Kirwan, of Ohio.

MR. KIRWAN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Kirwan moves that the House disagree to the amendment of the Senate to the House amendment to Senate amendment No. 2.

MR. [WILLIAM D.] HATHAWAY [of Maine]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Hathaway moves that the House concur in the amendment of the Senate to the House amendment to Senate amendment No. 2.

THE SPEAKER: The gentleman from Ohio [Mr. Kirwan] is recognized for 1 hour.

After controlling debate on this motion, Mr. Kirwan moved the previous question.

MR. KIRWAN: . . . Mr. Speaker, I move the previous question on the preferential motion offered by the gentleman from Maine [Mr. Hathaway].

The previous question was ordered.

14. 113 CONG. REC. 31878, 31880, 31881, 90th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The question is on the preferential motion offered by the gentleman from Maine [Mr. Hathaway] that the House concur in the amendment of the Senate to the House amendment to Senate amendment No. 2.

MR. KIRWAN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 118, nays 263, not voting 51. . . .

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question now is on the motion of the gentleman from Ohio [Mr. Kirwan] that the House disagree to the amendment of the Senate to the House amendment to Senate amendment No. 2.

The motion was agreed to.

A motion to reconsider was laid on the table.

**§ 7.12 A motion that the House concur in a Senate amendment takes precedence of a motion to disagree, but may not deprive the Member in charge of the floor.**

On Nov. 9, 1967,<sup>(16)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Michael J. Kirwan, of Ohio, to offer a motion to disagree to an amendment

15. Charles M. Price (Ill.).

16. 113 CONG. REC. 31878, 90th Cong. 1st Sess.

of the Senate to H.R. 11641, the civil functions appropriations bill of 1968.

The Clerk read as follows:

Mr. Kirwan moves that the House disagree to the amendment of the Senate to the House amendment to Senate amendment No. 2.

MR. [WILLIAM D.] HATHAWAY [of Maine]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Hathaway moves that the House concur in the amendment of the Senate to the House amendment to Senate amendment No. 2.

THE SPEAKER: The gentleman from Ohio [Mr. Kirwan] is recognized for 1 hour.

### *Motion To Concur and Motion To Insist on Disagreement*

**§ 7.13 The stage of disagreement having been reached, the motion to recede and concur takes precedence over the motion to insist on disagreement.**<sup>(17)</sup>

17. See 119 CONG. REC. 21171-73, 21179, 21180, 93d Cong. 1st Sess., June 25, 1973 (H.R. 7447); 118 CONG. REC. 22959, 22974, 22975, 92d Cong. 2d Sess., June 28, 1972 (H.R. 13955); and 113 CONG. REC. 25201, 25211, 90th Cong. 1st Sess., Sept. 12, 1967 (H.R. 10738).

On Oct. 24, 1967,<sup>(18)</sup> the House was considering the amendments in disagreement to H.R. 9960, independent offices appropriations for fiscal 1968. The following occurred:

THE SPEAKER:<sup>(19)</sup> The Clerk will report the Senate amendments in disagreement.

The Clerk read as follows:

Senate amendment No. 58: On page 36, line 23, strike out "\$75,000,000" and insert "\$125,000,000".

Senate amendment No. 59: On page 37, line 2, strike out "\$237,000,000" and insert "\$537,000,000".

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Evins of Tennessee moves that the House insist on its disagreement to the amendments of the Senate numbered 58 and 59.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House recede from its disagreement to the amendments of the Senate numbered 58 and 59 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Tennessee [Mr. Evins].

After controlling one hour of debate, Mr. Evins moved the previ-

18. 113 CONG. REC. 29837, 29838, 29842, 90th Cong. 1st Sess.

19. John W. McCormack (Mass.).

ous question on the motion offered by Mr. Giaimo.

MR. EVINS of Tennessee: . . . Mr. Speaker, I move the previous question and urge that you vote against the preferential motion. . . .

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Connecticut [Mr. Giaimo] that the House recede from its disagreement to Senate amendments No. 58 and No. 59, and concur therein.

MR. EVINS of Tennessee: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 156, nays 241, not voting 35. . . .

So the preferential motion was rejected. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Tennessee [Mr. Evins] that the House insist upon its disagreement to the amendments of the Senate No. 58 and No. 59.

The motion was agreed to.

### *Precedence of Motions and Control of Debate When Stage of Disagreement Is Reached*

§ 7.14 **When the stage of disagreement is reached on a Senate amendment to a House amendment to a Senate amendment to a House bill, the motion to concur in**

**the last Senate amendment takes precedence over a motion to disagree and request a conference, but the Member offering the preferential motion does not thereby gain control of the debate time which continues to be controlled by the manager of the bill and is divided between the majority and the minority.**

The proceedings of Oct. 13, 1977,<sup>(20)</sup> when the House was considering a final amendment in disagreement to the bill H.R. 7555, the Labor and Health, Education, and Welfare appropriation bill, show that, even after the preferential motion to concur was pending, the debate time continued to be controlled by the manager who eventually moved the previous question on the privileged and the underlying motions.

APPOINTMENT OF CONFEREES ON H.R. 7555, LABOR AND HEALTH, EDUCATION, AND WELFARE APPROPRIATION ACT, 1978

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 7555) making appropriations for the Departments of Labor, and Health,

20. 123 CONG. REC. 33688, 33689, 33693, 95th Cong. 1st Sess.

Education, and Welfare, and related agencies for the fiscal year ending September 30, 1978, and for other purposes, with a Senate amendment to the House amendment to Senate amendment numbered 82, disagree to the amendment of the Senate, and request a conference with the Senate on the disagreeing votes of the two Houses.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(1)</sup> The Clerk will report the motion.

The Clerk read as follows:

MOTION OFFERED BY MR. FLOOD

Mr. Flood moves to take from the Speaker's table the bill H.R. 7555, making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies for the fiscal year ending September 30, 1978, and for other purposes, with a Senate amendment to the House amendment to Senate amendment numbered 82, disagree to the amendment of the Senate, and request a conference with the Senate on the disagreeing votes of the two Houses.

PREFERENTIAL MOTION OFFERED BY  
MR. STEERS

MR. [NEWTON J.] STEERS [Jr., of Maryland]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Steers of Maryland moves that the House concur in the Senate Amendment to the House Amendment to the Senate Amendment No. 82.

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) is in control

of the time, and the gentleman is recognized for 30 minutes.

PARLIAMENTARY INQUIRY

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RHODES: Mr. Speaker, since the gentleman from Maryland (Mr. Steers) made the motion which is being considered by the House, does the gentleman from Maryland not have control of the time?

THE SPEAKER: In response to the parliamentary inquiry, the preferential motion made by the gentleman from Maryland (Mr. Steers) does not take the time from the gentleman from Pennsylvania, the chairman of the committee, who previously had the time under his original motion. The motion was in order. The vote will come first on the preferential motion.

The Chair recognizes the gentleman from Pennsylvania (Mr. Flood). . . .

MR. FLOOD: Mr. Speaker, I move the previous question on the motion to disagree and on the preferential motion to concur.

The previous question was ordered.

The preferential motion was then rejected.

***Relationship of Motions To Disagree, Recede and Concur, and Recede and Concur With Amendment***

**§ 7.15 A motion that the House insist on its disagreement**

1. Thomas P. O'Neill, Jr. (Mass.).

**to a Senate amendment remains pending during the consideration of preferential motions to recede and concur and to recede and concur with an amendment, and if the House refuses to recede (the preferential motion to recede and concur having been divided) the question recurs on the motion to insist on disagreement.**

On July 7, 1943,<sup>(2)</sup> the House was considering amendments in disagreement to H.R. 2968, the second deficiency appropriations bill. Speaker Sam Rayburn, of Texas, recognized Mr. Clarence Cannon, of Missouri.

MR. CANNON of Missouri: Mr. Speaker, I move that the House further insist on its disagreement to the amendment of the Senate No. 33.

Mr. Eberharter and Mr. Taber rose.

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, I offer a preferential motion.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a member of the committee.

THE SPEAKER: For what purpose does the gentleman from New York rise?

MR. TABER: To offer a preferential motion, Mr. Speaker.

THE SPEAKER: The Chair will have both motions read and see which is more preferential.

2. 89 CONG. REC. 7382-84, 78th Cong. 1st Sess.

The Clerk will report the motion of the gentleman from Pennsylvania [Mr. Eberharter].

The Clerk read as follows:

Mr. Eberharter moves to recede and concur in Senate amendment No. 33 to H.R. 2968.

THE SPEAKER: The Clerk will report the suggestion of the gentleman from New York [Mr. Taber].

The Clerk read as follows:

Mr. Taber moves to recede and concur with an amendment as follows: "In lieu of the matter inserted by the Senate insert the following:

"No part of any appropriation contained in this act shall be available to pay the salary of any person at the rate of \$5,500 per annum or more, appointed after June 30, 1943, unless such person shall have been appointed by the President by and with the advice and consent of the Senate: *Provided*, That those appointed between June 30, 1943, and November 1, 1943, may hold office till the latter date unless sooner than that the Senate shall have refused to give its advice and consent as to any such appointee."

THE SPEAKER: The Chair is compelled to hold that the motion to recede and concur, at this stage, takes precedence over a motion to recede and concur with an amendment.

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

THE SPEAKER: The gentleman from New York [Mr. Taber] demands a division of the question.

The question is: Will the House recede from its disagreement to the amendment of the Senate? . . .



The question was taken; and there were—yeas 170, nays 176, answering “present” none, not voting 84. . . .

So the motion to recede was not agreed to. . . .

The result of the vote was announced as above recorded.

THE SPEAKER: The question is on the motion of the gentleman from Missouri.

MR. EBERHARTER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. EBERHARTER: As I understand the situation, the motion made by me contained two parts, the motion to recede and concur; and the gentleman from New York [Mr. Taber] asked for division of that question and the House just declared itself not to recede. The question, as I understand it, now before the House is whether it desires to recede and concur.

THE SPEAKER: The House cannot concur until it has receded, which it has just refused to do.

MR. EBERHARTER: I beg the Speaker's pardon. I thought the vote was that the House should recede.

THE SPEAKER: The question is on the motion of the gentleman from Missouri.

The motion was agreed to.

### ***Motion To Adhere and Motion To Recede and Concur***

**§ 7.16 Where both the motion to adhere and the motion to recede and concur are pending, and a division of the latter motion is demanded, the**

### **vote comes first on the motion to recede.**

On June 23, 1960,<sup>(3)</sup> the House was considering the amendments in disagreement to H.R. 10569, appropriations for the Treasury and Post Office departments. Speaker Pro Tempore Wilbur D. Mills, of Arkansas, recognized Mr. J. Vaughan Gary, of Virginia.

MR. GARY: Mr. Speaker, I send a motion to the desk.

The Clerk read as follows:

Mr. Gary moves that the House adhere to its disagreement to the amendment of the Senate numbered 6.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Hoffman of Michigan moves that the House recede from its disagreement to the amendment of the Senate numbered 6 and concur therein.

MR. GARY: Mr. Speaker, I ask for a division of the motion.

THE SPEAKER PRO TEMPORE: The gentleman may have a division of the motion. Does the gentleman wish to debate the motion?

MR. GARY: Yes.

After one hour of debate, controlled by Mr. Gary, the following occurred:

3. 106 CONG. REC. 14074, 14081, 86th Cong. 2d Sess.

The previous question [on the motion to recede] was ordered.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The gentleman will state it.

MR. TABER: Is not the parliamentary situation this: The gentleman from Michigan [Mr. Hoffman] has offered a motion to recede and concur. The gentleman from Virginia asked for a division of the question. The parliamentary situation is this: We first vote on the question of receding, and if that carries we can vote on the other part of the motion?

THE SPEAKER PRO TEMPORE: On the question of concurrence?

MR. TABER: Yes.

THE SPEAKER PRO TEMPORE: That is correct.

MR. TABER: If the motion to recede is not agreed to, then that is the end of it?

THE SPEAKER PRO TEMPORE: No. The vote then would be on the motion to adhere.

MR. TABER: To adhere, that is right.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. GARY: Mr. Speaker, the question at the present time is on the motion offered by the gentleman from Michigan [Mr. Hoffman].

THE SPEAKER PRO TEMPORE: The question is, will the House recede from its disagreement with the Senate amendment. . . .

So the motion to recede was agreed to. . . .

4. Francis E. Walter (Pa.).

THE SPEAKER:<sup>(5)</sup> The question pending is, Shall the House concur in the Senate amendment?

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

### *Motion To Recede and Concur and Motion To Recede and Concur With an Amendment*

§ 7.17 **After the stage of disagreement is reached on an amendment between the Houses, a motion to recede from disagreement to a Senate amendment and concur takes precedence over a motion to recede and concur with an amendment.**

On July 7, 1943,<sup>(6)</sup> the House was considering amendments in disagreement to H.R. 2968, the second deficiency appropriations bill. Mr. Clarence Cannon, of Missouri, moved that the House insist on its disagreement to the Senate amendment numbered 33.

Mr. Eberharter and Mr. Taber rose.

MR. [HERMAN P.] EBERHARTER [of Pennsylvania]: Mr. Speaker, I offer a preferential motion.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a member of the committee.

5. Sam Rayburn (Tex.).

6. 89 CONG. REC. 7382-84, 78th Cong. 1st Sess.

THE SPEAKER:<sup>(7)</sup> For what purpose does the gentleman from New York rise?

MR. TABER: To offer a preferential motion, Mr. Speaker.

THE SPEAKER: The Chair will have both motions read and see which is more preferential.

The Clerk will report the motion of the gentleman from Pennsylvania [Mr. Eberharter].

The Clerk read as follows:

Mr. Eberharter moves to recede and concur in Senate amendment No. 33 to H.R. 2968.

THE SPEAKER: The Clerk will report the suggestion of the gentleman from New York [Mr. Taber].

The Clerk read as follows:

Mr. Taber moves to recede and concur with an amendment as follows: "In lieu of the matter inserted by the Senate insert the following:

"No part of any appropriation contained in this act shall be available to pay the salary of any person at the rate of \$5,500 per annum or more, appointed after June 30, 1943, unless such person shall have been appointed by the President by and with the advice and consent of the Senate: *Provided*, That those appointed between June 30, 1943, and November 1, 1943, may hold office till the latter date unless sooner than that the Senate shall have refused to give its advice and consent at to any such appointee."

THE SPEAKER: The Chair is compelled to hold that the motion to recede and concur, at this stage, takes precedence over a motion to recede and concur with an amendment.

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7. Sam Rayburn (Tex.).

### *Divisibility of Motion To Recede and Concur*

**§ 7.18 After the stage of disagreement has been reached, a motion to recede and concur in a Senate amendment takes precedence over a motion to recede and concur with an amendment, but a motion to recede and concur being divisible, and the House having receded from its disagreement to a Senate amendment, a motion to concur with an amendment takes precedence over a motion to concur.**

On July 18, 1947,<sup>(8)</sup> the House was considering the amendment in disagreement to H.R. 3601, agriculture appropriations for fiscal 1948. Mr. Clarence Cannon, of Missouri, offered the following motion:

Mr. Cannon moves that the House recede and concur in Senate amendment No. 42. . . .

The previous question was ordered.

THE SPEAKER:<sup>(9)</sup> The question is on the motion of the gentleman from Missouri to recede and concur in the Senate amendment.

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8. 93 CONG. REC. 9311, 9319, 9320, 80th Cong. 1st Sess.

9. Joseph W. Martin, Jr. (Mass.).

MR. [FRANCIS H.] CASE of South Dakota: Mr. Speaker, I ask for a division of the question.

THE SPEAKER: The question is, Will the House recede from its disagreement to the amendment of the Senate? . . .

MR. CASE of South Dakota: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE of South Dakota: Mr. Speaker, if the motion to recede should carry, then it will be in order, will it not, for me to offer a motion to concur with an amendment?

THE SPEAKER: It would be in order.

The question was taken; and there were—yeas 204, nays 187, not voting 39. . . .

So the motion was agreed to. . . .

MR. CASE of South Dakota: Mr. Speaker, I offer a preferential motion to concur with an amendment.<sup>(10)</sup>

**§ 7.19 A motion to recede from disagreement to a Senate amendment and concur therein being divided and the House having receded, a motion to concur with an amendment takes precedence of a motion to concur; and if the motion to concur**

10. See also 118 CONG. REC. 23718, 23725, 92d Cong. 2d Sess., June 30, 1972; 89 CONG. REC. 5899, 5900, 78th Cong. 1st Sess., June 15, 1943; 86 CONG. REC. 5892, 76th Cong. 3d Sess., May 9, 1940; and 81 CONG. REC. 971, 75th Cong. 1st Sess., Feb. 8, 1937.

**with an amendment is rejected the question recurs on the underlying motion to concur in such Senate amendment.**

On July 18, 1947,<sup>(11)</sup> the House was considering amendments in disagreement to H.R. 3601, agriculture appropriations for fiscal 1948. Mr. Clarence Cannon, of Missouri, moved that the House recede and concur in Senate amendment No. 42.

THE SPEAKER:<sup>(12)</sup> The question is on the motion of the gentleman from Missouri to recede and concur in the Senate amendment.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Speaker, I ask for a division of the question.

THE SPEAKER: The question is, Will the House recede from its disagreement to the amendment of the Senate? . . .

MR. CASE of South Dakota: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE of South Dakota: Mr. Speaker, if the motion to recede should carry, then it will be in order, will it not, for me to offer a motion to concur with an amendment?

THE SPEAKER: It would be in order.

11. 93 CONG. REC. 9319, 9320, 80th Cong. 1st Sess.

12. Joseph W. Martin, Jr. (Mass.).

The question was taken; and there were—yeas 204, nays 187, not voting 39. . . .

So the motion was agreed to. . . .

MR. CASE of South Dakota: Mr. Speaker, I offer a preferential motion to concur with an amendment. . . .

MR. CANNON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CANNON: If the motion of the gentleman is voted down, would the vote then recur on the motion to concur in the Senate amendment?

THE SPEAKER: It would.

***Amending Motion To Dispose of Senate Amendment in Disagreement***

**§ 7.20 The Member calling up a conference report with amendments in disagreement controls the floor on motions to dispose of each amendment in disagreement; and although the hour of debate on each such motion is divided and controlled by the manager and a representative from the minority party, an amendment to a pending motion may be offered only in time yielded by the manager for that purpose or if the previous question is voted down.**

On Aug. 2, 1977,<sup>(13)</sup> during consideration of the Labor and Health, Education, and Welfare appropriation bill for fiscal 1978, when an amendment in disagreement was pending, the Minority Leader, Mr. Robert H. Michel, of Illinois, was controlling the 30 minutes time in opposition. He yielded, without restriction, to Mrs. Millicent Fenwick, of New Jersey, who attempted to offer an amendment. The proceedings were as carried here.

MR. MICHEL: Mr. Speaker, before yielding a minute to my friend, the gentlewoman from New Jersey (Mrs. Fenwick), may I make this observation that if the gentleman from Washington (Mr. Pritchard), considers that he is being foreclosed from voting on the position of the Senate, let it be clear and understandable that the next vote is really one of either accepting the position of the House or the position of the Senate. If the position of the House prevails, as with the amendment of the chairman of the committee, the gentleman from Pennsylvania (Mr. Flood), that, in my opinion, is a clear expression of this House that we turned down the position of the Senate in favor of the position of the House.

I now yield 1 minute to the gentlewoman from New Jersey (Mrs. Fenwick).

13. 123 CONG. REC. 26209, 95th Cong. 1st Sess.

MRS. FENWICK: Mr. Speaker, I thank my friend, the gentleman from Illinois (Mr. Michel), for yielding to me.

Mr. Speaker, I have an amendment at the desk.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> Does the gentleman from Pennsylvania, Mr. Flood, yield for an amendment?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do not yield for the purpose of offering amendments, only for the purpose of debate.

MRS. FENWICK: The gentleman from Pennsylvania (Mr. Flood), did not yield to me, the gentleman from Illinois (Mr. Michel), yielded to me.

MR. MICHEL: Mr. Speaker, I did not yield to the gentlewoman from New Jersey (Mrs. Fenwick) for the purpose of offering an amendment.

#### PARLIAMENTARY INQUIRY

MRS. FENWICK: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The gentlewoman from New Jersey will state her parliamentary inquiry.

MRS. FENWICK: Mr. Speaker, it is my understanding of the parliamentary procedure that unless we are yielded to for the purpose of debate only, and for which I was not yielded, that then one can offer an amendment.

THE SPEAKER PRO TEMPORE: The Chair will rule that the gentlewoman from New Jersey was recognized for the purpose of debate only.

MRS. FENWICK: That is not what the gentleman from Illinois (Mr. Michel) said when he yielded to me.

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman had to yield for the purpose of debate only, he did not have any authority under clause 2(b)(2) rule XXVIII to yield other than for the purpose of debate.

#### *Effect on Pending Motions of Refusal To Recede*

**§ 7.21 After the stage of disagreement is reached and there are pending two motions—one to recede and concur in a Senate amendment with an amendment and the other a preferential motion to recede and concur—if the House refuses to recede when the motion to recede and concur is divided, both the above motions fall and a demand for a division of the motion to recede and concur with an amendment is not in order.**

On Dec. 16, 1943,<sup>(16)</sup> the House was considering amendments in disagreement to H.R. 3598, the first supplemental national defense appropriation bill. The following occurred:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I move that the House

14. John Brademas (Ind.).

15. Sam Gibbons (Fla.).

16. 89 CONG. REC. 10777-79, 78th Cong. 1st Sess.

recede from its disagreement to Senate amendment No. 49 and concur in the same with an amendment which I have sent to the desk.

THE SPEAKER:<sup>(17)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Cannon of Missouri moves that the House recede from its disagreement to Senate amendment No. 49 and agree to the same with an amendment as follows:

"In lieu of the sum of '\$2,800,000' named in such amendment, insert '\$700,000'; and in lieu of the sum of '\$800,000' named in such amendment, insert '\$200,000.'" . . .

MR. [COMPTON I.] WHITE [of Idaho]: Mr. Speaker, I make a preferential motion, which I send to the desk.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. White moves that the House recede from its disagreement to Senate amendment No. 49 and concur in the same. . . .

MR. CANNON of Missouri: Mr. Speaker, I ask for a division of the question, and I ask that we vote immediately on the question of receding.

THE SPEAKER: The question is, Will the House recede from its disagreement with the Senate amendment? . . .

The question was taken; and on a division (demanded by Mr. Cannon of Missouri) there were ayes 40 and noes 48.

So the motion to recede was rejected.

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Speaker, I ask for a division

of the motion of the gentleman from Missouri.

THE SPEAKER: The House has refused to recede.

MR. CANNON of Missouri: Mr. Speaker, I move to further insist.

MR. CASE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE: The first question for division was a division on the amendment offered by the gentleman from Idaho [Mr. White]. The House has refused to recede on the division of that motion. Then it seems to me that the question recurs on the motion offered by the gentleman from Missouri [Mr. Cannon] to recede and concur with an amendment. On that motion I ask for a division.

THE SPEAKER: The gentleman asks for a division of the question. The House has already refused to recede. Therefore, it would be rather anomalous if we had a division of the motion of the gentleman from Missouri, and voted again on the question of receding.

MR. CANNON of Missouri: Mr. Speaker, I insist on my motion that the House insist on its disagreement to the Senate amendment.

MR. CASE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE: Since the motion which was offered by the gentleman from Idaho [Mr. White] was a preferential motion as against the motion offered by the gentleman from Missouri [Mr. Cannon], I question whether or not the gentleman can then move to insist. The vote, it seems to me, must recur on the

17. Sam Rayburn (Tex.).

motion previously pending, which was the motion of the gentleman from Missouri to recede and concur with an amendment. A division of the question is entirely different when two different propositions are before the House. The House has refused to recede on the dividing of the question offered by the gentleman from Idaho, but has not refused to recede on dividing the question offered by the gentleman from Missouri in his original motion.

THE SPEAKER: The gentleman from Missouri [Mr. Cannon] has moved to insist on disagreement to the Senate amendment. The Chair believes there is nothing to do at this time but to put the gentleman's motion.

The question is on the motion offered by the gentleman from Missouri, that the House insist on its disagreement.

MR. CANNON of Missouri: Mr. Speaker, may I say with regard to that, there appears to have been a misunderstanding on the part of certain Members. I think we should take this back to conference.

THE SPEAKER: The question is on the motion of the gentleman from Missouri, to insist on the disagreement of the House to the Senate amendment. . . .

MR. [CLINTON P.] ANDERSON of New Mexico: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ANDERSON of New Mexico: Did the gentleman from Missouri withdraw his motion to recede and concur with an amendment?

THE SPEAKER: He did not; it was not necessary. Because of the fact that a motion to recede had been voted down,

a second motion to recede was not in order.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. TABER: The motion to recede and concur with an amendment having been displaced by a motion to recede and concur, and this motion having been divided so that we voted on the motion to recede alone, the only motion that could possibly be made would be the one the gentleman from Missouri did make, that the House further insist; is that correct?

THE SPEAKER: The Chair has so stated.

### *Where Senate Amendment Is Laid on the Table, Effect on Bill*

**§ 7.22 Where a conference report is rejected, and the manager moves to insist on its disagreement, a motion to lay the Senate amendment on the table is preferential and if adopted, carries the amendment and the bill to the table.**

When the second conference report on the Federal Trade Commission Amendments of 1978 (H.R. 3816) was called up on Sept. 28, 1978,<sup>(18)</sup> the previous question

18. The first conference report, submitted in the House on Feb. 22, 1978,



was ordered but on the question of the adoption of the report, the noes prevailed, 214 to 175.

The manager's motion that the House insist on its disagreement was then preempted by a motion to lay the Senate amendment on the table. Proceedings were as indicated below.<sup>(19)</sup>

THE SPEAKER PRO TEMPORE: The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

After a record vote, the motion to reconsider was laid on the table.

MOTION OFFERED BY MR. ECKHARDT

MR. ECKHARDT: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Eckhardt moves that the House insist on its disagreement to the Senate amendment.

PREFERENTIAL MOTION OFFERED BY  
MR. BROYHILL

MR. [JAMES T.] BROYHILL [of North Carolina]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

was rejected by the House on Feb. 28, 1978; when the second report was agreed to by the Senate but defeated in the House, the motion to table was offered and agreed to.

19. 124 CONG. REC. 32334, 32335, 95th Cong. 2d Sess.

Mr. Broyhill moves to lay on the table the amendment of the Senate to the bill, H.R. 3816.

THE SPEAKER:<sup>(20)</sup> The question is on the preferential motion to lay on the table offered by the gentleman from North Carolina (Mr. Broyhill).

The preferential motion to table was agreed to.

A motion to reconsider was laid on the table.

So the Senate amendment and the bill H.R. 3816 were laid on the table.

### *Motion To Table and Motion To Recommit (Refer)*

§ 7.23 A motion that a Senate amendment be laid on the table is of higher privilege than a motion to recommit (refer) the amendment to a committee.

On June 17, 1936,<sup>(1)</sup> the House was considering Senate amendments in disagreement to H.R. 11663, a bill to regulate lobbying. Speaker William B. Bankhead, of Alabama, recognized Mr. Earl C. Michener, of Michigan.

MR. MICHENER: Mr. Speaker, I move that the Senate amendment be laid on the table.

MR. [JOHN J.] O'CONNOR [of New York]: Mr. Speaker, I offer a preferential motion, that the conference report

20. Thomas P. O'Neill, Jr. (Mass.).

1. 80 CONG. REC. 9753, 74th Cong. 2d Sess.

and the Senate amendment be recommitted to the Committee on the Judiciary.

MR. MICHENER: Mr. Speaker, my understanding of the rule is that the motion suggested by the gentleman from New York is not preferential.

THE SPEAKER: The Chair is of opinion that the motion made by the gentleman from Michigan has priority. The question is on the motion of the gentleman from Michigan to lay the Senate amendment on the table.

The motion was agreed to.

*Parliamentarian's Note:* The effect of the motion to table the amendment was to table the bill also.

### ***Amendment to Provision Following Its Adoption***

**§ 7.24 It is not in order in the House to recede from or insist on a House amendment with an amendment since the House may not amend a provision that it has already adopted.**

On Feb. 1, 1937,<sup>(2)</sup> the House was considering a Senate amendment to House Joint Resolution 81, creating a Joint Committee on Government Organization. The following occurred:

2. 81 CONG. REC. 646-48, 75th Cong. 1st Sess.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, will the gentleman from New York yield to me to submit an amendment to be read by the Clerk?

MR. [JOHN J.] O'CONNOR of New York: Just for information; yes.

MR. RANKIN: Mr. Speaker, I send an amendment to the Clerk's desk to be read for the information of the House.

The Clerk read as follows:

Mr. Rankin offers the following amendment to the Senate amendment: After the word "nine" insert "and"; on page 1, line 9 [of the House text], strike out the word "seven" and insert the word "nine".

MR. RANKIN: That gives nine Members of the House and nine Members of the Senate.

MR. O'CONNOR of New York: A parliamentary inquiry, Mr. Speaker.

THE SPEAKER:<sup>(3)</sup> The gentleman will state it.

MR. O'CONNOR of New York: If I yield the floor to permit an amendment, will it be in order under the rule—I have some doubt about it?

THE SPEAKER: In reply to the inquiry made by the gentleman from New York, the Chair desires to call the attention of the gentleman and the attention of the House to the following rule.

Section 526 of Jefferson's Manual reads:

But the House cannot recede from or insist on its own amendment with an amendment, for the same reason that it cannot send to the other House an amendment to its own act after it has passed the Act.

3. William B. Bankhead (Ala.).

Under that rule it seems to the Chair that the House having acted on the matter and the Senate having accepted that language, it would not be open for the amendment offered by the gentleman from Mississippi.

MR. RANKIN: We have a right to accept the Senate amendment with an amendment. We are not attempting to amend the House bill.

THE SPEAKER: The gentleman's amendment is to the text of the House bill. . . .

MR. RANKIN: Mr. Speaker, a parliamentary inquiry. My amendment states:

I offer the following amendment to the Senate amendment.

I am not trying to amend what the House has done. It is specifically written that it is an amendment to the Senate amendment.

THE SPEAKER: The gentleman is not confining himself in his amendment to the Senate amendment, which deals only with the number of Senators on the joint committee; but he goes further down in the paragraph and adds additional matter to the text, to which both Houses have already agreed.

MR. RANKIN: All I do is to offer an amendment to the Senate amendment, not striking out their number but adding to ours, making them equal. I submit that under the rules of the House I have a right to offer an amendment to the Senate amendment.

THE SPEAKER: But the amendment offered by the gentleman must deal with the matter the Senate amendment deals with, as shown by the resolution. The Chair makes the further statement that the Chair has no disposition what-

ever to prevent the House from expressing itself upon the attitude assumed by the gentleman from Mississippi, but when the Chair is called upon to make a parliamentary decision, he is bound, of course, to conform with the rules and precedents of the House.

### *Debating Both Parts of Divided Motion To Recede and Concur*

**§ 7.25 When the question is divided on a motion to recede and concur, and the House debates the question of whether to recede under the hour rule and does not order the previous question on either motion of the divided question, then the second motion (to concur, or the preferential motion to concur with amendment, if offered) is separately debatable for one hour.**

Where a motion to dispose of an amendment in disagreement is pending, a Member offering a preferential motion does not ordinarily control time thereon, as all debate is allocated on the original motion. But where an original motion is divided, it in effect becomes two motions, each subject to debate under the hour rule, subject to the divided allocations

prescribed in Rule XXVIII clause 2(b)(2).<sup>(4)</sup> Often, the question on receding is put without debate so the House can get quickly to the next step: a preferential motion or the other half of the divided question.

The proceedings of Nov. 14, 1989,<sup>(5)</sup> included debate on both the motion to recede and the preferential motion to concur with an amendment.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 17: Page 11, line 25, after "zation" insert ": *Provided further*, That notwithstanding the previous proviso, not less than \$15,000,000 of the funds appropriated under this heading shall be made available only for the United Nations Population Fund: *Provided further*, That the United Nations Population Fund shall be required to maintain these funds in a separate account and not commingle them with any other funds: *Provided further*, That none of the funds made available under this heading for the United Nations Population Fund shall be made available for programs for the People's Republic of China".

4. *House Rules and Manual* § 912(c) (1997).

5. See 135 CONG. REC. 28754, 28766, 101st Cong. 1st Sess.

6. Sander M. Levin (Mich.).

MOTION OFFERED BY MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Obey moves that the House recede from its disagreement to the amendment of the Senate numbered 17, and concur therein. . . .

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I demand that the question be divided.

THE SPEAKER PRO TEMPORE: The question will be divided.

The gentleman from Wisconsin [Mr. Obey] will be recognized for 30 minutes, and the gentleman from Oklahoma [Mr. Edwards] will be recognized for 30 minutes.

MR. [MICKEY] EDWARDS of Oklahoma: Mr. Speaker, I ask unanimous consent that the 30 minutes allotted to me may be controlled by the gentleman from New Jersey [Mr. Smith].

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Smith] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. Obey]. . . .

MR. [WILLIAM] LEHMAN of Florida: Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> The question is, will the House recede from

7. Frank McCloskey (Ind.).

its disagreement to the amendment of the Senate numbered 17?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

PREFERENTIAL MOTION OFFERED BY  
MR. SMITH OF NEW JERSEY

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Smith of New Jersey moves to concur with the Senate amendment (number 17) with an amendment, as follows: at the end of Senate amendment 17, insert:

*Provided further*, That notwithstanding the previous provisos, no funds under this heading shall be made available to the United Nations Population Fund unless the President of the United States certifies that the United Nations Population Fund does not provide support for, or participate in the management of, a program of coercive abortion or involuntary sterilization in the People's Republic of China.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Smith] will be recognized for 30 minutes, and the gentleman from New York [Mr. McHugh] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Smith].

***Motion To Lay on the Table a Motion To Dispose of a Senate Amendment***

**§ 7.26 Where conferees on a particular Senate amend-**

**ment in disagreement develop compromise language to settle the dispute between the two Houses which is "legislative language" to which the House managers cannot agree (under Rule XX clause 2) without specific permission of the House, the matter is often brought back in "technical disagreement; enabling the House to recede and concur in the amendment in disagreement with an amendment which contains "legislative" language and is germane to the Senate amendment.**

On May 16, 1978,<sup>(8)</sup> when a Senate amendment in disagreement to H.R. 9005, making appropriations for the District of Columbia, fiscal 1978, was considered in the House, the proceedings were as follows:

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 37: Page 13, line 14, strike out: "\$168,757,900" and insert "\$102,173,400".

8. 124 CONG. REC. 13921-23, 95th Cong. 2d Sess.

9. Thomas S. Foley (Wash.).

MOTION OFFERED BY MR. NATCHER

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Natcher moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$129,173,400: *Provided*, That none of the funds appropriated for the Washington Civic Center shall be obligated until the Subcommittees on the District of Columbia Appropriations of the House of Representatives and the Senate have approved the plan submitted by the Mayor and the City Council for the Washington Civic Center".

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein.

MR. NATCHER: Mr. Speaker, I demand that the question be divided.

THE SPEAKER PRO TEMPORE: The question will be divided.

Does the gentleman from Kentucky (Mr. Natcher) seek time?

MR. BAUMAN: Mr. Speaker, I wonder if the gentleman would take some time briefly. I do not want to prolong this debate.

THE SPEAKER PRO TEMPORE: The gentleman from Kentucky (Mr.

Natcher) is recognized for 30 minutes. . . .

MR. NATCHER: Mr. Speaker, I move the previous question on the motion to recede.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recede.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is, Will the House recede from its disagreement to Senate amendment No. 37.

The House receded from its disagreement to Senate amendment No. 37.

PREFERENTIAL MOTION OFFERED BY  
MR. NATCHER

MR. NATCHER: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Natcher moves that the House concur in the amendment of the Senate numbered 37 with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$129,173,400: *Provided*, That none of the funds appropriated for the Washington Civic Center shall be obligated until the Subcommittees on the District of Columbia Appropriations of the House of Representatives and the Senate have approved the plan submitted by the Mayor and the City Council for the Washington Civic Center".

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves to table the motion to concur in the amendment of the Senate numbered 37, with an amendment.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion offered by the gentleman from Maryland (Mr. Bauman).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 190, nays 199, answered “present” 1, not voting 44. . . .

So the preferential motion to table was rejected.

The result of the vote was announced as above recorded.

MR. NATCHER: Mr. Speaker, I move the previous question on the motion now pending.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the preferential motion offered by the gentleman from Kentucky (Mr. Natcher) to concur in the Senate amendment No. 37, with an amendment.

The question is on the preferential motion offered by the gentleman from Kentucky (Mr. Natcher).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 199, nays 183, answered “present” 1, not voting 51.

*Parliamentarian’s Note:* The motion to table a motion disposing of an amendment in disagreement does not carry with it the amendment and the bill itself, since if the motion is tabled other motions remain available for disposition of the amendment, whereas the tabling of a Senate amendment itself has the effect of carrying to the table the House bill as well.<sup>10</sup>

### ***Tabling Motion To Dispose of Amendment in Disagreement***

**§ 7.27 A privileged motion to dispose of a Senate amendment in disagreement is subject to the motion to table; and the latter motion takes precedence over the motion for the previous question.**

The application of the motion to lay on the table a motion to dispose of an amendment in disagreement is rare. There are few precedents but the principle is now established that adoption of such a motion does not carry the underlying matter with it. The use

<sup>10</sup>. Note distinction between § 7.26 and § 7.22 and § 7.23, supra.

of the motion here, excerpted from the *Congressional Record* of Feb. 22, 1978,<sup>(11)</sup> is illustrative of the modern practice.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I move the previous question on the motion to recede and concur.

PREFERENTIAL MOTION OFFERED BY  
MR. LLOYD OF CALIFORNIA

MR. [JIM] LLOYD of California: Mr. Speaker, I offer a preferential motion that the motion of the gentleman from Texas (Mr. Mahon) to recede and concur be laid upon the table.

PARLIAMENTARY INQUIRY

MR. MAHON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The gentleman will state it.

MR. MAHON: If the motion to table is defeated, then the next order of business would be a vote on my motion to recede and concur in the Senate amendment?

THE SPEAKER PRO TEMPORE: The next vote would be on ordering the previous question which the gentleman from Texas has moved, and then on the motion of the gentleman from Texas to recede and concur.

MR. MAHON: That is, if the motion to table is defeated?

THE SPEAKER PRO TEMPORE: If the motion is defeated.

11. 124 CONG. REC. 4072, 4073, 95th Cong. 2d Sess.

12. Charles A. Vanik (Ohio).

PARLIAMENTARY INQUIRY

MR. LLOYD of California: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. LLOYD of California: If my motion should be defeated, would there be an opportunity to amend?

THE SPEAKER PRO TEMPORE: If the motion to table is defeated and the previous question is ordered, the answer is no on the pending motion.

MR. LLOYD of California: I thank the Speaker.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion to lay on the table offered by the gentleman from California (Mr. Lloyd).

The question was taken.

MR. LLOYD of California: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. . . .

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

## § 8. Recognition To Offer Motions; Control of the Floor

Motions in the House to dispose of Senate amendments were traditionally debated under the hour rule, with the proponent of the motion controlling the time and yielding to others for debate.



Amendments to House rules resulting from the adoption of the Legislative Reorganization Act of 1970 added the concept of dividing debate time on a conference report or on an amendment reported therefrom in disagreement between the majority and minority parties.<sup>(13)</sup> In the 92d Congress, Rule XXVIII clause 2(b)(1) was amended to provide for a division of the debate time on a motion to dispose of a Senate amendment reported in disagreement from conference.<sup>(14)</sup> The hour is now divided between the majority and the minority parties, in effect between the manager of the conference report and the ranking conferee on the minority side. In the 99th Congress, the division of debate time was again changed in those situations where the managers for the majority and the minority support the motion offered to dispose of a Senate amendment in disagreement. In that case, a person opposed to that motion may claim one-third of the hour.<sup>(15)</sup>

13. See H. Res. 5, 117 CONG. REC. 144, 92d Cong. 1st Sess., Jan. 22, 1971.

14. H. Res. 1153, adopted Oct. 13, 1972, 118 CONG. REC. 36023, 92d Cong. 2d Sess.

15. H. Res. 7, 131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985.

Under practices that have evolved since the adoption of the changes noted above, most motions to dispose of amendments between the Houses are now controlled and debated according to the strictures of Rule XXVIII. This rule also provides for the availability of copies of Senate amendments reported in disagreement, as well as copies of the conference report and the statement of managers.<sup>(16)</sup>

### *Control of Time—Division of Time*

**§ 8.1 When amendments in disagreement are considered in the House after disposition of the conference report, each amendment is debatable for one hour, equally divided between the majority and minority parties, and this division of time is not disturbed by the offering of a preferential motion.**

The rule dividing time on an amendment in disagreement<sup>(17)</sup> was first adopted in the 92d Con-

16. See §§ 8.24, 8.25, *infra*.

17. Rule XXVIII clause 2(b)(1), *House Rules and Manual* § 912b (1997).

gress.<sup>(18)</sup> It was later amended, in the 99th Congress,<sup>(19)</sup> to provide for a three-way division of time if the majority and minority floor leaders on the conference report both support the offered motion.

In the 94th Congress, a controversial Senate amendment was reported in disagreement from the conference dealing with the bill H.R. 8069, the Department of Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1976. The original motion to dispose of the Senate amendment, offered by the majority floor manager of the report, was to recede from disagreement and concur with a further amendment. Immediately after the motion of Mr. Daniel J. Flood, of Pennsylvania, was read, Mr. Robert E. Bauman, of Maryland, offered a preferential motion to recede and concur. The Chair<sup>(20)</sup> explained that the offering of this preferential motion did not deprive Mr. Flood of the floor. When the minority floor leader yielded

part of his debate time to Mr. Bauman, the latter spoke briefly and then attempted to move the previous question, but the Chair declined to entertain the motion since it would cut off the time allocated to the managers under Rule XXVIII clause 2(b)(1). After debate, the question on receding and concurring was divided, the House receded from disagreement, rejected a motion to concur with an amendment, and eventually concurred in the Senate amendment.<sup>(1)</sup>

MR. BAUMAN: Mr. Speaker, I believe the gentleman from Pennsylvania (Mr. Flood) has offered or will offer a motion, and I have a preferential motion at the desk.

THE SPEAKER: The Clerk will first report the motion offered by the gentleman from Pennsylvania (Mr. Flood).

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Flood moves that the House recede from its disagreement to the amendment of the Senate numbered 72 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the

18. See H. Res. 1153 (118 CONG. REC. 36013-23, 92d Cong. 2d Sess., Oct. 13, 1972).

19. See H. Res. 7 (131 CONG. REC. 393-413, 99th Cong. 1st Sess., Jan. 3, 1985).

20. Carl Albert (Okla.).

1. 121 CONG. REC. 38714, 38716-19, 94th Cong. 1st Sess., Dec. 4, 1975.

transportation of any student to a school other than the school which is nearest or next nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves that the House recede from its disagreement to Senate amendment No. 72 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Pennsylvania (Mr. Flood).

MR. BAUMAN: Mr. Speaker, may I inquire, who has the right to the time under the motion?

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) has 30 minutes, and the gentleman from Illinois (Mr. Michel) has 30 minutes. The time is controlled by the committee leadership on each side, and they are not taken from the floor by a preferential motion. . . .

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. Bauman). . . .

MR. BAUMAN: The gentleman from Maryland has made his case and if the gentleman would like to concur in the stand taken by the majority party in favor of busing he can do that. I do not concur.

Mr. Speaker, I move the previous question on the motion.

MR. FLOOD: Mr. Speaker, I demand the question be divided.

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman from Pennsylvania has the floor and the Chair is trying to let the gentleman be heard.

MR. FLOOD: Mr. Speaker, I demand a division.

MR. BAUMAN: Mr. Speaker, I have not yielded. My time has not expired.

THE SPEAKER: The gentleman has time for debate only.

MR. BAUMAN: No; Mr. Speaker, it was not yielded for debate only.

THE SPEAKER: The gentleman from Maryland has 15 seconds.

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman was yielded to for debate only. The gentleman from Illinois had no authority under clause 2, rule XXVIII to yield for any other purpose but debate.

MR. BAUMAN: Mr. Speaker, I was yielded to. There was no limitation on for what purpose.

THE SPEAKER: The gentleman was yielded 5 minutes. He can use it for debate only. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania.

MR. FLOOD: Mr. Speaker, I demand a division of the question. . . .

MR. MICHEL: A point of order, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

POINT OF ORDER

MR. MICHEL: Mr. Speaker, the gentleman from Illinois was given to un-

derstand that the time was to be divided equally. There was no indication on the part of the gentleman from Illinois that he had concluded giving what time he wanted to allocate to Members for general debate.

The gentleman from Illinois still has a request pending.

THE SPEAKER: The gentleman has 30 minutes for debate only. He can yield more time.

MR. MICHEL: I am still entitled, if I understand it, to the balance of the time to which I have been originally allocated. The gentleman from Illinois has 17 minutes remaining.

THE SPEAKER: That is correct, but the question has been divided.

#### PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, when must a request for division be made?

THE SPEAKER: Any time the motion is pending and before the question is put the question may be divided, and it is already divided.

MR. FLOOD: Mr. Speaker, if the question has been divided, then I have a preferential motion.

THE SPEAKER: The gentleman from Illinois has 15 minutes remaining, and the gentleman's motion may come later.

MR. MICHEL: Mr. Speaker, I yield myself such time as I may require, and yield to the gentleman from Massachusetts (Mr. Conte). . . .

MR. MICHEL: Mr. Speaker, I have no further requests for time.

MR. FLOOD: Mr. Speaker, I have no further requests for time.

THE SPEAKER: The question is, Will the House recede from its disagreement to the amendment of the Senate No. 72?

The House receded from its disagreement to Senate amendment No. 72.

#### PREFERENTIAL MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a preferential motion.

The Clerk read the preferential motion as follows:

Mr. Flood moves that the House concur in the amendment of the Senate numbered 72 with an amendment as follows: In lieu of the matter inserted by said amendment, insert the following:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest or next nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Pennsylvania (Mr. Flood).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present. . . .

The vote was taken by electronic device, and there were—yeas 133, nays 259, answered "present" 15, not voting 27. . . .

So the preferential motion to the Senate amendment numbered 72 was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is, Will the House concur in the Senate amendment?

The question was taken; and the Speaker announced that the ayes appeared to have it.

#### RECORDED VOTE

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 260, noes 146, answered “present” 1, not voting 27. . . .

So the Senate amendment was concurred in.

The result of the vote was announced as above recorded.

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

### *Member Handling Conference Report*

§ 8.2 Where amendments in disagreement are being considered *seriatim* following adoption of a conference report, the Chair recognizes the Member handling the report to offer motions to dispose of the amendments; and while a motion so offered may be displaced by a preferential motion, the Member

offering the preferential motion does not thereby gain control of time for debate.

If the question on the preferential motion to recede and concur is divided on demand and the House recedes from disagreement, the Member handling the conference report having offered an initial motion to insist on disagreement has been recognized to offer another motion to concur with an amendment preferential to the pending motion to concur, since that Member's original motion to insist has been displaced (although not directly rejected so as to deprive him the floor for subsequent recognition) and he would not be offering two motions pending at the same time.

On June 25, 1973,<sup>(2)</sup> the House was considering amendments reported back from conference in disagreement on H.R. 7447, supplemental appropriations for fiscal 1973. Speaker Carl Albert, of Oklahoma, then recognized George

2. 119 CONG. REC. 21171-73, 21179, 21180, 93d Cong. 1st Sess.

H. Mahon, of Texas, Chairman of the Committee on Appropriations.

MR. MAHON: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House insist on its disagreement to the amendment of the Senate numbered 83.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House recede from its disagreement to the amendment of the Senate numbered 83 and concur therein.

MR. MAHON: Mr. Speaker, I demand a division of the question.

THE SPEAKER: The question is, shall the House recede from its disagreement to the amendment of the Senate numbered 83?

The Chair recognizes the gentleman from Texas (Mr. Mahon).

MR. MAHON: Mr. Speaker, I moved that the House insist on its position banning all funds in the bill for combat activity in Cambodia. . . .

MR. GERALD R FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry.

MR. MAHON: Mr. Speaker, I will withhold my moving of the previous question until the gentleman from Michigan, the minority leader, states his parliamentary inquiry.

THE SPEAKER: The gentleman from Michigan will state his parliamentary inquiry.

MR. GERALD R. FORD: Mr. Speaker, my parliamentary inquiry is this: Am I

correct, Mr. Speaker, that a "no" vote on the motion offered by the gentleman from Texas (Mr. Mahon) to recede would uphold the House position on the supplemental?

The motion offered by the gentleman from Connecticut (Mr. Giaimo) was to recede and concur, but the Chairman, the gentleman from Texas (Mr. Mahon) divided the question, and the vote is on a motion to recede. Therefore a "no" vote on the motion to recede would uphold the position of the House?

THE SPEAKER: The Chair can state that if the "no" vote prevails, the next vote would be on the motion to insist on the House's position. . . .

MR. MAHON: Mr. Speaker, we have been over this ground. Various Members on both sides of the aisle have expressed their views today and on previous days and in previous weeks and months.

Mr. Speaker, I now move the previous question on the motion to recede.

The previous question was ordered.

THE SPEAKER: The question is: Will the House recede from its disagreement to Senate amendment numbered 83?

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. GIAIMO: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 235, noes 172, present 1, not voting 25, as follows: . . .

So the preferential motion was agreed to. . . .

MR. MAHON: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Mahon moves that the House concur with the amendment of the Senate numbered 83 with an amendment, as follows: In lieu of the matter inserted, insert the following:

"SEC. 305. After September 1, 1973, none of the funds herein appropriated under this Act or heretofore appropriated under any other Act may be expended to support directly or indirectly combat activities in, over or from off the shores of Cambodia or in or over Laos by United States forces."

MR. MAHON: Mr. Speaker, this preferential motion is slightly different from the Senate language. The amendment reads:

SEC. 305. After September 1, 1973 none of the funds herein appropriated under this Act or heretofore appropriated under any other Act may be expended to support directly or indirectly combat activities, in, over, or from off the shores of Cambodia or in or over Laos by United States forces. . . .

MR. MAHON: Mr. Speaker, I move the previous question on the motion to concur with an amendment.

MR. FRANK E. EVANS of Colorado. Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Has the previous question been moved?

MR. MAHON: Mr. Speaker, I have moved the previous question.

THE SPEAKER: The previous question has been moved on the motion. Until that has been disposed of, the Chair is without power to recognize any Member for any other purpose.

The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Texas.

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. EVANS of Colorado. Mr. Speaker, a parliamentary inquiry.

MR. GERALD R. FORD: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The Chair is not going to allow any further interruptions.

MR. GERALD R. FORD: Mr. Speaker, a parliamentary inquiry. Was that a vote on the previous question?

THE SPEAKER: The question was on the motion.

MR. GERALD R. FORD: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 204, nays 204, present 1, not voting 24, as follows: . . .

So the preferential motion was rejected. . . .

THE SPEAKER: The question is on the motion to concur offered by the gentleman from Connecticut (Mr. Giaimo).

The motion was agreed to.

*Parliamentarian's Note:* While the manager of a conference report is entitled to prior recognition to offer motions to dispose of amendments in disagreement, he should not be entitled to offer two motions, one preferential to the other, to be pending at the same time. However, where his first motion to insist on disagreement has been superseded by the

House's voting to recede from disagreement, then his initial motion is no longer pending and he may be recognized to offer another motion to concur with an amendment which would be preferential to the remaining portion of another Member's divided motion to concur. This is to be contrasted with the situation where the bill manager offers a motion to dispose of a Senate amendment which is rejected by the House. As illustrated on Aug. 6, 1993 (*Manual* § 954) in that case recognition to offer a subsequent motion to dispose of the pending Senate amendment shifts to another Member who led the opposition to the rejected motion.

### *Withdrawal of Motions in House*

**§ 8.3 A motion to recede and concur with an amendment in a Senate amendment in disagreement may be withdrawn before action is taken thereon, and the proponent has the right to change the amendment included in the motion and offer it again in its modified form.**

When the final amendment in disagreement to H.R. 5021, the

Commerce, State, Justice appropriation bill for fiscal 1991, was reported, the manager, Neal Smith, of Iowa, offered a motion to recede from disagreement and concur in the Senate amendment with a further amendment. Time was divided three ways, with Mr. Lawrence J. Smith, of Florida, claiming time in opposition. A preferential motion to recede and concur was then offered by Mr. Smith of Florida. A division of the preferential motion to recede and concur was then demanded, the House receded from disagreement, and a series of inquiries then focused on the options available to the House.<sup>(3)</sup>

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The Clerk will designate the last amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 165: Page 31, after line 10, insert:

SEC. 610. (a) None of the funds in this or any other act may be used to approve the licensing for export of any supercomputer or associated technology to any country that (1) is assisting, officially or unofficially, or (2) whose nationals are assisting Iraq to improve its rocket technology or

3. 136 CONG. REC. 32667, 32668, 32672-76, 101st Cong. 2d Sess., Oct. 23, 1990.

4. Michael R. McNulty (N.Y.).



chemical, biological, or nuclear weapons capability. . . .

MOTION OFFERED BY MR. SMITH OF IOWA

MR. SMITH of Iowa: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Smith of Iowa moves that the House recede from its disagreement to the amendment of the Senate numbered 165, and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

SEC. 609. (a) None of the funds in this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines to be assisting Iraq to improve its ballistic missile technology or chemical, biological, or nuclear weapons capability and so reports to the Congress. . . .

THE SPEAKER PRO TEMPORE: The Chair rules that under rule XXVIII the time will be divided three ways.

The gentleman from Iowa [Mr. Smith] will be recognized for 20 minutes, the gentleman from Kentucky [Mr. Rogers] will be recognized for 20 minutes, and the gentleman from Florida [Mr. Smith] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Iowa [Mr. Smith].

PREFERENTIAL MOTION OFFERED BY  
MR. SMITH OF FLORIDA

MR. SMITH of Florida: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Preferential motion offered by Mr. Smith of Florida: Mr. Smith of Florida moves that the House recede from its disagreement to Senate amendment No. 165 and concur therein.

MR. SMITH of Iowa: Mr. Speaker, I ask that the question be divided.

THE SPEAKER PRO TEMPORE: The question will be divided. . . .

#### PARLIAMENTARY INQUIRIES

MR. [STEPHEN J.] SOLARZ [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SOLARZ: Mr. Speaker, would it be possible through a unanimous-consent procedure to amend the amendment of the gentleman from Iowa?

THE SPEAKER PRO TEMPORE: By unanimous consent, yes.

MR. SOLARZ: That would be possible. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Iowa may withdraw his motion, leaving the motion of the gentleman from Florida to be voted on.

MR. SMITH of Iowa: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SMITH of Iowa: Mr. Speaker, I could withdraw my motion by unanimous consent and substitute another one? Is that right?

THE SPEAKER PRO TEMPORE: The gentleman does not need unanimous consent to do that.

MR. SMITH of Iowa: I can substitute another. . . .

MR. [SAMUEL] GEJDENSON [of Connecticut]: Would the House be in a position to accept an amended version of the gentleman from Florida [Mr. Smith]?

THE SPEAKER PRO TEMPORE: Mr. Smith of Iowa may offer another motion. . . .

MR. GEJDENSON: If the gentleman from Florida [Mr. Smith] then withdraws his motion, could he offer an amended version of that motion?

THE SPEAKER PRO TEMPORE: The Chair would look first to the manager of the bill, the gentleman from Iowa [Mr. Smith] to offer a motion.

MR. GEJDENSON: Look first to the manager of the bill, and if the manager of the bill had no motion, well the manager could offer that motion. I thank the Chair. . . .

THE SPEAKER PRO TEMPORE: The motion of the gentleman from Iowa [Mr. Smith] to concur in Senate amendment No. 165 with an amendment.

MR. SMITH of Iowa: With an amendment?

THE SPEAKER PRO TEMPORE: Yes.

MR. SMITH of Iowa: So, Mr. Speaker, first if we vote to recede, we will then come to whether or not to concur with my amendment, which is agreed to by the conferees.

THE SPEAKER PRO TEMPORE: That is correct.

MR. SMITH of Florida: Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. SMITH of Florida: Mr. Speaker, under the division of the question, the gentleman from Iowa [Mr. Smith] has a motion which will be voted on first, which motion was to recede and concur

with the Senate language, as amended by the Senate, is that correct?

THE SPEAKER PRO TEMPORE: With an amendment. . . .

The first question is, Shall the House recede from its disagreement to Senate amendment No. 165?

MR. SMITH of Florida: And if that is defeated—

THE SPEAKER PRO TEMPORE: If the House then recedes, if that motion carries, then the question is on the motion of the gentleman from Iowa, shall the House concur in Senate amendment No. 165 with an amendment.

MR. SMITH of Iowa: If that is voted down, Mr. Speaker, there is nothing in the bill. . . .

MR. SMITH of Florida: Mr. Speaker, there are two votes on the motion of the gentleman from Iowa to recede and concur in the Senate language?

THE SPEAKER PRO TEMPORE: The first vote is on receding. The second is on concurring with an amendment.

MR. SMITH of Florida: If those are adopted, I no longer obtain a vote on my preferential motion?

THE SPEAKER PRO TEMPORE: That is correct. . . .

The question is: Will the House recede from its disagreement to the amendment of the Senate numbered 165.

The House receded from its disagreement to the amendment of the Senate numbered 165.

THE SPEAKER PRO TEMPORE: The question is: Shall the House concur in the amendment of the Senate numbered 165 with an amendment?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. SMITH of Florida: Mr. Speaker, I object to the vote on the grounds that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 381, nays 39, not voting 13. . . .

So the House concurred in the amendment of the Senate numbered 165 with an amendment.

The result of the vote was announced as above recorded.

A motion to reconsider the votes by which action was taken on the several motions laid on the table.

### *Order of Consideration of Amendments in Disagreement*

**§ 8.4 The disposition of Senate amendments in disagreement normally proceeds in the order in which they appear in the House text; but the House may vary the order of consideration by a unanimous-consent agreement.**

Where controversy is expected on a particular motion to dispose of a Senate amendment in disagreement, its disposition can be postponed until a more convenient time on the following day by

a proper unanimous-consent request.<sup>(5)</sup>

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I ask unanimous consent that amendments numbered 147 and 148 be passed over this evening and that they be considered tomorrow, Wednesday, October 20, 1993, immediately prior to the consideration of amendment No. 171.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Is there objection to the request of the gentleman from Iowa?

There was no objection.

THE SPEAKER PRO TEMPORE: The Clerk will designate the next amendment in disagreement. . . .

The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Chair rules that further consideration of this bill will continue tomorrow.

### *Control of Debate*

**§ 8.5 In 1970, pursuant to the provisions of Rule XIV clause 2 (the “hour rule”) the Speaker stated in response to a parliamentary inquiry that a Member recognized to offer a motion to dispose of a Senate amendment to a House amendment to a Senate amendment to a House bill would be recognized for one**

5. See 139 CONG. REC. 25388, 25390, 103d Cong. 1st Sess., Oct. 19, 1993 (H.R. 2519).

6. Kweisi Mfume (Md.).

**hour, which time that Member could allocate at his discretion.**

*Parliamentarian's Note:* Rule XXVIII clause 2(a), was amended in the 92d Congress to provide for a division of debate time on a conference report or an amendment reported in disagreement. In the 99th Congress, the clause was further modified to specify that if the majority and minority floor managers support a conference report, the time can be allotted three ways if demanded by a Member opposing the report.<sup>(7)</sup>

On Jan. 22, 1970,<sup>(8)</sup> the House was considering a Senate amendment to a House amendment to a Senate amendment to H.R. 13111, appropriations for the Department of Health, Education, and Welfare.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry. In the consideration of the Nelson amendments, which was an amendment in disagreement, when it comes back, will there be 1 hour of debate in the control of the chairman of the committee or the chairman of the subcommittee?

7. Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997).

8. 116 CONG. REC. 750, 91st Cong. 2d Sess.

THE SPEAKER:<sup>(9)</sup> The Chair will state in response to the parliamentary inquiry that any Member who makes the motion will be entitled to 1 hour, and the question of the allocation of time will be in his discretion.

***Division of Debate Time on Motion To Dispose of Amendment Between Houses***

**§ 8.6 In the modern practice, debate on a privileged motion to dispose of a Senate amendment in disagreement, during the subsequent stages of action following the rejection of a conference report, is equally divided between the majority and minority parties.**

While the provisions of Rule XXVIII clause 2(b) specifically address the division of debate time on an amendment "reported in disagreement" from a conference committee, the practice has developed of dividing the time between the parties on any motion to dispose of an amendment, once the stage of disagreement has been reached.

9. John W. McCormack (Mass.).

On Dec. 19, 1985,<sup>(10)</sup> the Chair's announcement of the division of time in the proceedings carried here shows the practice that has been followed in recent years.<sup>(11)</sup>

FURTHER MESSAGE FROM THE  
SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendment of the House to the amendments of the Senate to the bill (H.R. 3128) entitled "An act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process," with an amendment.<sup>(12)</sup>

The message also announced that the Senate had passed a joint resolution of the following title, in which concurrence of the House is requested:

S.J. Res. 255. Joint Resolution Relative to the convening of the 2d session of the 99th Congress.

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10. 131 CONG. REC. 38359, 38360, 38367, 99th Cong. 1st Sess.
  11. This practice supersedes that followed in the period immediately following the adoption of Rule XXVIII clause 2(b) in 1972. See *House Rules and Manual* § 912(b) (1997) for a synopsis of the evolution of dividing debate time.
  12. The conference report on H.R. 3128 had been rejected on Dec. 19, 1985, so the stage of disagreement was still applicable and motions to dispose of this amendment between the Houses remained privileged.

CONSOLIDATED OMNIBUS RECON-  
CILIATION ACT OF 1985

MR. [WILLIAM (BILL) H.] GRAY of Pennsylvania: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, with the Senate amendment to the House amendment to the Senate amendment, and concur in the Senate amendment to the House amendment to the Senate amendment.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The Clerk will report the title of the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment as follows: . . .

MOTION OFFERED BY MR. DAUB

MR. [HAL] DAUB [of Nebraska]: Mr. Speaker, I move to table the motion.

My motion is in writing, and it is on its way to the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Daub moves to table the motion.

THE SPEAKER PRO TEMPORE: The question is on the motion to lay on the table offered by the gentleman from Nebraska (Mr. Daub).

The motion to table was rejected.

- 
13. Dale E. Kildee (Mich.).

MR. GRAY of Pennsylvania: Mr. Speaker, I move to limit debate to 15 minutes per side.

THE SPEAKER PRO TEMPORE: The gentleman requests that debate be limited. Is there objection to the request of the gentleman from Pennsylvania?

MR. DAUB: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The gentleman from Pennsylvania [Mr. Gray] will be recognized for 30 minutes and the gentleman from Ohio [Mr. Latta] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. Gray]. . . .

MR. GRAY: . . . Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The question is on the motion offered by the gentleman from Pennsylvania [Mr. Gray] to concur in the Senate amendment to the House amendment to the Senate amendment.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. GRAY of Pennsylvania: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 137, nays 211, not voting 86, as follows: . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *Division of Time on Motion Relating to Amendment in Disagreement*

**§ 8.7 Where an original motion to dispose of an amendment in disagreement is pending, it is possible for an opponent to demand one-third of the hour if both the majority and minority managers are in favor; and the demand for 20 minutes does not come too late when the proponent of a preferential motion indicates his opposition after his motion is reported.**

The rule providing for a three-way division of time (Rule XXVIII clause 2(b)(1)) was added in the 99th Congress.<sup>(14)</sup>

The proceedings of Oct. 11, 1989,<sup>(15)</sup> during the consideration of amendments reported in disagreement on the District of Columbia Appropriation Act, fiscal 1990, indicates that the mere offering of a preferential motion

14. H. Res. 7, 131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985. See *House Rules and Manual* § 912b (1997).

15. 135 CONG. REC. 24091, 101st Cong. 1st Sess.

does not automatically cause the Chair to divide the time three ways: a Member must directly state his opposition to the original motion to qualify.

The text of the amendment is as follows:

Senate amendment No. 22: Page 31, after line 2, insert:

SEC. 141. (a) This section may be cited as the "Nation's Capital Religious Liberty and Academic Freedom Act".

(b) Section 1-2520 of the District of Columbia Code (1981 edition) is amended by adding after subsection (2) the following new subsection:

"(3) Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization to deny, restrict, abridge, or condition—

"(A) the use of any fund, service, facility, or benefit; or

"(B) the granting of any endorsement, approval, or recognition,

to any person or persons that are organized for, or engaged in, promoting, encouraging, or condoning any homosexual act, lifestyle, orientation, or belief."

MOTION OFFERED BY MR. DIXON

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Dixon moves that the House recede from its disagreement to the amendment of the Senate numbered 22, and concur therein with an amendment, as follows: In lieu of the

matter proposed by said amendment, insert the following:

SEC. 141. Notwithstanding any other provision of the laws of the District of Columbia, it shall not be an unlawful discriminatory practice in the District of Columbia for any educational institution that is affiliated with a religious organization to deny:

(a) the use of any facility, service or benefit set aside for the practice or promotion of religion; or

(b) the granting of any endorsement, approval, or recognition, to any person or persons that are organized for, or engaged in, the promotion of any homosexual or heterosexual lifestyle or belief that is contrary to its religious doctrine.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman from California [Mr. Dixon] will be recognized for 30 minutes and the gentleman from New Jersey [Mr. Gallo] will be recognized for 30 minutes.

PREFERENTIAL MOTION OFFERED BY  
MR. DANNEMEYER

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Dannemeyer moves that the House recede from disagreement with the amendment of the Senate numbered 22 and concur therein.

PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Mr. Speaker, I have a parliamentary inquiry.

16. Doug Barnard, Jr. (Ga.).

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DANNEMEYER: Mr. Speaker, how will the time be allocated concerning the motion in disagreement offered by the gentleman from California [Mr. Dixon]?

THE SPEAKER PRO TEMPORE: Is the gentleman from California requesting one-third of the time?

MR. DANNEMEYER: That is correct, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Is the gentleman from New Jersey [Mr. Gallo] opposed to the original motion?

MR. [DEAN A.] GALLO [of New Jersey]: No, Mr. Speaker, I am not.

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Dannemeyer] will be recognized for 20 minutes.

MR. DIXON: Mr. Speaker, I demand a division of the question on the preferential motion.

THE SPEAKER PRO TEMPORE: The question will be divided.

### *Order of Recognition for Controlling and Closing Debate*

**§ 8.8 When time for debate on an amendment being considered after the stage of disagreement is divided three ways, with 20 minutes being controlled by a Member opposed, the Chair recognizes the Member offering the motion to close debate and the others in the reverse order of the original allocation.**

Where a motion was made to concur in a Senate amendment after the stage of disagreement has been reached, and the bill had been represented in conference by conferees from two House committees having jurisdiction and Members from both committees were seeking recognition to oppose the pending motion, the Speaker recognized the senior member of the two to control the time. The proceedings were as follows:<sup>(17)</sup>

#### MEDICARE CATASTROPHIC COVERAGE REFORM AMENDMENTS OF 1989

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3607) to repeal Medicare provisions in the Medicare Catastrophic Coverage Act of 1988, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Senate Amendment: Strike out all after the enacting clause and insert:  
SECTION 1. SHORT TITLE.

This title may be cited as the "Medicare Catastrophic Coverage Reform Amendments of 1989". . . .

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman from Illinois [Mr. Rosten-

17. 135 CONG. REC. 30809, 30813, 30814, 101st Cong. 1st Sess., Nov. 21, 1989.

18. Steny H. Hoyer (Md.).



kowski] will be recognized for 30 minutes, and the gentleman from Texas [Mr. Archer] will be recognized for 30 minutes.

PARLIAMENTARY INQUIRIES

MR. [MARTIN A.] RUSSO [of Illinois]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. RUSSO: Mr. Speaker, I would wonder whether or not the gentleman from Texas is opposed to the motion.

THE SPEAKER PRO TEMPORE: The Chair will inquire: Is the gentleman from Texas opposed to the amendment?

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I am opposed to the amendment on this side.

THE SPEAKER PRO TEMPORE: The Chair propounded a question, however, to the gentleman from Texas, the ranking member. Will the ranking member respond to the question of the Chair?

The Chair must ascertain whether the ranking member, who is entitled under the rules to 30 minutes, whether the ranking member is opposed to the amendment.

MR. [WILLIAM A.] ARCHER [Jr., of Texas]: Mr. Speaker, I am in favor of the amendment.

THE SPEAKER PRO TEMPORE: Does a Member seek 20 minutes in opposition to the amendment?

MR. MADIGAN: Mr. Speaker, I seek time in opposition.

THE SPEAKER PRO TEMPORE: For what purpose does the gentleman from Illinois [Mr. Russo] rise?

MR. [J. J. (JAKE)] PICKLE [of Texas]: Mr. Speaker, we have two gentlemen who wish to be recognized.

THE SPEAKER PRO TEMPORE: The Chair is going to recognize one Member for the purpose of being in opposition. That Member will be assigned 20 minutes of the time allotted.

MR. ROSTENKOWSKI: Mr. Speaker, if I may be recognized, I have no idea why the gentleman on my left and the gentleman on my right are seeking recognition. However, if it is because of opposition, I would suggest that the senior member be recognized in opposition.

THE SPEAKER PRO TEMPORE: Does the gentleman from Texas [Mr. Pickle] seek time in opposition? The gentleman from Texas is on his feet and the gentleman from Texas is the ranking member. Under the rules he would be entitled to recognition. Is the gentleman from Texas [Mr. Pickle] opposed to the amendment?

MR. PICKLE: No, I am not. I am for the amendment, Mr. Speaker.

MR. MADIGAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. MADIGAN: Mr. Speaker, this bill is in the jurisdiction of both the Ways and Means Committee and the Energy and Commerce Committee, and members from both of those committees are conferees on the subject matter that is before us. Am I to understand that the Committee on Energy and Commerce is not entitled to any time?

THE SPEAKER PRO TEMPORE: The Chair would ask the gentleman from Illinois if he is opposed to the amendment?

MR. MADIGAN: I am opposed, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman is entitled to 20 minutes as the senior Member seeking time. . . .

PARLIAMENTARY INQUIRY

MR. RUSSO: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. RUSSO: Mr. Speaker, under the process that we have agreed upon, who has the right to close debate; in what order do we close this debate?

THE SPEAKER PRO TEMPORE: The chairman of the committee who made the motion has the right to close debate.

MR. RUSSO: And prior to the chairman of the committee, who is the next in line to close debate; would it be some Member for the opposition?

THE SPEAKER PRO TEMPORE: Not necessarily, since the ranking minority member to whom 30 minutes was originally allocated has the right to close prior to the chairman.

MR. RUSSO: It would seem to me, Mr. Speaker, that having two Members who are in support of the amendment and two opposing the amendment speaking before that, would it not be more equitable that we would have one to close against, one to close for, one to close against, and then the chairman to close for; would that not be more fair?

THE SPEAKER PRO TEMPORE: The precedents require the Chair to go by the reverse order of the original allocation under the circumstances when more than two Members control time.

The gentleman from Pennsylvania [Mr. Schulze] is recognized for 2 minutes.

*Control of Debate When Preferential Motion Displaces Original Motion*

**§ 8.9 Where an amendment reported in disagreement from conference is under consideration, and a motion is made to dispose of that amendment, a preferential motion may be offered; but the Member offering the preferential motion does not thereby deprive the Member making the original motion of the floor.**

On June 30, 1972,<sup>(19)</sup> the House was considering amendments in disagreement to H.R. 15390, a bill to provide a four-month extension of the public debt limit. Speaker Carl Albert, of Oklahoma, recognized Wilbur D. Mills, of Arkansas, Chairman of the Committee on Ways and Means:

<sup>19</sup> 118 CONG. REC. 23725, 92d Cong. 2d Sess.

Mr. Speaker, I move that the House recede and concur, and pending that, Mr. Speaker, I would like to be recognized.

MR. [JOHN W.] BYRNES of Wisconsin: Mr. Speaker, I ask that the motion be divided.

THE SPEAKER: That will be in order after the Clerk reports the motion.

The Clerk will read.

The Clerk reads as follows:

Mr. Mills moves to recede and concur in Senate amendment numbered 2.

MR. BYRNES of Wisconsin: Mr. Speaker, I ask for a division of the question, that it be divided.

THE SPEAKER: The gentleman from Wisconsin asks for a division of the question.

The question is, will the House recede from its disagreement to the amendment of the Senate.

The motion was agreed to.

MR. BYRNES of Wisconsin: Mr. Speaker, I offer a motion to concur with an amendment.

THE SPEAKER: The Clerk will report the motion.

The reading of the amendment offered by Mr. Byrnes was dispensed with by unanimous consent, after which the Speaker recognized Mr. Mills.

***Division of Time on Amendments Reported From Conference in Disagreement***

**§ 8.10 A Member offering a preferential motion to dispose of an amendment in disagreement does not gain control of the time; the Member offering the original motion to dispose of the amendment retains control of the time which is divided between the majority and minority parties.<sup>(20)</sup>**

During consideration of an amendment reported in disagreement from a conference on a general appropriation bill, the manager of the conference report offered a motion to insist on disagreement with the Senate amendment. A preferential motion to recede and concur in the amendment with an amendment was offered and pending the debate on the motions, a parliamentary inquiry was directed to the

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20. The division of time on any amendment in disagreement is prescribed by Rule XXVIII clause 2(b) *House Rules and Manual* § 912(b) (1997). Under current rules, if the floor managers from the majority and minority are both in favor of the original motion which is offered to dispose of the amendment, one-third of the time can be claimed by a Member opposed.

Speaker about the control and division of time.<sup>(1)</sup>

THE SPEAKER:<sup>(2)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 61: Page 41, line 9, insert:

“FEDERAL RAILROAD  
ADMINISTRATION

“RAIL TRANSPORTATION  
IMPROVEMENT AND EMPLOYMENT

For payment of financial assistance to assist railroads by providing funds for repairing, rehabilitating, and improving railroad roadbeds and facilities, \$700,000,000 of which not to exceed \$7,000,000 shall be available for administrative expenses of the Secretary to remain available until December 31, 1976: *Provided, however,* That these funds shall be available only upon enactment of authorizing legislation.”

MOTION OFFERED BY MR. MAHON

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House insist on its disagreement to the amendment of the Senate numbered 61.

PREFERENTIAL MOTION OFFERED BY  
MR. CONTE

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

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1. 121 CONG. REC. 14385, 14386, 94th Cong. 1st Sess., Mar. 14, 1975.
  2. Carl Albert (Okla.).

Mr. Conte moves that the House recede from its disagreement to Senate amendment Number 61 and concur therein with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate, insert the following:

“CHAPTER VIII

“DEPARTMENT OF TRANSPORTATION  
“FEDERAL RAILROAD  
ADMINISTRATION

“For payment of financial assistance to assist railroads by providing funds for repairing, rehabilitating, and improving railroad roadbeds and facilities, \$200,000,000 of which not to exceed \$1,500,000 shall be available for administrative expenses of the Secretary to remain available until December 31, 1976: *Provided, however,* That these funds shall be available only upon enactment of authorizing legislation: *Provided, further,* That none of these funds shall be available to commuter rail systems.”

MR. MAHON: Mr. Speaker, I have moved that the House insist upon its disagreement with the Senate amendment. . . .

MR. [E. G.] SHUSTER [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. SHUSTER: Mr. Speaker, how is the time divided?

THE SPEAKER: The time is divided equally between the gentleman from Texas (Mr. Mahon), who has 30 minutes, and the gentleman from Illinois (Mr. Michel) who has 30 minutes or such small fraction thereof as he may decide to use.

MR. SHUSTER: I thank the Speaker.

### *Recognition To Offer Motion*

**§ 8.11 Where the subcommittee chairman of the Committee on Appropriations, calling up the conference report, did not seek recognition to offer a motion to dispose of a crucial amendment in disagreement, the Speaker recognized the chairman of the full committee to offer the anticipated preferential motion.**

The sequence of motions to dispose of an amendment in disagreement can be important. In the instance cited below, the subcommittee chairman allowed another to offer the preferential motion so he could control the floor on the less preferential motion when the first motion offered was defeated. The proceedings of Nov. 3, 1977,<sup>(3)</sup> are carried below:

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The Chair recognizes the gentleman from Pennsylvania (Mr. Flood).

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, pursuant to the resolution just agreed to, I call up the

conference report on the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 82 to the bill (H.R. 7555) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies for the fiscal year ending September 30, 1978, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The Clerk will read the report.

The Clerk read the report.

(For conference report and statement, see proceedings of the House of November 2, 1977.)

#### AMENDMENT IN DISAGREEMENT

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 28: Sec. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, or except for medical procedures necessary for the victims of rape or incest, or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

The Secretary shall issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced.

3. 123 CONG. REC. 36959, 36966, 95th Cong. 1st Sess.

4. K. Gunn McKay (Utah).

PREFERRED MOTION OFFERED BY MR.  
MAHON

MR. [GEORGE H.] MAHON [of Texas]:  
Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Mahon moves that the House concur in the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 82.

THE SPEAKER PRO TEMPORE: The gentleman from Texas (Mr. Mahon) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. Michel) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. Mahon). . . .

Following debate, the question was taken and, on a yea and nay vote, the preferential motion was rejected.

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Flood moves that the House disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 82.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania (Mr. Flood), is recognized for 30 minutes.

MR. FLOOD: Mr. Speaker, the House has just voted down the preferential motion on the Senate amendment, and in order to move along with this bill and send it back to the Senate, I have

offered this motion, which accomplishes that purpose.

Mr. Speaker, I urge the adoption of the motion.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Pennsylvania (Mr. Flood).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So the motion was agreed to.

A motion to reconsider was laid on the table.

### *Division of Debate Time on Amendments in Disagreement*

§ 8.12 Rule XXVIII clause 2 (b)(1) provides explicitly for a division of debate time between the majority and the minority when amendments are reported in disagreement from conference; and initial practice under this rule was to construe the rule narrowly and to recognize the proponent of a motion to concur in a new amendment added by the Senate after the stage of disagreement for a full hour.

The only amendment remaining in disagreement on the Labor and Health, Education, and Welfare appropriation bill for fiscal year

1979 when it was taken up in the House on Oct. 14, 1978,<sup>(5)</sup> was one dealing with abortion funding. Since the stage of disagreement had been reached, motions to dispose of the amendment were privileged, and after the amendment was read, the manager of the report, Mr. Daniel J. Flood, of Pennsylvania, offered a motion to disagree with the amendment. The chairman of the Committee on Appropriations, Mr. George H. Mahon, of Texas, then offered a preferential motion to concur in the Senate amendment. The Chair's application of the rule about division of debate time is shown below.

MOTION TO DISAGREE TO SENATE AMENDMENT NO. 103 TO H.R. 12929, LABOR-HEW APPROPRIATIONS, FISCAL YEAR 1979

MR. FLOOD: Mr. Speaker, I again move to take from the Speaker's desk the bill (H.R. 12929) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1979, and for other purposes, with Senate amendment No. 103 thereto and disagree to the Senate amendment.

The Clerk read the title of the bill.

The Clerk read Senate amendment No. 103 as follows:

Page 40, strike out lines 1 to 4, inclusive, and insert:

SEC. 210. None of the funds in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, or where medically necessary, or for rape or incest victims. This section does not prohibit the use of drugs or devices to prevent implantation of the fertilized ovum.

GENERAL LEAVE

MR. FLOOD: Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment which we will now consider.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MR. FLOOD: Mr. Speaker, I have moved to disagree to the Senate amendment.

THE SPEAKER: That motion is now pending.

PREFERENTIAL MOTION OFFERED BY MR. MAHON

MR. MAHON: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Mahon moves that the House concur in the amendment of the Senate.

5. 124 CONG. REC. 38230, 38231, 38236, 95th Cong. 2d Sess.

6. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) is recognized for 1 hour.

MR. FLOOD: Mr. Speaker, I have no further requests for time.

Mr. Speaker, I move the previous question on the preferential motion.

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Texas (Mr. Mahon).

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. MAHON: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 198, nays 195, not voting 37.

*Parliamentarian's Note:* The practice has developed, through use of the Chair's recognition policy, of dividing the time on amendments in disagreement following rejection of a conference report, where an initial motion to dispose of an amendment in disagreement is rejected, and where the Senate adds a new amendment after the stage of disagreement. Decisions illustrating this

evolving practice are carried elsewhere in this chapter.<sup>(7)</sup>

**§ 8.13 The Member offering the preferential motion to recede and concur does not thereby gain control of the time for debate.**

On Sept. 12, 1967,<sup>(8)</sup> the House was considering an amendment reported in disagreement from a conference on H.R. 10738, appropriations for fiscal 1967 for the Department of Defense.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House insist upon its disagreement to Senate amendment numbered 18.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Sikes moves that the House recede from its disagreement to the amendment of the Senate numbered 18 and concur therein.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> The gentleman from Texas [Mr. Mahon] is recognized for 1 hour.<sup>(10)</sup>

7. See § 8.20, *infra*.

8. 113 CONG. REC. 25201, 90th Cong. 1st Sess.

9. Carl Albert (Okla.).

10. See also 113 CONG. REC. 29837, 29842, 90th Cong. 1st Sess., Oct. 24, 1967; and 111 CONG. REC. 8861,



**§ 8.14 Although the motion to recede from disagreement and concur in a Senate amendment takes precedence over the motion to insist on disagreement, the Member offering the preferential motion does not thereby gain control of time for debate.**

On Oct. 24, 1967,<sup>(11)</sup> the House was considering the amendments in disagreement to H.R. 9960, independent offices appropriations for fiscal 1968.

THE SPEAKER:<sup>(12)</sup> The Clerk will report the Senate amendments in disagreement.

The Clerk read as follows:

Senate amendment No. 58: On page 36, line 23, strike out "\$75,000,000" and insert "\$125,000,000".

Senate amendment No. 59: On page 37, line 2, strike out "\$237,000,000" and insert "\$537,000,000".

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Speaker I offer a motion.

The Clerk read as follows:

Mr. Evins of Tennessee moves that the House insist on its disagreement to the amendments of the Senate numbered 58 and 59.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House recede from its disagreement to the amendments of the Senate numbered 58 and 59 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Tennessee [Mr. Evins].

After controlling one hour of debate, Mr. Evins moved the previous question on the motion offered by Mr. Giaimo.

MR. EVINS of Tennessee: . . . Mr. Speaker, I move the previous question and urge that you vote against the preferential motion. . . .

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Connecticut [Mr. Giaimo] that the House recede from its disagreement to Senate amendments No. 58 and No. 59, and concur therein.

MR. EVINS of Tennessee: Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The question was taken; and there were—yeas 156, nays 241, not voting 35. . . .

So the preferential motion was rejected. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Tennessee [Mr. Evins] that the House insist upon its disagreement to the amendments of the Senate No. 58 and No. 59.

The motion was agreed to.

8866, 89th Cong. 1st Sess., Apr. 29, 1965.

11. 113 CONG. REC. 29837, 29838, 29842, 90th Cong. 1st Sess.

12. John W. McCormack (Mass.).

§ 8.15 Although the motion to recede from disagreement and concur in a Senate amendment takes precedence over the motion to adhere, the Member offering the preferential motion does not thereby gain control of time for debate.

On June 23, 1960,<sup>(13)</sup> the House was considering a Senate amendment to H.R. 10569, the Treasury and Post Office Departments appropriation bill for fiscal 1961. The following occurred:

MR. [J. VAUGHAN] GARY [of Virginia]: Mr. Speaker, I send a motion to the desk.

The Clerk read as follows:

Mr. Gary moves that the House adhere to its disagreement to the amendment of the Senate numbered 6.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Hoffman of Michigan moves that the House recede from its disagreement to the amendment of the Senate numbered 6 and concur therein.

MR. GARY: Mr. Speaker, I ask for a division of the motion.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The gentleman may have a division of the motion. Does the gentleman wish to debate the motion?

MR. GARY: Yes.

MR. HOFFMAN of Michigan: Yes; I would like to explain what the motion is.

THE SPEAKER PRO TEMPORE: The gentleman from Virginia [Mr. Gary] is entitled to be recognized for 1 hour on the motion.

MR. HOFFMAN of Michigan: How about my 5 minutes? Will I be recognized for 5 minutes to explain the motion?

THE SPEAKER PRO TEMPORE: The time is under the control of the gentleman from Virginia.

### *Dividing the Question*

§ 8.16 When a division of the question is demanded on a preferential motion to recede and concur in a Senate amendment in disagreement, the House does not vote on whether to divide the question but first votes on whether to recede; and if it decides this question in the affirmative, the vote may recur on the underlying motion to concur with an amendment which was temporarily displaced by the preferential motion.

13. 106 CONG. REC. 14074, 14081, 86th Cong. 2d Sess.

14. Wilbur D. Mills (Ark.).

The proceedings of Oct. 11, 1989,<sup>(15)</sup> illustrate one sequence of motions which may occur where a motion to recede and concur with an amendment is supplanted by a motion to recede and concur.

PARLIAMENTARY INQUIRY

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman will state it.

MR. DANNEMEYER: Mr. Speaker, will the vote be on whether there will be a division?

THE SPEAKER PRO TEMPORE: No, the question has been divided. There has been a division, and the first question will be: Will the House recede from its disagreement to Senate amendment numbered 22?

MR. DANNEMEYER: That is the first vote?

THE SPEAKER PRO TEMPORE: That is the first vote.

The second vote will be, if the House does recede: Will the House concur in the Senate amendment with the amendment offered by the gentleman from California [Mr. Dixon]?

MR. DANNEMEYER: And, Mr. Speaker, in order to get to the position that this Member, the gentleman from California [Mr. Dannemeyer], has offered, we must defeat the issue that is being pre-

sented by the gentleman from California [Mr. Dixon]; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. DANNEMEYER: I thank the Chair. . . .

The House receded from its disagreement to the amendment of the Senate numbered 22.

THE SPEAKER PRO TEMPORE: The question is, Will the House concur in the amendment of the Senate numbered 22 with an amendment.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

So the House refused to concur in the amendment of the Senate numbered 22 with an amendment.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion offered by the gentleman from California [Mr. Dannemeyer].

The motion was agreed to.

*Effect of Division of Motion To Recede and Concur*

**§ 8.17 Where a motion to recede and concur in an amendment of the Senate which is in disagreement between the two Houses is divided, on the demand of a Member, the proponent of the initial motion still has control of the floor and has an hour at his disposal.**

15. 135 CONG. REC. 24097, 24099, 101st Cong. 1st Sess.

16. Doug Barnard, Jr. (Ga.).

On Dec. 22, 1969,<sup>(17)</sup> the House was considering Senate amendments to H.R. 15209, the supplemental appropriations bill for fiscal 1970. Speaker John W. McCormack, of Massachusetts, recognized George H. Mahon, of Texas, Chairman of the Committee on Appropriations.

MR. MAHON: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 33<sup>(18)</sup> and concur therein.

THE SPEAKER: For what purpose does the gentleman from New Jersey rise?

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Speaker, I ask that the question be divided. Mr. Speaker, I have a motion at the desk.

MR. MAHON: Mr. Speaker, I do not yield for a motion at this time.

THE SPEAKER: The gentleman from New Jersey demands a division?

MR. THOMPSON of New Jersey: The gentleman does.

THE SPEAKER: The question is, Will the House recede from its disagreement

to the amendment of the Senate numbered 33?

MR. [CLARK] MACGREGOR [of Minnesota]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MACGREGOR: I should like to ask the Speaker if the time for debate on the motion of the gentleman from Texas (Mr. Mahon) is under the control of the gentleman from Texas and if it is in order for me at this time to ask the gentleman from Texas to yield to me for 5 minutes?

MR. MAHON: I have agreed to yield to the gentleman from Minnesota for 5 minutes for the purpose of debate.

MR. MACGREGOR: Am I recognized, Mr. Speaker?

THE SPEAKER: The gentleman from Texas will be recognized for 1 hour, but the question before the House now is on the motion of the gentleman from Texas that the House recede from its disagreement to the Senate amendment.

### *Debate on Preferential Motion*

**§ 8.18 Following a demand for a division of the question on a motion to recede and concur, the House having voted to recede, the proponent of a motion to concur with amendment does not by offering his preferential motion deprive the Member who had previously been recognized to offer the motion to**

17. 115 CONG. REC. 40902, 40915, 91st Cong. 1st Sess.

18. This amendment concerned the controversial Philadelphia plan dealing with memberships of racial minorities in construction unions employed on federal projects.

**recede and concur of the floor. The Member offering the motion to recede and concur still controls the debate on the preferential motion under the hour rule.**

On June 30, 1972,<sup>(19)</sup> Mr. Wilbur D. Mills, of Arkansas, was recognized by Speaker Carl Albert, of Oklahoma, to offer a motion to recede and concur in a Senate amendment to H.R. 15390, a bill to extend the public debt limit.

MR. [JOHN W.] BYRNES of Wisconsin: Mr. Speaker, I ask for a division of the question, that it be divided.

THE SPEAKER: that will be in order after the Clerk reports the motion.

The Clerk will report.

The Clerk read as follows:

Mr. Mills moves to recede and concur in Senate amendment numbered 2.

MR. BYRNES of Wisconsin: Mr. Speaker, I ask for a division of the question, that it be divided.

THE SPEAKER: The gentleman from Wisconsin asks for a division of the question.

The question is, will the House recede from its disagreement to the amendment of the Senate.

The motion was agreed to.

MR. BYRNES of Wisconsin: Mr. Speaker, I offer a motion to concur with an amendment.

THE SPEAKER: The Clerk will report the motion. . . .

MR. BYRNES of Wisconsin (during the reading): Mr. Speaker, I wonder if on this particular amendment we may not dispense with the reading?

THE SPEAKER: Does the gentleman ask unanimous consent to do so?

MR. BYRNES of Wisconsin: I ask unanimous consent to dispense with further reading of the motion and that it be printed in the Record.

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

There was no objection.

THE SPEAKER: The gentleman from Arkansas is recognized.

MR. MILLS of Arkansas: Mr. Speaker, the second amendment in which I have moved to recede and concur involves an increase in social security benefits of 20 percent across the board effective for the month of September 1972, payable in the check for early October and automatic benefit increases to protect against the cost-of-living rises in the future. . . .

So, Mr. Speaker, I urge the House to vote down the substitute offered by the gentleman from Wisconsin (Mr. Byrnes) and agree to the Senate amendment.

I move the previous question.

THE SPEAKER: Without objection, the previous question is ordered.

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from Wisconsin (Mr. Byrnes).

MR. BYRNES of Wisconsin: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

<sup>19</sup> 118 CONG. REC. 23725, 23731, 23738, 23739, 92d Cong. 2d Sess.

The question was taken; and there were—yeas 83, nays 253, answered “present” 1, not voting 95. . . .

So the motion was rejected. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Arkansas (Mr. Mills) that the House concur in the Senate amendment No. 2.

MR. MILLS of Arkansas: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 302, nays 35, not voting 95. . . .

So the motion was agreed to.

### *Recognition Following Defeat of Motion*

#### **§ 8.19 When a motion to recede and concur in a Senate amendment with an amendment is made by the Member in charge of a bill and is defeated, recognition for a motion to further insist on disagreement passes to a Member opposed to the original motion.**

On June 26, 1942,<sup>(20)</sup> the House was considering amendments in disagreement to H.R. 6709, appropriations for the Department of Agriculture. Mr. Malcolm C. Tarver, of Georgia, offered a motion to recede and concur in Sen-

20. 88 CONG. REC. 5642, 5643, 77th Cong. 2d Sess.

ate amendment No. 90 with an amendment.

The question was taken; and there were—yeas 131, nays 159, not voting 142. . . .

The result of the vote was announced as above recorded.

Mr. Cannon of Missouri and Mr. Tarver rose.

THE SPEAKER:<sup>(1)</sup> For what purpose does the gentleman from Missouri rise?

MR. [CLARENCE] CANNON of Missouri: I rise to move that the House insist on its disagreement to the Senate amendment.

MR. TARVER: Mr. Speaker, I desire to submit a parliamentary inquiry. It was my purpose to offer a motion as I have done in connection with the same subject matter on previous occasions. I had risen for the purpose of offering a motion to further insist upon the disagreement of the House to Senate amendments Nos. 90 and 91. I wish to inquire whether or not I am privileged, as chairman of the House conferees, to offer that motion?

MR. CANNON of Missouri: Mr. Speaker, my motion is to further insist.

MR. TARVER: Mr. Speaker, I was on my feet before the gentleman from Missouri rushed over between me and the microphone and offered his motion.

MR. CANNON of Missouri: Mr. Speaker, it is a long-established rule of procedure that when a vital motion made by the Member in charge of a bill is defeated, the right to prior recognition passes to the opposition. That is the position in which the gentleman finds

1. Sam Rayburn (Tex.).

himself. He has made a major motion. The motion has been defeated. Therefore the right of recognition passes to the opposition, and I ask to be recognized to move to further insist.

MR. TARVER: Mr. Speaker, may I be heard with regard to that statement?

THE SPEAKER: The Chair will hear the gentleman.

MR. TARVER: The question has never been raised so far as I have known in the course of my experience of some 16 years upon an appropriation bill conference report, but if as the gentleman states the right of making the motion passes to the opposition, it should pass to my Republican colleague the gentleman from Kansas [Mr. Lambertson] with whom the gentleman from Missouri has been associated in the defeat of the motion offered by the chairman of the subcommittee. I have desired to offer the motion myself in the absence of the exercise of that privilege by the gentleman from Kansas.

MR. [WILLIAM P.] LAMBERTSON: Mr. Speaker, I ask for recognition.

THE SPEAKER: The gentleman from Georgia has the floor.

MR. TARVER: I have completed all I desire to say except that I desire to offer the motion if it is permissible; otherwise, I insist that the right should pass to the opposition and to the gentleman from Kansas [Mr. Lambertson].

THE SPEAKER: The Chair is of the opinion that the gentleman from Missouri has been properly recognized to offer a motion. The gentleman will state his motion.

MR. CANNON of Missouri: Mr. Speaker, I move that the House further insist on its disagreement to the Senate amendments.

The motion was agreed to.

***Where Initial Motion Is Rejected, Recognition May Go To Opponent Thereof***

**§ 8.20 Where the original motion to dispose of an amendment in disagreement is rejected, recognition goes to a Member who led the opposition; and when that Member is recognized to offer a successor motion, the debate time, under current procedures, is divided pursuant to the same rule which governed debate on the original motion.**

On Aug. 6, 1993,<sup>(2)</sup> during consideration of amendments in disagreement reported from the conference on H.R. 2493, Agriculture appropriations for fiscal year 1994, the original motion to recede and concur in a Senate amendment with an amendment was rejected. The subsequent motion was offered by a Member who had opposed the original motion.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The Clerk will designate the next amendment in disagreement.

2. 139 CONG. REC. 19582, 19587, 19588, 103d Cong. 1st Sess.
3. Romano L. Mazzoli (Ky.).

The text of the amendment is as follows:

Senate amendment No. 164: Page 81, after line 12, insert:

SEC. 730. (a) None of the funds appropriated or otherwise made available by this Act shall be used by the Secretary of Agriculture to provide a total amount of payments to a person to support the price of honey under section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446h) and section 405A of such Act (7 U.S.C. 1425a) in excess of \$50,000 in the 1994 crop year.

MOTION OFFERED BY MR. SKEEN

MR. [JOE] SKEEN [of New Mexico]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Motion offered by Mr. Skeen:

Mr. Skeen moves that the House recede and concur in the amendment of the Senate numbered 164 with an amendment as follows: In the matter proposed to be inserted by the amendment, add the following: "The GAO shall conduct a study and report to Congress on the effectiveness of the program."

THE SPEAKER PRO TEMPORE: The gentleman from New Mexico [Mr. Skeen] is recognized for 30 minutes.

PARLIAMENTARY INQUIRIES

MR. [HARRIS W.] FAWELL [of Illinois]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. FAWELL: First of all, the motion that the gentleman from New Mexico offered was read so fast I did not un-

derstand just what it was. But I rise in opposition.

THE SPEAKER PRO TEMPORE: If the gentleman is opposed to the motion offered by the gentleman from New Mexico, the gentleman [Mr. Fawell] is entitled to 20 minutes to debate the issue.

Is the gentleman opposed to the motion offered by the gentleman from New Mexico?

MR. FAWELL: Mr. Speaker, if I could, may I have a rereading of that motion.

THE SPEAKER PRO TEMPORE: The Clerk will rereport the motion offered by the gentleman from New Mexico [Mr. Skeen].

The Clerk reread the motion.

THE SPEAKER PRO TEMPORE: Is the gentleman [Mr. Fawell] opposed to the motion offered by the gentleman from New Mexico [Mr. Skeen]?

MR. FAWELL: Yes, I am, Mr. Speaker.

Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FAWELL: At least I think it is a parliamentary inquiry.

Assuming that this particular motion fails, can the Chair advise me where we will be then?

THE SPEAKER PRO TEMPORE: Another Member will be recognized for another motion on this amendment in disagreement.

Is the gentleman opposed to the motion?

MR. FAWELL: Yes, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from New Mexico [Mr. Skeen] will be recognized for 20 minutes, the gentleman from Illinois [Mr. Fawell] will be recognized for 20 min-



utes, and the gentleman from Illinois [Mr. Durbin] will be recognized for 20 minutes. . . .

The question is on the amendment offered by the gentleman from New Mexico [Mr. Skeen].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. FAWELL: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were yeas 140, nays 274, not voting 19. . . .

So the House refused to recede and concur in the amendment of the Senate numbered 164 with an amendment.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. FAWELL

MR. FAWELL: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Fawell moves that the House recede and concur in the amendment of the Senate numbered 164 with an amendment as follows: In the matter proposed to be inserted by the amendment, strike "\$50,000" and insert "\$0".

THE SPEAKER PRO TEMPORE: The gentleman from Illinois [Mr. Fawell] will be recognized for 30 minutes in support of his motion, and the gentleman from Illinois [Mr. Durbin] will be recognized for 30 minutes in opposition.

The Chair recognizes the gentleman from Illinois [Mr. Fawell].

MR. FAWELL: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I believe we have fully debated this, and with concurrence from the gentleman from Illinois [Mr. Durbin] and with concurrence from the gentleman from New Mexico [Mr. Skeen], I would suggest that we simply go right to the vote, and yield back our time.

I would merely say that those who voted "no" previously would vote "yes" this time if they want to kill the honey program, and I would, assuming there is agreement, I would then yield back my time.

MR. [RICHARD J.] DURBIN [of Illinois]: Mr. Speaker, I yield back the balance of my time.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois [Mr. Fawell].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. DURBIN: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 344, noes 60, not voting 29. . . .

***Recognition Where Manager's Motion Regarding Senate Amendment in Disagreement Is Rejected***

**§ 8.21 Where a motion to dispose of an amendment re-**

**ported from conference in disagreement, offered by the manager of the conference report, is rejected, the Speaker recognizes a Member leading the opposition to offer another motion to dispose of the amendment.**

Following the adoption of an appropriations conference report in the 95th Congress, the manager of the report, Mr. Edward P. Boland, of Massachusetts, offered a motion to recede from disagreement to a Senate amendment reported in disagreement and concur therein with an amendment reducing the amount of the appropriation proposed by the Senate. The motion was actively opposed by the Chairman of the Committee on Science and Astronautics, Don Fuqua, of Florida. When the initial motion was defeated, Mr. Fuqua was recognized to offer a motion to recede and concur.

The proceedings of July 19, 1977,<sup>(4)</sup> were as indicated:

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

- 
4. 123 CONG. REC. 23668, 23669, 23678, 95th Cong. 1st Sess.
  5. Norman Y. Mineta (Calif.).

Senate amendment No. 24: Page 17, line 11, strike out "\$2,943,600,000" and insert "\$3,013,000,000".

MOTION OFFERED BY MR. BOLAND

MR. BOLAND: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Boland moves that the House recede from its disagreement to the amendment of the Senate numbered 24 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$2,995,300,000".

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts (Mr. Boland) is recognized for 30 minutes and the gentleman from Pennsylvania (Mr. Coughlin) is recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. Boland).

MR. BOLAND: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this motion and another motion I will offer later on in the bill are the only two controversial parts of this conference report.

Mr. Speaker, the House conferees were unable to reach agreement on the Jupiter Orbiter Probe which NASA had requested in the 1978 budget. The House deleted \$20,700,000 for the initial funding of this program, and the Senate restored the funds. . . .

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Florida (Mr. Fuqua).

MR. FUQUA: Mr. Speaker, I rise in opposition to amendment No. 24.

The effect of this amendment would be to deny the Jupiter Orbiter Probe program which has been approved by

three of the four committees making reviews for authorizing and appropriating funds for NASA for fiscal year 1978. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. FUQUA

MR. FUQUA: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Fuqua moves that the House recede from its disagreement to the amendment of the Senate numbered 24 and concur therein.

THE SPEAKER PRO TEMPORE: The gentleman from Florida (Mr. Fuqua) is recognized . . . .

MR. FUQUA: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The motion was agreed to.

*Parliamentarian's Note:* Under Rule XXVIII clause 2(b)(1) the division of time on a motion to dispose of an amendment reported from conference in disagreement is equally divided between the majority and minority parties. This provision about the control of time was added to the rules in 1972.<sup>(6)</sup> Two major alterations have occurred since: first, the rule was formally amended in the 99th Congress to provide that if both

6. See H. Res. 1153, 118 CONG. REC. 36023, 92d Cong. 2d Sess., Oct. 13, 1972.

the manager and the floor manager for the minority favor the motion which is offered to dispose of the amendment, the time may be, if demanded, divided three ways to allow a Member in opposition to control one-third of the time;<sup>(7)</sup> and second, by custom, the practice has developed of dividing the time, not only on the original motion to dispose of the amendment in disagreement, but on motions offered after defeat of the original motion. See, e.g., § 8.20, supra.

### *Role of Committee Chairman*

**§ 8.22 The Speaker recognized the Chairman of the Committee on Interstate and Foreign Commerce to move to suspend the rules and agree to a resolution taking a House bill with Senate amendment from the Speaker's table and agreeing to the Senate amendment.**

On Aug. 27, 1962,<sup>(8)</sup> the following took place in the House:

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I move to suspend the

7. See H. Res. 7, 131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985.

8. 108 CONG. REC. 17671, 17681, 87th Cong. 2d Sess.

rules and agree to House Resolution 769.

The Clerk read the resolution as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 11040, with the Senate amendment thereto, be, and the same is hereby, taken from the Speaker's table, to the end that the Senate amendment be, and the same is hereby, agreed to.

THE SPEAKER:<sup>(9)</sup> Is a second demanded?

MR. [WILLIAM L.] SPRINGER [of Illinois]: Mr. Speaker, I demand a second.

MR. [WILLIAM FITTS] RYAN of New York: Mr. Speaker, I demand a second. . . .

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection. . . .

The yeas and nays were ordered.

The question was taken; and there were—yeas 372, nays 10, not voting 53. . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was passed.<sup>(10)</sup>

**§ 8.23 The Speaker declined to recognize a Member for a unanimous-consent request to take a bill from the Speaker's table and concur in the Senate amendments where such a request was**

9. John W. McCormack (Mass.).  
10. Mr. Harris was Chairman of the Committee on Interstate and Foreign Commerce during the 87th Congress.

**made without the authorization of the chairman of the committee involved and where Members had been informed there would be no further legislative business for the day.**

On July 31, 1969,<sup>(11)</sup> the following occurred on the floor of the House:

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9951), to provide for the collection of the Federal unemployment tax in quarterly installments during each taxable year; to make status of employer depend on employment during preceding as well as current taxable year; to exclude from the computation of the excess the balance in the employment security administration account as of the close of fiscal years 1970 through 1972; to raise the limitation on the amount authorized to be made available for expenditure out of the employment security administration account by the amounts so excluded; and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

THE SPEAKER:<sup>(12)</sup> The Chair will state that at this time the Chair does not recognize the gentleman from Louisiana for that purpose.

11. 115 CONG. REC. 21691, 91st Cong. 1st Sess.  
12. John W. McCormack (Mass.).

The chairman of the Committee on Ways and Means is at present appearing before the Committee on Rules seeking a rule and Members have been told that there would be no further business tonight.

The Chair does not want to enter into an argument with any Member, particularly the distinguished gentleman from Louisiana whom I admire very much. But the Chair has stated that the Chair does not recognize the gentleman for that purpose.

MR. BOGGS: Mr. Speaker, the gentleman from Louisiana equally admires gentleman in the chair. I thoroughly understand the position of the distinguished Speaker.

### ***Availability on Floor of Copies of Matters To Be Considered***

**§ 8.24 Pursuant to Rule XXVIII clause 2(b) copies of Senate amendments reported from conference in disagreement as well as the conference report in disagreement and the joint statement, must be available on the floor of the House when the amendment is considered, unless the amendment is considered under suspension of the rules.**

On June 29, 1973,<sup>(13)</sup> Mr. Wilbur D. Mills, of Arkansas, asked unanimous consent for the imme-

13. 119 CONG. REC. 22381, 22382, 22384, 93d Cong. 1st Sess.

diately consideration of the conference report and amendments in disagreement on H.R. 8410, to continue a temporary increase in the public debt limit. Mr. William A. Steiger, of Wisconsin, rose with a parliamentary inquiry:

Mr. Speaker, my parliamentary inquiry is this: that if an objection is heard to the request made by the gentleman from Arkansas, is it in order for the gentleman from Arkansas, the distinguished chairman of the Committee on Ways and Means, to move to suspend the rules to bring this to the floor of the House?

THE SPEAKER:<sup>(14)</sup> The Chair will state that the Chair has the authority to recognize the gentleman for such a motion.

MR. STEIGER of Wisconsin: Mr. Speaker, further reserving the right to object, may I ask the Chair's indulgence in a question relating to rule XXVIII, clause 2(b), as to whether we have waived that part of the rule XXVIII governing conference reports, which says: Nor shall it be in order to consider any such amendment that is to the conference unless copies of the report and accompanying statement together with the text of the amendment are then available on the floor.

THE SPEAKER: The Chair will state that copies of the Senate amendment and conference report are available, but that suspension of the rules will suspend all rules. . . .

14. Carl Albert (Okla.).

Is there objection to the request of the gentleman from Arkansas?

There was no objection.

***Dispensing With Reading of Motions To Recede and Concur With an Amendment***

§ 8.25 To expedite the consideration of amendments reported from conference in disagreement, the House sometimes dispenses with the reading of motions to recede and concur with amendment, so long as the motions offered conform to those printed in the conference statement.<sup>(15)</sup>

While this was the first instance where such a request was entertained,<sup>(16)</sup> it has since become an accepted method for accelerating consideration of amendments in disagreement on general appropriation bills.

15. Under Rule XXVIII clause 2(c), as added to the standing rules in the 96th Congress, conference reports and amendments in disagreement are considered as read if printed and available as provided in clause 2 of the same rule. (H. Res. 5, 125 CONG. REC. 7-16, 96th Cong. 1st Sess., Jan. 15, 1979.)

16. 133 CONG. REC. 18294, 100th Cong. 1st Sess., June 30, 1987.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> The question is on the motion offered by the gentleman from Mississippi [Mr. Whitten].

The motion was agreed to.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent that the reading of any motion to recede and concur with an amendment to be offered by the bill manager shall be dispensed with if offered in identical form as the motion printed in the Statement of Managers—House Report 100-195—which was also printed in the *Congressional Record* on June 27, 1987—pages H5651 through H5682.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

**§ 9. To Agree or Concur**

Before the stage of disagreement, or after that stage is reached and the House has receded from its disagreement on a particular amendment, concurring in a Senate amendment brings the two Houses to reconciliation. A request or motion to concur may be made in order in a variety of ways—by intervention of the Committee on Rules, by unanimous consent, or by a motion under suspension of the rules.

17. Daniel R. Glickman (Kans.).

After the stage of disagreement is reached, a motion to dispose of an amendment of the other House is given privilege.

### *Resolution From Committee on Rules*

§ 9.1 By a resolution reported from the Committee on Rules, the House may take a House bill with Senate amendments from the Speaker's table and concur in the Senate amendments.

On Apr. 8, 1964,<sup>(18)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard Bolling, of Missouri:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 665, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 6196) to encourage increased consumption of cotton, to maintain the income of cotton producers, to provide a special research program designed to lower costs of production, and for other purposes, with the Senate amendments thereto, be, and the same is hereby taken from the Speaker's table, to

18. 110 CONG. REC. 7302-04, 88th Cong. 2d Sess.

the end that the Senate amendments be, and the same are hereby agreed to.<sup>(19)</sup>

§ 9.2 Where a resolution provides for taking a House bill with Senate amendments from the Speaker's table to the end that the Senate amendments are agreed to, adoption of the resolution means that the House concurs in the Senate amendments.

On Mar. 24, 1948,<sup>(20)</sup> Speaker Joseph W. Martin, Jr., of Massachusetts, recognized Mr. Leo E. Allen, of Illinois, to call up House Resolution 510:

Mr. Speaker, I call up House Resolution 510 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 4790) to reduce individual income tax payments, and for other purposes, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table to the end that all Senate amendments be, and the same are hereby, agreed to. . . .

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, a parliamentary inquiry.

19. See also 112 CONG. REC. 2069, 89th Cong. 2d Sess., Feb. 3, 1966.

20. 94 CONG. REC. 3399, 3413, 80th Cong. 2d Sess.

THE SPEAKER: The gentleman will state it.

MR. RAYBURN: As I understand the parliamentary situation, Mr. Speaker, there is to be one vote only; and if the resolution is agreed to, it means that the House concurs in the Senate amendments to the so-called Knutson bill.

THE SPEAKER: The gentleman has stated the situation correctly.

**§ 9.3 The House may adopt a resolution providing that it shall proceed to consideration of Senate amendments to a House joint resolution, that the motion to concur be pending, that the previous question be ordered thereon, and that the time for debate be fixed.**

On Nov. 12, 1941,<sup>(1)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Adolph J. Sabath, of Illinois:

Mr. Speaker, I call up House Resolution 334, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the House shall proceed to consider the Senate amendments to the joint resolution (H.J. Res. 237) to repeal section 6 of the Neutrality Act of

1. 87 CONG. REC. 8763, 8770, 77th Cong. 1st Sess.

1939, and for other purposes; that the motion to concur in the said Senate amendments shall be considered as pending and that debate on said motion shall be limited to not to exceed 8 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs; and that at the conclusion of such debate the previous question shall be considered as ordered on the motion to concur. . . .

THE SPEAKER: The previous question has been ordered. The question is on agreeing to the resolution.

The resolution was agreed to. . . .

THE SPEAKER: The Clerk will report the Senate amendments. . . .

Pursuant to House Resolution No. 334, a motion to concur in the Senate amendments just read is pending. The gentleman from New York [Mr. Bloom] is recognized for 4 hours. The gentleman from New York [Mr. Fish] is recognized for 4 hours on the motion.

**§ 9.4 Form of resolution providing for taking a House bill with a Senate amendment from the Speaker's table and agreeing to such Senate amendment.**

On May 29, 1946,<sup>(2)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Edward E. Cox, of Georgia:

2. 92 CONG. REC. 5925, 79th Cong. 2d Sess.



Mr. Speaker, I call up House Resolution 644 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That upon the adoption of this resolution the bill (H.R. 4908) to provide additional facilities for the mediation of labor disputes, and for other purposes, with the Senate amendment thereto, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendment be, and the same hereby is, agreed to.<sup>(3)</sup>

### ***Concurring and Concurring With Amendment***

**§ 9.5 The House may adopt a resolution providing for taking from the Speaker's table a House bill with Senate amendments, concurring in certain amendments, and concurring in certain other amendments with amendments.**

On Aug. 27, 1957,<sup>(4)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Ray J. Madden, of Indiana:

3. See also 87 CONG. REC. 8579, 77th Cong. 1st Sess., Nov. 6, 1941; 87 CONG. REC. 2143, 77th Cong. 1st Sess., Mar. 10, 1941; and 80 CONG. REC. 837, 74th Cong. 2d Sess., Jan. 22, 1936.

4. 103 CONG. REC. 16086, 85th Cong. 1st Sess.

Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 410 and ask for its immediate consideration.

The Clerk read as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill, H.R. 6127, with Senate amendments thereto be, and the same hereby is, taken from the Speaker's table; that Senate amendments Nos. 1 to 6, inclusive, Senate amendments 8 to 14, inclusive, and Senate amendment No. 16, be, and the same are hereby, agreed to; that the House hereby concurs in Senate amendment No. 7 with an amendment as follows: In lieu of the matter inserted by said amendment insert the following: . . .

**§ 9.6 The House may adopt a resolution taking a House bill with Senate amendments from the Speaker's table, agreeing to the Senate amendment to the title of the bill and concurring in the remaining amendment with an amendment striking out a section of the Senate amendment.**

On June 20, 1936,<sup>(5)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. John J. O'Connor, of New York:

Mr. O'Connor, from the Committee on Rules, submitted the following privileged resolution, which was re-

5. 80 CONG. REC. 10568, 10569, 74th Cong. 2d Sess.

ferred to the House Calendar and ordered printed:

H. RES. 557

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 8555, with the Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment to the title of the bill be, and the same is hereby, agreed to; and Senate amendment no. 1 be, and the same is hereby, agreed to with the following amendment: Strike out section 303 of title III of the said Senate amendment.

### *Resolution as Subject to Amendment*

**§ 9.7** In response to a parliamentary inquiry, the Speaker stated that if the previous question were voted down on a resolution providing for agreeing to a Senate amendment to a House bill, the resolution would be open to amendment.

On June 17, 1970,<sup>(6)</sup> the House was considering House Resolution 914, which provided for agreeing to Senate amendments to H.R. 4249, a bill to extend the Voting Rights Act of 1965. Mr. Gerald R. Ford, of Michigan, rose with a parliamentary inquiry:

6. 116 CONG. REC. 20159, 20198-200, 91st Cong. 2d Sess.

Mr. Speaker, a "no" vote on the previous question does give an opportunity for one of those who led the fight against the resolution to amend the resolution now pending before the House?

THE SPEAKER:<sup>(7)</sup> The Chair will state in response to the parliamentary inquiry of the gentleman from Michigan that if the previous question is voted down, the resolution is open to amendment. . . .

### *Senate Joint Resolution*

**§ 9.8** The House may adopt a special rule taking a Senate joint resolution from the Speaker's table and concurring in a Senate amendment to a House amendment.

On June 14, 1935,<sup>(8)</sup> Speaker Joseph W. Byrns, of Tennessee, instructed the Clerk to read the following resolution:

*Resolved*, That immediately upon the adoption of this resolution the joint resolution (S.J. Res. 113) entitled "Joint resolution to extend until April 1, 1936, the provisions of title I of the National Industrial Recovery Act, and for other purposes", with the amendment of the Senate to the House amendments, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendment to

7. John W. McCormack (Mass.).

8. 79 CONG. REC. 9311, 74th Cong. 1st Sess.

the House amendments be, and the same is hereby, agreed to.

***Under Motion To Suspend the Rules***

**§ 9.9 On one occasion the Chairman of the Committee on Ways and Means submitted a House resolution agreeing to Senate amendments to a House bill and the Speaker recognized him to move to suspend the rules and agree thereto.**

On Sept. 17, 1962,<sup>(9)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Wilbur D. Mills, of Arkansas:

Mr. Speaker, I move to suspend the rules and agree to the House Resolution 800.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 7431, with the Senate amendments thereto, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendments be, and the same are hereby agreed to.

**§ 9.10 A motion to suspend the rules and concur in a Senate amendment to a House bill is not subject to amendment.**

9. 108 CONG. REC. 19610, 19614, 87th Cong. 2d Sess.

On July 27, 1946,<sup>(10)</sup> the following occurred in the House:

MR. [HATTON W.] SUMNERS of Texas: Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the joint resolution (H.J. Res. 225) to quiet the titles of the respective States, and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles. . . .

MR. [SAM] HOBBS [of Alabama]: Mr. Speaker, I offer an amendment.

THE SPEAKER:<sup>(11)</sup> No amendment is in order. . . .

MR. HOBBS: Mr. Speaker, I have an agreement with the gentleman from Texas that I would be permitted to offer an amendment to the Senate amendment.

THE SPEAKER: The Chair knows nothing about that agreement. An amendment to this motion is not in order.

**§ 9.11 To a pending motion to suspend the rules and concur in a Senate amendment a motion to concur in such amendment with an amendment is not in order.**

On July 27, 1946,<sup>(12)</sup> the following took place in the House:

10. 92 CONG. REC. 10310, 79th Cong. 2d Sess.

11. Sam Rayburn (Tex.).

12. 92 CONG. REC. 10310, 79th Cong. 2d Sess.

MR. [HATTON W.] SUMNERS of Texas: Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the joint resolution (H.J. Res. 225) to quiet the titles of the respective States, and others, to lands beneath tidewaters and lands beneath navigable waters within the boundaries of such States and to prevent further clouding of such titles. . . .

MR. [SAM] HOBBS [of Alabama]: Mr. Speaker, I move to concur in the Senate amendment with an amendment.

THE SPEAKER:<sup>(13)</sup> That motion is not in order.

### *By Unanimous Consent*

#### **§ 9.12 Before the stage of disagreement, the House may by unanimous consent concur in a nongermane Senate amendment to House amendments to a Senate bill.**

On Apr. 23, 1970,<sup>(14)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Kenneth J. Gray, of Illinois:

Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 3253) to provide that the Federal office building and U.S. Courthouse in Chicago, Ill., shall be named the "Everett McKinley Dirksen Building East", and that the Federal office building to be constructed in Chicago, Ill., shall be named the "Everett

13. Sam Rayburn (Tex.).

14. 116 CONG. REC. 12874, 91st Cong. 2d Sess.

McKinley Dirksen Building West" in memory of the late Everett McKinley Dirksen, a Member of Congress of the United States from the State of Illinois from 1933 to 1969, together with the Senate amendment to the House amendments, and concur in the Senate amendment. . . .

The Clerk read the Senate amendment to the House amendments as follows:

Sec. 2. Upon a determination that a local educational agency lacks the fiscal capacity to provide an adequate free public education for children of persons who live and work on Federal property, and if such children constitute not less than 25 per centum of the total enrollment, the Secretary of Health, Education, and Welfare shall make emergency payments from sums already available, but not to exceed \$2,500,000, for the current school year to such local educational agency as may be necessary to provide a free public education for such children: *Provided*, That such payments shall not exceed the average per-pupil cost to such agency for all children eligible to receive a free public education from such agency, less Federal and State payments to such agency for free public education.

The Senate amendment was agreed to.

#### **§ 9.13 By unanimous consent, the House conferees were discharged and, the original papers being in the possession of the House, the House agreed to the Senate amendments that had been in disagreement.**

On Aug. 12, 1964, the Senate notified the House that it had appointed managers to join those previously named in the House at conference on H.R. 4649, which had been amended by the Senate. The House agreed to the Senate amendments on Oct. 2, 1964. On Oct. 2,<sup>(15)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Wilbur D. Mills, of Arkansas:

Mr. Speaker, I ask unanimous consent that the conferees on the part of the House be discharged from further consideration of the bill (H.R. 4649) to amend the Internal Revenue Code of 1954 to authorize the use of certain volatile fruit-flavor concentrates in the cellar treatment of wine; and I ask unanimous consent to take from the Speaker's desk the bill (H.R. 4649) to amend the Internal Revenue Code of 1954 to authorize the use of certain volatile fruit-flavor concentrates in the cellar treatment of wine, with Senate amendments thereto, and concur in the Senate amendments. . . .

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

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

15. 110 CONG. REC. 23786, 23787, 88th Cong. 2d Sess.

§ 9.14 The pendency of a unanimous-consent request to take from the Speaker's table a House joint resolution with Senate amendments and concur in the Senate amendments precludes a demand for a roll call vote on the Senate amendments, since those amendments are already disposed of if the request is granted.

On June 30, 1971,<sup>(16)</sup> George H. Mahon, of Texas, Chairman of the Committee on Appropriations, sought unanimous consent to take House Joint Resolution 742, with Senate amendments thereto, from the Speaker's table and to concur in those amendments:

MR. [JOHN R.] DELLENBACK [of Oregon]: Mr. Speaker, a . . . parliamentary inquiry.

THE SPEAKER:<sup>(17)</sup> The gentleman will state it.

MR. DELLENBACK: If this Member is desirous of asking for a rollcall vote on the approval of this particular continuing appropriation measure, would this be the time to bring it to the attention of the Chair and withdraw the reservation of objection?

16. 117 CONG. REC. 23095, 92d Cong. 1st Sess.

17. Carl Albert (Okla.).

MR. MAHON: Mr. Speaker, if I may say a word, the request or unanimous consent was to take from the Speaker's table House Joint Resolution 742 making continuing appropriations for the fiscal year 1972, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments. The request, I believe, would not open up the measure for a rollcall vote.<sup>(18)</sup> We would have to use a different procedure if we wanted a rollcall vote on the measure, as I see it. The Speaker, of course, will make his own ruling.

THE SPEAKER: The gentleman is correct.

***Privilege of Motion When Applied to Amendments Not Requiring Consideration in Committee of the Whole***

**§ 9.15 A motion to concur in the Senate amendments to a House concurrent resolution providing for the signing of enrolled bills during a period of adjournment is privileged under Rule XXIV clause 2 (since such amendments do not require consideration in the Committee of the Whole).**

*Parliamentarian's Note:* Although the *Congressional Record*

18. This request also obviated the requirement that these amendments be considered in the Committee of the Whole.

for Oct. 13, 1970,<sup>(19)</sup> indicates that Mr. Carl Albert, of Oklahoma, obtained unanimous consent to concur in the Senate amendments to House Concurrent Resolution 775, the following entry from the Journal for that day<sup>(20)</sup> indicates that concurrence was obtained by a motion offered by Mr. Albert, and that therefore, such motion was privileged:

On motion of Mr. Albert, the concurrent resolution (H. Con. Res. 775) authorizing the Speaker of the House<sup>(1)</sup> and the President of the Senate to sign enrolled bills and joint resolutions notwithstanding the adjournment of Congress from October 14 to November 16, 1970; together with the following amendment of the Senate thereto, was taken from the Speaker's table:

Page 1, line 3, strike out "House" and insert "Congress".

Page 1, line 4, after "Senate" insert "the President pro tempore, or the Acting President pro tempore,".

When, on motion of Mr. Albert, said Senate amendment was concurred in.

***Effect of Rejection of Preferential Motion***

**§ 9.16 Upon rejection of a preferential motion to concur in**

19. 116 CONG. REC. 36600, 91st Cong. 2d Sess.

20. H. Jour. 1299, 91st Cong. 2d Sess. (1970).

1. John W. McCormack (Mass.).

**a Senate amendment with an amendment, the question recurs on a pending motion to concur in the Senate amendment.**

On June 28, 1972,<sup>(2)</sup> the House was considering Senate amendments in disagreement to H.R. 13955, legislative branch appropriations for fiscal 1973. A motion to recede and concur offered by Mr. Samuel S. Stratton, of New York, was divided on demand of Mr. Robert R. Casey, of Texas. After the House voted to recede, Mr. Casey offered the resultant preferential motion to concur with an amendment.

MR. STRATTON: Mr. Speaker, if the motion offered by the gentleman from Texas does not carry; what is the parliamentary situation then?

THE SPEAKER:<sup>(3)</sup> The next vote would be on the motion of the gentleman from New York to concur in the Senate amendment.

### ***Effect of Rejection of Motion To Concur***

**§ 9.17 In response to a parliamentary inquiry, the Speaker indicated that if a motion to concur in Senate amend-**

**ments to a House amendment to a Senate bill was rejected, either a motion to concur with a germane amendment or to disagree would be in order.**

On July 17, 1967,<sup>(4)</sup> the House was considering a Senate amendment to a House amendment to Senate Joint Resolution 81, providing for a settlement to a railway labor dispute. Mr. Samuel N. Friedel, of Maryland, offered a motion to concur in the Senate amendment. Mr. Claude D. Pepper, of Florida, was then recognized:

Mr. Speaker, a parliamentary inquiry, if I may.

THE SPEAKER:<sup>(5)</sup> The gentleman will state his parliamentary inquiry.

MR. PEPPER: If the motion to concur in the Senate amendments should be voted down, would then a motion to disagree to the Senate amendments be in order?

THE SPEAKER: It could be, under the rules, any germane amendments. Did the gentleman ask specifically as to any amendment?

MR. PEPPER: If a motion to disagree to the Senate amendments were made, in case the motion to agree to the Senate amendments were voted down, would it be in order?

2. 118 CONG. REC. 22959, 22974, 22975, 92d Cong. 2d Sess.

3. Carl Albert (Okla.).

4. 113 CONG. REC. 19036, 90th Cong. 1st Sess.

5. John W. McCormack (Mass.).

THE SPEAKER: It could be.

## § 10. To Recede or Recede and Concur

A “motion to recede” is a somewhat ambiguous term in the abstract: it may indicate that the person making the request in the House wishes to recede from a House amendment. After the stage of disagreement is reached, the request is normally directed at removing a particular amendment of the Senate from that condition, thus permitting a reversal of the privilege bestowed upon certain motions under Rule XLV of Jefferson’s Manual (*House Rules and Manual* § 528 (1997)).

Where a bill is returned to the House with amendments in disagreement, and the House recedes from its own House amendments, the bill is passed unless the motion otherwise specifies,<sup>(6)</sup> or unless the Senate has concurred in the House amendment with a Senate amendment.<sup>(7)</sup> But if by motion the House recedes from disagreement to Senate amendments, the amendments are not thereby agreed to, since a motion

6. See §§ 10.2, 10.3, *infra*.

7. See §§ 10.7–10.9, *infra*.

to concur with an amendment is still in order.

A motion to recede from an amendment with an amendment is not privileged, but such a result can be achieved by unanimous consent or special order.<sup>(8)</sup>

### *Receding From House Amendment*

#### § 10.1 By unanimous consent, the House may recede from its own amendments to a Senate bill.

On Apr. 18, 1966,<sup>(9)</sup> the following occurred in the House:

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I ask unanimous consent to take from the Speaker’s table the bill (S. 2729) to amend section 4(c) of the Small Business Act, and for other purposes, with House amendments thereto, and that the House recede from its amendments numbered 1 through 7.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.<sup>(11)</sup>

8. See §§ 10.4–10.6, *infra*.

9. 112 CONG. REC. 8207, 89th Cong. 2d Sess.

10. John W. McCormack (Mass.).



***Effect of House Receding From Its Amendment to Senate Bill***

**§ 10.2 Where the House recedes from its amendment to a Senate bill, even where the Senate has informed the House that it disagrees with the House amendment, the Senate bill is passed.**

Since the House was about to adjourn *sine die*, there was no time to go to conference on S. 1805, authorizing reinstatement of a certain oil and gas lease. The proceedings, which were not a matter of dispute, are carried here.<sup>(12)</sup>

MR. [NICK J.] RAHALL [II, of West Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1805) to authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164, with House amendments thereto, and recede from the House amendments to the Senate bill.

The Clerk read the title of the Senate bill.

The text of the House amendments to the Senate bill is as follows:

House amendments:

- 
11. See also 107 CONG. REC. 18595, 87th Cong. 1st Sess., Sept. 7, 1961.  
12. 136 CONG. REC. 36825, 36826, 101st Cong. 2d Sess., Oct. 27, 1990.

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Oil and Gas Leasing Amendments Act of 1990".

SEC. 2. TREATMENT OF SECTION 14 LEASES. . . .

Amend the title so as to read: "An Act to amend sections 14 and 31 of the Mineral Leasing Act, and for other purposes."

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> Is there objection to the request of the gentleman from West Virginia? . . .

MR. RAHALL: Mr. Speaker, this legislation was first passed by the Senate on September 11. On October 10, the House amended and passed the bill. On Tuesday, the Senate disagreed to our amendments.

We are accepting the Senate version of this legislation. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from West Virginia?

There was no objection.

A motion to reconsider was laid on the table.<sup>(14)</sup>

***Effect of Receding***

**§ 10.3 When a House amendment to a Senate bill is reported back from conference in disagreement and the House insists on its amend-**

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13. Michael R. McNulty (N.Y.).

14. The enrollment of this measure was announced to the House on Jan. 3, 1991, at 137 CONG. REC. 111, 102d Cong. 1st Sess.

**ment, the bill returns to the Senate with such message for further action, but should the House recede from its amendment the bill retains its original form.**

On Mar. 16, 1942,<sup>(15)</sup> the House was considering the amendments reported back from conference still in disagreement to S. 2208, the second war powers bill of 1942. Mr. Hatton W. Sumners, of Texas, moved to insist on House amendment No. 32, which deleted title VIII of the bill. Mr. Charles F. McLaughlin, of Nebraska, was then recognized by the Speaker Pro Tempore, Richard M. Duncan, of Missouri:

If the House votes not to insist upon its amendment, then there is nothing before the conferees, because the House will then have yielded to the position taken by the Senate, as I understand the situation. Am I correct?

THE SPEAKER PRO TEMPORE: If the House recedes from its amendment, then there would be no reason to go to conference.

MR. McLAUGHLIN: That is what I intended to ask. So that the situation is, Mr. Speaker, if I understand it correctly, we have two alternatives—one to insist and one to recede.

THE SPEAKER PRO TEMPORE: That is correct.

15. 88 CONG. REC. 2508, 2512, 2513, 77th Cong. 2d Sess.

MR. McLAUGHLIN: If we recede, we vote to pass without further action by the conferees the bill in the form in which it was prior to the time the Judiciary Committee, by committee amendment, moved that this title be stricken out, and prior to the time the House adopted that amendment. If we vote to insist, then we send it back to conference for action by the conferees. Is that not the situation?

THE SPEAKER PRO TEMPORE: If the House adopted the pending motion, then it goes back to the Senate for further consideration. It goes to the Senate first before it goes to conference.

### *Receding From an Amendment With an Amendment*

**§ 10.4 The Senate has, by unanimous consent, receded from one of its own amendments “with an amendment.”**

The proceedings below show the action of the Senate on Mar. 22, 1983,<sup>(16)</sup> when it receded from one of its amendments to a House bill with an amendment.

MR. [MARK O.] HATFIELD [of Oregon]: Mr. President, I move that we adopt amendment No. 82.

THE PRESIDING OFFICER:<sup>(17)</sup> The amendment has been adopted.

The clerk will report the remaining amendment in disagreement.

16. 129 CONG. REC. 6629, 6630, 98th Cong. 1st Sess.

17. Nancy L. Kassebaum (Kans.).

The legislative clerk read as follows:

The House insists upon disagreement to Senate amendment numbered 82.

MR. HATFIELD: Mr. President, I ask unanimous consent that it be in order for the Senate to recede from its amendment No. 82 with an amendment.

THE PRESIDING OFFICER: Without objection, it is so ordered.

UP AMENDMENT NO. 118

MR. HATFIELD: Mr. President, I send an amendment to the desk.

THE PRESIDING OFFICER: The amendment will be stated.

The bill clerk read as follows:

The Senator from Oregon (Mr. Hatfield) proposes an unprinted amendment numbered 118.

MR. HATFIELD: Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER: Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

SEC. 101. (a)(1) Notwithstanding any other provision of law, 75 per centum of the funds appropriated or otherwise made available in this title for each account listed in subsection (a)(5) shall be made available for projects and activities in civil jurisdictions with high unemployment, or in labor surplus areas, or in political units or in pockets of poverty that are currently or should meet the criteria to be eligible under the Urban Development Action Grant program

administered by the Department of Housing and Urban Development.

On Mar. 24, 1983,<sup>(18)</sup> when the House took up the message from the Senate with respect to the new Senate amendment 82, it was considered as privileged, the stage of disagreement being in effect, even with respect to this new amendment.

EMERGENCY APPROPRIATIONS, 1983

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 1718) making emergency expenditures to meet national needs for the fiscal year ending September 30, 1983, and for other purposes, with the remaining Senate amendment numbered 82 thereto, and concur therein.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

*Resolved*, That the Senate recede from its amendment numbered 82 and concur with a further amendment as follows:

Page 32, of the House engrossed bill, strike out all after line 21 over to and including line 5 on page 35 and insert: . . .

THE SPEAKER:<sup>(19)</sup> The gentleman from Mississippi (Mr. Whitten) will be recognized for 30 minutes, and the gentleman from Massachusetts (Mr. Conte) will be recognized for 30 minutes.

18. 129 CONG. REC. 7300, 7301, 98th Cong. 1st Sess.

19. Thomas P. O'Neill, Jr. (Mass.).

The Chair recognizes the gentleman from Mississippi (Mr. Whitten).

*Parliamentarian's Note:* Although the Senate is not under its rules specifically governed by Jefferson's Manual, it has traditionally followed the prohibition Jefferson sets forth in Sec. XLV of his Manual: "But the House can not recede from or insist on its own amendment, with an amendment; for the same reason that it cannot send to the other House an amendment to its own act after it has passed the act. They may modify an amendment from the other House by engrafting an amendment on it, because they have never assented to it; but they cannot amend their own amendment, because they have, on the question, passed it in that form."<sup>(20)</sup>

**§ 10.5 Form of a special order permitting the House to recede from its amendment to a Senate amendment in disagreement, and concur therein with a different amendment.**

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20. *House Rules and Manual* § 526 (1997).

On Nov. 15, 1995,<sup>(1)</sup> the Senate had attempted to table its amendment numbered 115 to the bill H.R. 1868. Debate in the Senate indicated that the Senate action would clear the bill for presentation to the President, assuming that by tabling its amendment (in which the House had already concurred with an amendment) there would be nothing left in disagreement between the Houses.

On Dec. 13, 1995,<sup>(2)</sup> the House took the action here noted, since under House precedents, the Senate action in tabling its amendment (an action which the Senate equated with receding from its amendment) was not itself an action sufficient to pass the bill without further action by the House.<sup>(3)</sup>

The Senate action, a portion of the debate on that occasion, and the special order utilized in the House to recede from its amendment and concur with a new amendment are carried here. The special order provided for a waiver of points of order against the mo-

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1. 141 CONG. REC. 32530, 32534, 104th Cong. 1st Sess.  
 2. *Id.* at p. 36290.  
 3. See § 10.9, *infra*.

tion, since House precedents indicate that it is not parliamentary to recede from a House amendment to a Senate text with an amendment.<sup>4</sup>

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996

MR. [MITCH] MCCONNELL [of Kentucky]: Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1868, a bill making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes.

The Presiding Officer laid before the Senate the following message from the House of Representatives.

*Resolved*, That the House disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 115 to the bill (H.R. 1868) entitled "An Act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes." . . .

. . . [T]he motion to lay on the table the amendment (No. 115) was agreed to. . . .

MR. MCCONNELL: Mr. President, let me describe where I believe we are on the foreign operations bill as of this motion to table.

According to the Senate Parliamentarian, based on precedence, beginning in 1898 and in subsequent votes as recently as 1984, either House has the option to recede on its amendment. Based on discussions with the Parliamentarian, it is my understanding that by tabling amendment No. 115, we have, in effect, receded our position on both the Kassebaum language [Senate] and the Chris Smith language [House] leaving no further amendments in disagreement. This means no further action is required by the House on the foreign operations appropriations bill, unless it chooses to, and it can be enrolled by the House and sent to the President, again, if the House should choose to take that route. . . .

DISPOSING OF SENATE AMENDMENT 115 TO H.R. 1868, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996

MR. [PORTER J.] GOSS [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 296 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 296

*Resolved*, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 1868) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes, with the Senate amendment numbered

4. See 5 Cannon's Precedents §§ 6216-6218; *House Rules and Manual* § 526 (1997).

115 thereto, and to consider in the House the motion printed in section 2 of this resolution. The Senate amendment and the motion shall be considered as read. All points of order against the motion are waived. The motion shall be debatable for one hour equally divided and controlled by the proponent and an opponent. The previous question shall be considered as ordered on that motion to final adoption without intervening motion or demand for division of the question.

SEC. 2. The motion to dispose of the amendment of the Senate numbered 115 is as follows:

Mr. Callahan (or his designee) moves that the House recede from its amendment to the amendment of the Senate numbered 115, and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert:

“Authorization of Population Planning

“SEC. 518A. Section 526 of this Act shall not apply to funds made available in this Act for population planning activities or other population assistance pursuant to section 104(b) of the Foreign Assistance Act or any other provision of law, or to funds made available in title IV of this Act as a contribution to the United Nations Population Fund (UNFPA).”

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The gentleman from Florida [Mr. Goss] is recognized for 1 hour. . . .

**§ 10.6 The House has also receded from a House amendment to a Senate amendment to a House bill with**

5. Jack Kingston (Ga.).

**an amendment, but only by unanimous consent.**

The request made by Mr. Eligio (Kika) de la Garza, of Texas, on July 14, 1983,<sup>(6)</sup> shows an example of this type of action, which is rarely utilized.

AGRICULTURAL ACT OF 1949  
AMENDMENT

MR. DE LA GARZA: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3392) to amend the Agricultural Act of 1949, with a House amendment to the Senate amendment thereto, and to recede from the House amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the House amendment to the Senate amendment, as follows:

In lieu of the language contained in the Senate amendment, insert the following:

Page 1, after line 11, insert the following:

SEC. 2. Section 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e) is amended by—

(1) in the second sentence of subsection (c), striking out “5 per centum” and inserting in lieu thereof “10 per centum”; and

(2) in the fourth sentence of subsection (e), striking out “95 per centum” and inserting in lieu thereof “90 per centum”. . . .

6. 129 CONG. REC. 19158, 98th Cong. 1st Sess.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Texas?

There is no objection.

Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

***Effect of Receding From an Amendment, the Other House Having Concurred With a Further Amendment***

**§ 10.7 Where one House has receded from its amendment to a bill after the other House has concurred therein with an amendment, the bill is not passed until the House that has concurred with an amendment has receded from its own amendment and agreed to the action of the other House.**

In the instance described here,<sup>(8)</sup> the Senate had actually not receded from, but tabled, its amendment in which the House had previously concurred in with an amendment. Mr. Mark O. Hatfield, of Oregon, originally moved to recede, but after debate, the

7. Thomas P. O'Neill, Jr. (Mass.).

8. 130 CONG. REC. 18576, 18591, 98th Cong. 2d Sess., June 25, 1984.

question was put on his motion to table the Senate amendment to the House amendment.

THE PRESIDING OFFICER:<sup>(9)</sup> The clerk will report the next amendment in disagreement.

The legislative clerk read as follows:

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid resolution, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "No funds are appropriated herein for the Central Intelligence Agency in fiscal year 1984 for purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

MR. HATFIELD: Mr. President, this is the amendment dealing with the subject of Nicaragua, aid to Nicaragua. I now move that the Senate recede from its amendment numbered 14.

THE PRESIDING OFFICER: Without objection, the motion is agreed to.

MR. [WILLIAM] PROXMIRE [of Wisconsin]: Mr. President, I suggest the absence of a quorum.

MR. HATFIELD: Mr. President, if the Senator will withhold, I was about ready to explain the motion. I think there are Members who wish to speak on this issue. I should like to have the Chair not rule on this point, on the adoption of this motion, until I have had an opportunity to explain it. . . .

9. Robert W. Kasten, Jr. (Wis.).

(Mrs. [Nancy L.] Kassebaum [of Kansas] assumed the chair.)

MR. HATFIELD: Madam President, I thank the Senator from North Carolina. I know that he feels strongly about this issue and expressed himself today in very eloquent terms. Even though we disagree on the matter, I think the issue has had a good debate and good discussion and the record has been made.

Therefore, at this time, I move to table Senate amendment numbered 14.

MR. [EDWARD M.] KENNEDY [of Massachusetts]: Madam President, this is an important vote.

It does represent a lessening of the administration's commitment to the war.

And I say, "Amen."

Madam President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Oregon [Mr. Hatfield] to table Senate amendment No. 14. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

MR. [JOHN C.] STENNIS [of Mississippi]: I announce that the Senator from South Dakota [Mr. Abdnor] and the Senator from Colorado [Mr. Armstrong] are necessarily absent. . . .

So the motion to lay on the table Senate amendment No. 14 was agreed to.

MR. [HOWARD H.] BAKER [Jr., of Tennessee]: Madam President, I move to

reconsider the vote by which the motion was agreed to.

MR. [ALAN J.] DIXON [of Illinois]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. BAKER: Madam President, am I correct now that the vote just taken, which disposes of the last remaining amendment in disagreement, is the final action required by the Senate on this measure?

THE PRESIDING OFFICER: The majority leader is correct.

MR. BAKER: I thank the Chair.

On the following day,<sup>(10)</sup> the House took the necessary conforming action. Mr. Jamie L. Whitten, of Mississippi, offered a unanimous-consent request, but since the stage of disagreement had been reached when the measure was sent to conference, a motion to recede from the House amendment would have been privileged.

#### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the joint resolution (H.J. Res. 492) entitled "Joint resolution making an urgent supplemental appropriation for the

10. 130 CONG. REC. 18733, 18734, 98th Cong. 2d Sess., June 26, 1984.



fiscal year ending September 30, 1984, for the Department of Agriculture." . . .

The message also announced that the Senate tabled its amendment numbered 14 to the above-entitled joint resolution. . . .

EXPLANATION OF HOUSE JOINT  
RESOLUTION 492 . . .

MR. WHITTEN: Mr. Speaker, I wish to make a statement regarding a unanimous-consent request that I am about to make regarding the urgent supplemental (H.J. Res. 492). As my colleagues probably know by now, yesterday the Senate cleared the remaining obstacle on the conference report on the urgent supplemental. By a record vote of 88 to 1 the other body agreed with the House position that no additional funding should be made available to the CIA for the Nicaragua operations. This House voted 241 to 177 on May 24 to prohibit the CIA to use any funds in this bill to continue their covert actions in Nicaragua. Finally after almost a month, the Senate has come around to the House position on this matter. My unanimous-consent request, which I will make shortly is somewhat unusual in that since the Senate has tabled its amendment (No. 14) which provided the \$21 million, for the bill to go to the President we need to recede from our language amendment which was offered by the gentleman from Massachusetts [Mr. Boland]. Since the funding is no longer in this measure, the language prohibition is no longer required and it can now be deleted so that this bill may go to the President.

I sincerely hope that no one will object to this request. This resolution which began in the Appropriations

Committee on February 29 is long overdue and necessary. . . .

URGENT SUPPLEMENTAL APPROPRIATION,  
DEPARTMENT OF AGRICULTURE,  
1984

MR. WHITTEN: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 492) making an urgent supplemental appropriation for the fiscal year ending September 30, 1984, for the Department of Agriculture, with the remaining amendment, and that the House recede from its amendment to the amendment of the Senate numbered 14 and agree to the action of the Senate.

This is necessary in order for the bill to go on to the President, and as I say again, everyone that I have talked to agrees that it is necessary.

The Clerk read the title of the joint resolution.

THE SPEAKER:<sup>(11)</sup> Is there objection to the request of the gentleman from Mississippi?

There was no objection.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* In the Senate, tabling an amendment does not table the underlying bill (as would be the case in the House).

Relevant precedents relating to one House receding from its amendment after the other has concurred with an amendment

11. Thomas P. O'Neill, Jr. (Mass.).

are noted in Jefferson's Manual, *House Rules and Manual* § 524 (1997).

**§ 10.8 Where the Senate has receded from its amendment to a bill after the House has concurred therein with an amendment, the bill is not passed until the House has receded from its own amendment and agreed to the action of the other body.**

On Nov. 9, 1993,<sup>(12)</sup> Sidney R. Yates, of Illinois, Chairman of the Interior Subcommittee of the Committee on Appropriations, made the unanimous-consent request carried below. Since the stage of disagreement had been reached on the amendments remaining in disagreement to the appropriation bill, the matter could have been effected by a motion if the request were not agreed to.

MR. YATES: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the conference report on the bill (H.R. 2520) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1994, and for other purposes, with the re-

maining amendment in disagreement and that the House recede from its amendment to the amendment of the Senate numbered 123 and agree to the action of the Senate.

The Clerk read the title of the bill.

The text of the House amendment to Senate amendment No. 123 is as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 317. GRAZING. . . .

Title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.) is amended by adding the following new sections:

"SEC. 406. GRAZING FEES.

"(a) ESTABLISHMENT.—The Secretary of the Interior and the Secretary of Agriculture shall annually establish grazing fees.

"(b) PHASE-IN.—The grazing fee for the grazing years 1994, 1995, and 1996 shall be as follows . . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Illinois?

MR. [RALPH] REGULA [of Ohio]: Mr. Speaker, reserving the right to object, I reserve the right to object in order to advise the House as to what has happened on this.

On September 29 this House, by a vote of 314 to 109, instructed the House conferees to reject the Senate amendment to this bill which put a moratorium on the Secretary of the Interior. I am pleased to inform the House Members that the House has prevailed. The moratorium has been taken out of the bill and the Secretary of the Interior will now be free to, by executive action, deal with the grazing-fee issue and also

12. 139 CONG. REC. 28061-64, 103d Cong. 1st Sess.

with whatever regulations he may choose to promulgate.

This reflects exactly the House position as we, as conferees, were instructed by that vote on September 29.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Illinois?

There was no objection.

A motion to reconsider was laid on the table.

**§ 10.9 Where the Senate recedes from amendments which have been amended by the House it is necessary, to reach agreement on the bill, for the House to recede from its amendments to the Senate amendments.**

On Sept. 11, 1944,<sup>(13)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Stephen Pace, of Georgia:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4278) to provide for the control and eradication of certain animal and plant pests and diseases, to facilitate cooperation with the States in fire control, to provide for the more efficient protection and management of the national forests, to facilitate the carrying out of agricultural conservation and related agricultural programs,

to facilitate the operation of the Farm Credit Administration and the Rural Electrification Administration, to aid in the orderly marketing of agricultural commodities, and for other purposes, with Senate amendments; that the House recede from its amendments to Senate amendments Nos. 1 and 3 and agree to the action of the Senate in receding from their amendments Nos. 1 and 3.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, reserving the right to object, will the gentleman explain in very clear language the necessity for this?

MR. PACE: The bill H.R. 4278 was an authorization bill which passed the House last May authorizing certain appropriations that Congress has made for a number of years but which had never been authorized by law. After being amended I believe the bill passed the House practically unanimously.

The Senate Committee on Agriculture reported the bill line for line as it was passed by the House; but they did add three amendments, one having to do with the school-lunch program, a second having to do with the Farm Security Administration, and a third having to do with the tobacco-acreage allotments.

The House never agreed to the amendment relating to tobacco allotments but did agree with an amendment to the school-lunch and Farm Security provisions. On account of the fact that these two provisions subsequently were written into the agricultural appropriation bill and enacted into law the Senate has agreed to recede from all three amendments. Inasmuch as the other two provisions are

13. 90 CONG. REC. 7634, 78th Cong. 2d Sess.

now in the agricultural appropriation bill they have receded from the tobacco amendment.

I am advised by the Parliamentarian, however, that inasmuch as we concurred in two of the amendments with amendments it is now necessary that the House concur in the action of the Senate in receding from their original amendments.

MR. MICHENER: Yes, I understand that. The language of the request is unusual from a parliamentary standpoint; it is very difficult to understand. It expresses what ought to be done, but in a very unusual way. I do not wish to apologize for the Parliamentarian in drafting the language of the request, for I think it is the only possible approach he could make to a situation so unusual.

MR. PACE: I am advised it is under these circumstances.

### *Division of Motion To Recede and Concur*

#### **§ 10.10 The question on the motion to recede and concur in a Senate amendment may be divided on demand of a Member.**

On June 15, 1943,<sup>(14)</sup> the House was considering the Senate amendment in disagreement to H.R. 1648, Treasury and Post

14. 89 CONG. REC. 5899, 78th Cong. 1st Sess.

Office appropriations for 1944. Speaker Sam Rayburn, of Texas, recognized Mr. Louis Ludlow, of Indiana:

Mr. Speaker, I move to recede and concur in the Senate amendment, and I yield myself 15 minutes.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I ask for a division of the question.

MR. LUDLOW: Mr. Speaker, I object to a division of the question and insist on my preferential motion to recede and concur.

THE SPEAKER: The Chair thinks the gentleman from New York is entitled to have the question divided if he so desires.

MR. LUDLOW: A parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. LUDLOW: I have always understood that a motion to recede and concur by the Member in charge of the bill is a preferential motion.

THE SPEAKER: It is a preferential motion, but it may be divided.

MR. LUDLOW: If I insist that it is a preferential motion, what is the ruling of the Chair?

THE SPEAKER: The ruling of the Chair is that it is a preferential motion, but it is divisible. If any Member desires a division of the question, he has a right under the rules of the House to demand it.<sup>(15)</sup>

15. See also 109 CONG. REC. 8506, 88th Cong. 1st Sess., May 14, 1963 (H.R. 5517); and 106 CONG. REC. 14074,

**§ 10.11 Any Member may as a matter of right (under Rule XVI clause 6) demand a division of the question on a motion to recede and concur in a Senate amendment, and the House does not vote on whether to permit a division of the question.**

On June 28, 1972,<sup>(16)</sup> the House was considering Senate amendments in disagreement to H.R. 13955, legislative branch appropriations for fiscal 1973. Mr. Robert R. Casey, of Texas, offered a motion that the House insist on its disagreement to Senate amendment No. 36. Speaker Carl Albert, of Oklahoma, then recognized Mr. Samuel S. Stratton, of New York:

Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Stratton moves that the House recede from its disagreement to Senate amendment numbered 36 and concur therein.

MR. CASEY of Texas: Mr. Speaker, I request a division of the question.

MR. STRATTON: Mr. Speaker, a parliamentary inquiry.

86th Cong. 2d Sess., June 23, 1960 (H.R. 10569).

16. 118 CONG. REC. 22959, 22974, 92d Cong. 2d Sess.

THE SPEAKER: The gentleman will state it.

MR. STRATTON: Is the request for a division of the question presumably to recede on one part and concur on the other part? Is this subject to a vote or something?

THE SPEAKER: All of the motion is subject to a vote. The question is on the matter of receding from disagreement.

MR. STRATTON: A further parliamentary inquiry, Mr. Speaker. If a Member is in favor of accepting the Senate amendment, then he would oppose the motion to divide on the vote. Is that correct?

THE SPEAKER: This is not a question of voting on the division but a question of voting on the motion to recede.

MR. STRATTON: A further parliamentary inquiry. My understanding is that if the motion to divide succeeds and passes, then it is possible parliamentarily to offer an amendment to the Senate amendment rather than to accept the Senate amendment. Is that not correct?

THE SPEAKER: If the motion to recede from disagreement is adopted, then a motion to concur in the Senate amendment with an amendment is in order.

MR. STRATTON: Then another further parliamentary inquiry, Mr. Speaker. If we want to accept the Senate amendment and conclude the conference, the way to do that is to vote down the motion to divide this particular question. Is that not true?

THE SPEAKER: There is no question of division involved.

MR. STRATTON: Mr. Speaker, I am confused. My original question was

whether the proposal to divide the question into two parts was subject to a vote.

THE SPEAKER: Division of a question is a right which any Member of the House enjoys.

**§ 10.12 Where a motion to recede and concur with an amendment to an amendment of the Senate reported in disagreement from conference has been divided, and the House has refused to recede, the conferee managing the bill is entitled to recognition to offer a motion to insist on disagreement.**

The practice regarding the Speaker's bestowal of recognition to offer a new motion following the rejection of a motion to recede from disagreement is illustrated by the proceedings of Sept. 24, 1975.<sup>(17)</sup>

THE SPEAKER:<sup>(18)</sup> . . . The question is on the motion to recede.

The question was taken; and the Speaker announced that the ayes appeared to have it. . . .

The vote was taken by electronic device, and there were—yeas 197, nays 203, not voting 33. . . .

So the motion to recede was rejected.

17. 121 CONG. REC. 30081, 30082, 94th Cong. 1st Sess.

18. Carl Albert (Okla.).

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. SLACK

MR. [JOHN M.] SLACK [Jr., of West Virginia]:<sup>(19)</sup> Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Slack moves that the House insist on its disagreement to Senate amendment No. 8.

THE SPEAKER: Does the gentleman from West Virginia desire time on the motion?

MR. SLACK: Mr. Speaker, I desire no time.

MR. [M. G. (GENE)] SNYDER [of Kentucky]: Mr. Speaker, will the gentleman yield just for 30 seconds?

MR. SLACK: I yield to the gentleman from Kentucky.

MR. SNYDER: Mr. Speaker, I just wanted to say I had the same motion.

The motion was agreed to.

***Debating Both Parts of Divided Motion To Recede and Concur***

**§ 10.13 When the question is divided on a motion to recede and concur, and the House debates the question of whether to recede under**

19. Mr. Slack was the manager of the conference report on H.R. 8121 (State, Justice, Commerce, the Judiciary appropriations for fiscal year 1976) by virtue of his chairmanship of the Subcommittee on State, Justice, Commerce, and Judiciary.

**the hour rule and does not order the previous question on either member of the divided question, then the second member (to concur, or the preferential motion to concur with amendment, if offered) is separately debatable for one hour.**

Where a motion to dispose of an amendment in disagreement is pending, a Member offering a preferential motion does not ordinarily control time thereon, as all debate is allocated on the original motion. But where an original motion is divided, it in effect becomes two motions, each subject to debate under the hour rule, subject to the divided allocations prescribed in Rule XXVIII clause 2(b)(2).<sup>(20)</sup> Often, the question on receding is put without debate so the House can get quickly to the next step: a preferential motion or the other half of the divided question.

The proceedings of Nov. 14, 1989,<sup>(1)</sup> included debate on both the motion to recede and the pref-

erential motion to concur with an amendment.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 17: Page 11, line 25, after "zation" insert "*Provided further*, That notwithstanding the previous proviso, not less than \$15,000,000 of the funds appropriated under this heading shall be made available only for the United Nations Population Fund: *Provided further*, That the United Nations Population Fund shall be required to maintain these funds in a separate account and not commingle them with any other funds: *Provided further*, That none of the funds made available under this heading for the United Nations Population Fund shall be made available for programs for the People's Republic of China".

MOTION OFFERED BY MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Obey moves that the House recede from its disagreement to the amendment of the Senate numbered 17, and concur therein. . . .

MR. [VIN] WEBER [of Minnesota]: Mr. Speaker, I demand that the question be divided.

THE SPEAKER PRO TEMPORE: The question will be divided.

The gentleman from Wisconsin [Mr. Obey] will be recognized for 30 minutes, and the gentleman from Okla-

20. *House Rules and Manual* § 912(c) (1997).

1. See 135 CONG. REC. 28754, 28766, 101st Cong. 1st Sess.

2. Sander M. Levin (Mich.).

homa [Mr. Edwards] will be recognized for 30 minutes.

MR. [MICKEY] EDWARDS of Oklahoma: Mr. Speaker, I ask unanimous consent that the 30 minutes allotted to me may be controlled by the gentleman from New Jersey [Mr. Smith].

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Smith] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. Obey]. . . .

MR. [WILLIAM] LEHMAN of Florida: Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The question is, will the House recede from its disagreement to the amendment of the Senate numbered 17?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

PREFERENTIAL MOTION OFFERED BY  
MR. SMITH OF NEW JERSEY

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Smith of New Jersey moves to concur with the Senate amendment (number 17) with an amendment, as follows: at the end of Senate amendment 17, insert:

*Provided further,* That notwithstanding the previous provisos, no funds under this heading shall be made available to the United Nations Population Fund unless the President of the United States certifies that the United Nations Population Fund does not provide support for, or participate in the management of, a program of coercive abortion or involuntary sterilization in the People's Republic of China.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Smith] will be recognized for 30 minutes, and the gentleman from New York [Mr. McHugh] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Smith].

### *Debate on Motion To Recede and Concur*

**§ 10.14 Debate on a motion that the House recede from its disagreement to a Senate amendment and concur in the same is under the hour rule, and if the question is divided the hour rule applies to each motion separately.**

On May 9, 1940,<sup>(4)</sup> during consideration of the conference report and amendments in disagreement to H.R. 8202, the agricultural appropriation bill for 1941, the following discussion occurred:

4. 86 CONG. REC. 5889, 76th Cong. 3d Sess.

3. Frank McCloskey (Ind.).



Mr. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Speaker, as I understand, there is 1 hour debate allowed on the motion to recede and concur. Request had been made for a division. My inquiry is this: Will there be 1 hour of debate on each motion?

THE SPEAKER:<sup>(5)</sup> The gentleman from Missouri [Mr. Cannon] controls the time. If one is demanded on the motion to recede, that hour is granted. Then an hour will be granted on the motion to concur.

MR. WHITTINGTON: That satisfies my inquiry.

### *Consequences of Dividing Motion To Recede and Concur*

**§ 10.15 Where a division of the question was demanded on a preferential motion to recede from disagreement and concur in a Senate amendment (offered while a motion to insist was pending), the Speaker indicated: (1) that if the motion to recede were agreed to, a motion to concur with a germane amendment would take precedence over the pending motion to concur; but (2) that if the motion to recede were disagreed to, the question would recur on the initial motion to insist on**

5. William B. Bankhead (Ala.).

### **disagreement to the Senate amendment.**

On Aug. 10, 1976,<sup>(6)</sup> when the House had under consideration the final amendment remaining in disagreement following adoption of the conference report on an appropriation bill,<sup>(7)</sup> the manager<sup>(8)</sup> of the bill offered a motion that the House insist on its disagreement. A preferential motion to recede and concur was then offered, followed by a demand that that motion be divided. The proceedings and inquiries are carried below:

THE SPEAKER:<sup>(9)</sup> The Clerk will report the last amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 68: Page 39, line 5, strike out: "Sec. 209. None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions."

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

6. 122 CONG. REC. 26781, 26783, 26792, 26793, 94th Cong. 2d Sess.

7. H.R. 14232 (Labor and Health, Education, and Welfare appropriations for fiscal 1977).

8. Daniel J. Flood (Pa.).

9. Carl Albert (Okla.).

Mr. Flood moves that the House insist on its disagreement to the amendment of the Senate numbered 68.

PREFERENTIAL MOTION OFFERED BY  
MR. PRITCHARD

MR. [JOEL] PRITCHARD [of Washington]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Pritchard moves that the House recede from its disagreement to the amendment of the Senate numbered 68 and concur therein.

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, if this is the correct time to make this request, I ask that that question be divided.

THE SPEAKER: The Chair will inform the gentleman that the question will be divided on the preferential motion. . . .

PARLIAMENTARY INQUIRY

MR. [JEROME A.] AMBRO [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. AMBRO: Mr. Speaker, as I understand the situation, the gentleman from Pennsylvania is making a motion to insist on the House language incorporated in the Hyde amendment. The gentleman from Washington (Mr. Pritchard) now asks us to recede and concur with the Senate language.

THE SPEAKER: The gentleman is right.

MR. AMBRO: The gentleman then said that this was divisible, which means that we can take a vote on the motion to recede.

THE SPEAKER: To recede from disagreement to the Senate amendment.

MR. AMBRO: Yes. If the motion to recede passes, can we then go on with a vote to concur with the Senate language? Is that the next step?

THE SPEAKER: Yes. But if the House recedes, any germane motion to concur with an amendment would be in order before the House votes on the pending motion to concur.

MR. AMBRO: To concur with an amendment will be in order. If the motion to recede fails, is another preferential motion to recede and amend in order?

THE SPEAKER: No.

MR. AMBRO: Do we then move to a vote on the Flood language?

MR. FLOOD: Pro forma.

THE SPEAKER: The gentleman is correct.

MR. AMBRO: That is correct?

THE SPEAKER: Yes.

MR. AMBRO: I thank the Speaker. . . .

MR. FLOOD: Mr. Speaker, I move the previous question on the motion to insist on its disagreement and on the preferential motion.

THE SPEAKER: Without objection, the previous question is ordered.

There was no objection.

PARLIAMENTARY INQUIRY

MS. [BELLA S.] ABZUG [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentlewoman will state it.

MS. ABZUG: Mr. Speaker, if as the chairman has indicated he moves the previous question, if one intends to concur with the Senate amendment one would vote "yea" and if one opposes the Senate amendment, which is to elimi-

nate the Hyde amendment, then one would vote "nay." Is that correct?

THE SPEAKER: The question will be on whether the House shall recede from its disagreement. If the House does not recede, then the motion of the gentleman from Pennsylvania will be voted upon, and then the House could insist on its position and then the matter will go back to the Senate.

PARLIAMENTARY INQUIRY

MR. [JOE] SKUBITZ [of Kansas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. SKUBITZ: Mr. Speaker, if the House votes to recede, would a motion have precedence?

THE SPEAKER: A motion will be in order.

MR. SKUBITZ: I thank the Chair.

THE SPEAKER: The question is on the motion offered by the gentleman from Washington (Mr. Pritchard) that the House recede from its disagreement to the amendment of the Senate numbered 68. . . .

So the motion to recede was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is on the motion offered by the gentleman from Pennsylvania (Mr. Flood).

The motion was agreed to.

A motion to reconsider the vote by which action was taken on the several motions was laid on the table.

***Stage of Disagreement, Once Reached, Continues as Additional Amendments Are Con-***

***sidered; Precedence of Motions***

§ 10.16 A motion in the House to dispose of a further amendment of the Senate to a House amendment to a Senate amendment, the stage of disagreement having been reached, is privileged and is more preferential than a motion to commit under Rule XVII clause 1.

Where the House, pursuant to a rule, amended a Senate amendment to a House bill, then insisted on its amendment and requested a conference, the stage of disagreement was reached; and when the Senate ignored a request for a conference and sent the House a further amendment to the House amendment to the Senate amendment, the motion to concur in the House was deemed privileged.

A motion to refer, or to commit, a Senate amendment to a House amendment to a Senate amendment, the stage of disagreement having been reached, is in order under Rule XVI clause 4 if the previous question is rejected on the motion to concur.

Where the final stage of amendment is reached between the Houses, the motion which tends to bring the matter to closure most quickly is the most preferential.

On Sept. 16, 1976,<sup>(10)</sup> when the House had before it the final Senate amendment to the House amendment to the Senate amendment to a House bill, the options available to the House were limited. When the manager of the bill<sup>(11)</sup> moved to concur in the final Senate amendment, a series of inquiries and alternatives were broached, including a specific inquiry regarding the applicability of a motion to refer under Rule XVII<sup>(12)</sup> in the pending situation:

MR. RODINO: Mr. Speaker, I move to take from the Speaker's desk the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with a Senate amendment to the House amendment to the Senate amendments thereto, and concur in the Senate amendment to the House amendment to the Senate amendments.

10. 122 CONG. REC. 30868, 30872, 30873, 30887, 30888, 94th Cong. 2d Sess.

11. Peter W. Rodino, Jr. (N.J.), Chairman of the Committee on the Judiciary.

12. *House Rules and Manual* § 804 (1997).

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendments, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate engrossed amendments, insert;

That this Act may be cited as the "Hart-Scott-Rodino Antitrust Improvements Act of 1976". . . .

MR. RODINO (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment be dispensed with.

THE SPEAKER:<sup>(13)</sup> Is there objection to the request of the gentleman from New Jersey?

#### PARLIAMENTARY INQUIRIES

MR. [ROBERT] MCCLORY [of Illinois]: Mr. Speaker, I have several parliamentary inquiries.

THE SPEAKER: The gentleman will state them.

MR. MCCLORY: Mr. Speaker, is the motion of the gentleman from New Jersey privileged because the stage of disagreement has been reached?

THE SPEAKER: The gentleman is correct.

MR. MCCLORY: Mr. Speaker, my next parliamentary inquiry is, was the stage of disagreement reached when the House insisted on its amendment to the first Senate amendment and requested a conference thereon, even though the Senate had not previously or has not subsequently voted its disagreement?

13. Carl Albert (Okla.).

THE SPEAKER: That is correct.

MR. MCCLORY: Mr. Speaker, my third parliamentary inquiry is this: Is the House still in disagreement even though it has not acted upon the Senate amendment now before the House?

THE SPEAKER: The stage of disagreement is still in effect.

MR. MCCLORY: I thank the Speaker.

THE SPEAKER: Is there objection to the request of the gentleman from New Jersey? . . .

There was no objection.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Rodino moves that the House concur in the Senate amendment to the House amendment to the Senate amendments. . . .

MR. RODINO: Mr. Speaker, I allot myself such time as I may consume. . . .

I move the previous question on the motion.

#### PARLIAMENTARY INQUIRY

MR. MCCLORY: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MCCLORY: Mr. Speaker, in view of the fact that rule XVII states that "It shall be an order—after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee," and in view of the fact that motions to commit are permitted when the stage of disagreement has been reached in the context of the consideration of conference reports, and in view of the fact that prior precedents

indicate that a motion to commit is in order after the previous question has been ordered on a motion to concur in a Senate amendment (V, 5575), is it absolutely necessary to first vote down the previous question before I may be recognized to offer a motion to commit?

THE SPEAKER: The answer to the specific question is "yes," but the precedent cited by the gentleman is not applicable in the present situation, since in this case the stage of disagreement has been reached and therefore the pending motion is most preferential as tending to resolve the differences between the House most quickly.<sup>(14)</sup>

MR. MCCLORY: I thank the Chair. . . .

THE SPEAKER: The question is on ordering the previous question.<sup>(15)</sup>

14. The precedent cited by Mr. McClory (5 Hinds' Precedents § 5755) involved action on a Senate amendment which was not in disagreement. Rule XVII clause 1 was held on that occasion to permit a motion to commit after the previous question was ordered.
15. If the previous question on Mr. Rodino's motion had been voted down, a motion to refer under Rule XVI clause 4 (*House Rules and Manual* § 782 (1997)) would have been in order, but not the most preferential. See *House Rules and Manual* § 808 (1997), which states "Although a motion to commit under this clause, with instructions to report forthwith with an amendment, has been allowed after the previous question has been ordered on a motion to dispose of Senate amendments before the stage of disagreement (5 Hinds'

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

MR. MCCLORY: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 215, noes 177, not voting 38. . . .

**§ 10.17 The stage of disagreement having been reached and the previous question having been demanded on the motion to recede (the motion to recede and concur in the Senate amendment having been divided), the Chair informed a Member that a motion to refer the matter back to the committee having jurisdiction would not be in order.**

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Precedents § 5575; 8 Cannon's Precedents §§ 2744, 2745), a motion to commit under this rule does not apply to a motion disposing of Senate amendments after the stage of disagreement where utilized to displace a pending preferential motion." But a motion which would further amend would not have been in order since it would have been in the third degree.

On May 14, 1963,<sup>(16)</sup> a motion to recede and concur in a Senate amendment to H.R. 5517, supplemental appropriations for fiscal 1963, had been divided and the previous question had been demanded on the motion to recede.

MR. [AUGUST E.] JOHANSEN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(17)</sup> The gentleman will state it.

MR. JOHANSEN: Mr. Speaker, if the privileged motion prevails, what will be the parliamentary situation with respect to the possibility of offering a motion to refer the matter back to the proper legislative committee?

THE SPEAKER: Under present circumstances, that motion, in the opinion of the Chair, would not be in order.

*Effect of Receding After Division of Motion*

**§ 10.18 A motion to recede from disagreement to a Senate amendment and concur therein is divisible and, if the House recedes, the motion to concur in the Senate amendment is then pending.**

On June 30, 1972,<sup>(18)</sup> the House was considering the conference

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16. 109 CONG. REC. 8508, 88th Cong. 1st Sess.

17. John W. McCormack (Mass.).

report and amendments in disagreement to H.R. 15390, providing for a temporary extension of the public debt limit. Speaker Carl Albert, of Oklahoma, recognized Mr. John J. Rhodes, of Arizona, with a parliamentary inquiry:

Mr. Speaker, as I understand the parliamentary situation that will prevail, there are two amendments which will be offered and then a motion will be offered, presumably by the gentleman from Arkansas, to recede and concur.

At that time, Mr. Speaker, is that motion divisible?

THE SPEAKER: It is.

MR. RHODES: Mr. Speaker, a further parliamentary inquiry—if the motion to recede is carried, then a motion to concur is then in order; is that correct?

THE SPEAKER: That is part of the pending motion to recede and concur.

**§ 10.19 After a motion to recede and concur in a Senate amendment is divided and the previous question had been moved on the pending question to recede, no motion to concur in the Senate amendment with an amendment is in order until the House votes to recede.**

18. 118 CONG. REC. 23716, 23717, 92d Cong. 2d Sess.

On May 14, 1963,<sup>(19)</sup> the House was considering Senate amendment No. 76 to H.R. 5517, supplemental appropriations for fiscal 1963. A motion to recede and concur offered by Mr. Robert R. Barry, of New York, was divided on demand of Mr. Albert Thomas, of Texas, who then moved the previous question on the motion to recede. At this point Mr. H. R. Gross, of Iowa, sought to offer a “substitute”<sup>(20)</sup> motion:

Mr. Speaker, I would like to offer a substitute for the Barry motion.

THE SPEAKER:<sup>(1)</sup> The gentleman from Texas has moved the previous question.

### *Effect of the Previous Question*

**§ 10.20 The motion to recede and concur having been divided, the previous question applies only to the motion to recede and, if both the previous question and the motion to recede are agreed to, then**

19. 109 CONG. REC. 8508, 88th Cong. 1st Sess.

20. The term “substitute” motion is imprecise here. If Mr. Gross had intended to offer a motion to concur with an amendment, such motion would have been “preferential” if the motion to recede had carried in the House.

1. John W. McCormack (Mass.).

**the question of concurring is before the House.**

On May 14, 1963,<sup>(2)</sup> the House was considering Senate amendments in disagreement to the supplemental appropriations bill, H.R. 5517. Mr. Robert R. Barry, of New York, moved that the House recede from its disagreement to Senate amendment No. 76 and concur therein. That motion was divided on demand of Mr. Albert Thomas, of Texas, who, after brief debate moved the previous question on the motion to recede. Mr. Melvin R. Laird, of Wisconsin, then posed a parliamentary inquiry:

Mr. Speaker, as I understand, the gentleman from Texas moved the previous question merely on the question of receding. We will still have the question before us of concurring, and amendments may be offered?

THE SPEAKER:<sup>(3)</sup> The gentleman is correct.

MR. [FRANK J.] BECKER [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BECKER: Mr. Speaker, what has happened to the preferential motion made by the gentleman from New York?

2. 109 CONG. REC. 8508, 8509, 88th Cong. 1st Sess.

3. John W. McCormack (Mass.).

THE SPEAKER: The motion of the gentleman from New York is the pending question. If the previous question is ordered, the first vote will be on whether or not the House will recede from its disagreement to the Senate amendment.

The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is, Will the House recede from its disagreement to the Senate amendment No. 76?

The motion was agreed to.

***Effect of Rejection of Motion To Recede***

**§ 10.21 The House having refused to recede from disagreement to a Senate amendment, a motion to further insist is in order and a motion to concur is not admitted.**

On July 7, 1943,<sup>(4)</sup> the House was considering Senate amendment No. 33 reported back in disagreement on H.R. 2968, the second deficiency appropriation bill. Mr. Clarence Cannon, of Missouri, moved that the House further insist on its disagreement to the amendment. Mr. Herman P. Eberharter, of Pennsylvania, offered a preferential motion to

4. 89 CONG. REC. 7382-84, 78th Cong. 1st Sess.



recede and concur which was divided on demand of Mr. John Taber, of New York.

The question was taken; and there were—yeas 170, nays 176, answering “present” none, not voting 84. . . .

So the motion to recede was not agreed to. . . .

THE SPEAKER:<sup>(6)</sup> The question is on the motion of the gentleman from Missouri.

MR. EBERHARTER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. EBERHARTER: As I understand the situation, the motion made by me contained two parts, the motion to recede and concur; and the gentleman from New York [Mr. Taber] asked for a division of that question and the House just declared itself not to recede. The question, as I understand it, now before the House is whether it desires to recede and concur.

THE SPEAKER: The House cannot concur until it has receded, which it has just refused to do.

MR. EBERHARTER: I beg the Speaker's pardon. I thought the vote was that the House should recede.

THE SPEAKER: The question is on the motion of the gentleman from Missouri.

The motion was agreed to.

### § 10.22 If the House refuses to recede from its disagreement to a Senate amendment a

5. Sam Rayburn (Tex.).

### motion to concur with an amendment is precluded.

On May 9, 1940,<sup>(6)</sup> the House was considering amendments in disagreement to H.R. 8202, agriculture appropriations for fiscal 1941. After a motion to recede and concur was divided, the following question arose:

MR. [WILLIAM P.] LAMBERTSON [of Kansas]: If the House recedes, the question then recurs on the amendment to strike out the 75-percent provision. Will that come on concurring, or what will be the effect of receding?

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Of course, the Chair is not in position to anticipate further motions that may be made, but, as the Chair understands it, after the motion to recede is agreed to, the gentleman from Missouri gave notice that he expected to offer a motion to concur with an amendment.

MR. LAMBERTSON: If the motion to recede carries, what will be the situation?

THE SPEAKER PRO TEMPORE: The gentleman from Missouri will doubtless offer his motion, as he had indicated he will do.

MR. LAMBERTSON: If the House does not recede, then his motion is precluded?

THE SPEAKER PRO TEMPORE: That is the effect of it.

6. 86 CONG. REC. 5892, 76th Cong. 3d Sess.

7. Jere Cooper (Tenn.).

**§ 10.23 Where the House refuses to recede from its disagreement to a Senate amendment a motion is usually made that the House insist on its disagreement to such amendment.**

On July 15, 1937,<sup>(8)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. James G. Scrugham, of Nevada, to offer a motion to dispose of Senate amendment No. 89 to H.R. 6958, Interior Department appropriations for fiscal 1938:

Mr. Speaker, I move that the House recede and concur.

THE SPEAKER: The question is on the motion of the gentleman from Nevada that the House recede and concur.

MR. [ABE] MURDOCK of Utah: Mr. Speaker, I demand a division of that question.

THE SPEAKER: The gentleman is entitled to a division of the question. The question is whether the House shall recede from its disagreement to the Senate amendment. . . .

The question was taken; and there were—yeas 122, nays 191, not voting 117. . . .

MR. SCRUGHAM: Mr. Speaker, I move that the House insist on its disagreement to the amendment of the Senate numbered 89.

The motion was agreed to.

**§ 10.24 The rejection of the motion to recede has on rare occasions been interpreted as tantamount to insisting on disagreement to the Senate amendment.**

On Aug. 21, 1957,<sup>(9)</sup> the House was considering the Senate amendments reported back from conference in disagreement to H.R. 9131, supplemental appropriations for fiscal 1958. Speaker Sam Rayburn, of Texas, recognized Mr. Clarence Cannon, of Missouri:

Mr. Speaker, I move that the House recede and concur in the Senate amendment with an amendment.

The Clerk read as follows:

Mr. Cannon moves that the House recede from its disagreement to the amendment of the Senate numbered 54, and concur therein with an amendment, as follows: In lieu of the sum named in said amendment insert "\$425,000".

MR. [KARL M.] LECOMPTE [of Iowa]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

8. 81 CONG. REC. 7197, 7198, 75th Cong. 1st Sess.

9. 103 CONG. REC. 15518, 15519, 85th Cong. 1st Sess.

Mr. LeCompte moves to recede and concur with Senate amendment numbered 54.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I ask for a division of the question.

THE SPEAKER: The question is, Will the House recede from its disagreement? . . .

The question was taken; and there were—yeas 142, nays 215, not voting 75. . . .

THE SPEAKER: The House insists on its disagreement to the Senate amendment.

*Parliamentarian's Note:* The Speaker's interpretation in this instance was contrary to the weight of the precedents. See §§ 10.20, 10.21, supra, and §§ 12.5, 12.9, 12.10, infra, for examples of the prevailing interpretation generally given in this situation.

***Effect of Adoption of Motion To Recede and Concur on Motion To Insist***

**§ 10.25 When the House agrees to a preferential motion to recede and concur, the motion to insist upon disagreement falls and is not voted upon.**

On the legislative day of Sept. 14, 1959,<sup>(10)</sup> the House was considering Senate amendment No. 50 reported in disagreement to H.R. 8385, providing appropriations for mutual security and related agencies.

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Passman moves that the House insist upon its disagreement to the amendment of the Senate numbered 50.

MR. [JOHN J.] ROONEY [of New York]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Rooney moves that the House recede from its disagreement to the amendment of the Senate numbered 50 and concur therein. . . .

The previous question was ordered.

THE SPEAKER:<sup>(11)</sup> The question is on the preferential motion offered by the gentleman from New York [Mr. Rooney]. . . .

The question was taken; and there were—yeas 221, nays 81, not voting 133. . . .

So the motion was agreed to. . . .

The result of the vote was announced as above recorded.

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

10. 105 CONG. REC. 19740-42, 86th Cong. 1st Sess., Sept. 15, 1959 (Calendar Day).

11. Sam Rayburn (Tex.).

***Rejection of Motion To Recede  
and Concur Not Equivalent to  
Insisting on Disagreement***

**§ 10.26 Rejection of a motion to recede and concur with amendments in a Senate amendment reported from conference in disagreement is not equivalent to a motion to insist on disagreement, and a motion to insist and request a conference is the appropriate motion to send a measure to a new conference.**

On May 29, 1980,<sup>(12)</sup> during the consideration of motions to recede from disagreement and concur with amendments in the Senate amendment reported from the conference in disagreement, a colloquy occurred about the equivalency of motions. A portion of the proceedings is carried here.

CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 307, FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1981

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I call up the conference report on the concurrent resolution (H. Con. Res. 307) setting forth the congressional budget for the

<sup>12.</sup> 126 CONG. REC. 12678, 12710, 12712, 12716, 12717, 96th Cong. 2d Sess.

U.S. Government for the fiscal years 1981, 1982, and 1983 and revising the congressional budget for the U.S. Government for the fiscal year 1980, and ask for its immediate consideration. . . .

MR. [LEON E.] PANETTA (of California): Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Panetta moves that the House recede from its disagreement to the Senate amendment to House Concurrent Resolution 307 and to concur therein with two amendments, as follows:

In the engrossed Senate amendment to House Concurrent Resolution 307, strike out section 1 and sections 14–20 and insert in lieu thereof the following:

SECTION 1. That the Congress hereby determines and declares, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1980— . . .

THE SPEAKER:<sup>(13)</sup> The gentleman from California (Mr. Panetta) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. Latta) will be recognized for 30 minutes. . . .

The question is on the motion offered by the gentleman from California (Mr. Panetta).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [DELBERT L.] LATTA [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

<sup>13.</sup> Thomas P. O'Neill, Jr. (Mass.).

The vote was taken by electronic device, and there were—yeas 173, nays 199, not voting 61 . . . .

So the motion was rejected.

MOTION OFFERED BY MR. GIAIMO

MR. GIAIMO: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Giaimo moves that the House insist upon its disagreement to the Senate amendment and requests a further conference with the Senate thereon.

THE SPEAKER: The question is on the motion offered by the gentleman from Connecticut (Mr. Giaimo).

The question was taken, and the Speaker announced that the ayes appeared to have it.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, on that I demand the yeas and nays.

PARLIAMENTARY INQUIRY

MR. [PETER A.] PEYSER [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. PEYSER: Mr. Speaker, would the Speaker please explain what it is that we are now voting on in this particular matter?

THE SPEAKER: The question is on the motion of the gentleman from Connecticut (Mr. Giaimo) that the House insist upon its disagreement to the Senate amendment and request a further conference with the Senate on the budget for 1980 and 1981.

The question has been put.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, we just voted on the figures for 1981 in the motion by the gentleman from California (Mr. Panetta). A motion to insist is, in fact, redundant and it is a revote of the previous vote; is that not correct? It is the same proposition.

THE SPEAKER: The Chair will reply that it is a necessary motion to get back to a new conference. That is the gentleman's motion, and it is not an equivalent motion to the motion previously made by the gentleman from California. The Chair has already put the question to a voice vote. The gentleman from Maryland had risen for a rollcall. Does the gentleman want the yeas and nays?

MR. BAUMAN: Yes, I certainly do.

The yeas and nays were ordered.

### *Defeat of Motion To Recede and Concur Permits Further Motions*

**§ 10.27 If a motion to recede and concur in a Senate amendment is defeated, a further motion relating to the amendment in disagreement is in order.**

On Oct. 17, 1967,<sup>(14)</sup> the House was considering Senate amendment No. 13 to H.R. 11476, appropriations for the Department of Transportation for fiscal 1968 which had been reported back from conference in disagreement. Mr. Edward P. Boland, of Massachusetts, moved that the House recede and concur therein. Mr. Sidney R. Yates, of Illinois, was recognized:

Mr. Speaker, a parliamentary inquiry, if the gentleman will yield.

MR. BOLAND: I yield to the gentleman.

THE SPEAKER:<sup>(15)</sup> The gentleman will state it.

MR. YATES: This is a motion to recede and concur in the Senate amendment. What would be the effect of voting down such a motion? Will it have the effect of sending the conferees back to conference for the purpose of ironing out this particular item again?

THE SPEAKER: The amendment would still be before the House subject to another form of a motion.

MR. YATES: What would be the nature of that motion, Mr. Speaker?

THE SPEAKER: The motion could be that the House insist on its disagreement.

MR. YATES: I thank the Speaker.

14. 113 CONG. REC. 29044, 29048, 29049, 90th Cong. 1st Sess.

15. John W. McCormack (Mass.).

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, will the gentleman yield?

MR. BOLAND: I yield to the gentleman.

MR. HALL: If the gentleman from Massachusetts' motion that the House recede from its disagreement to the amendment of the Senate No. 13 and concur therein was voted down, then another motion would be in order, would it not, I would ask as a parliamentary inquiry, to instruct the conferees to maintain the position of the House or that the House insist upon its disagreement with the other body?

THE SPEAKER: The Chair will state in response to the parliamentary inquiry propounded to the Chair by the distinguished gentleman from Missouri that if the House should insist upon its disagreement, then the matter could go back to conference.<sup>(16)</sup>

**§ 10.28 When a preferential motion to recede and concur is decided in the negative, the question recurs on a pending motion to insist on disagreement to the Senate amendment.**

On Dec. 17, 1963,<sup>(17)</sup> the House was considering amendments in disagreement to H.R. 8667, river basin and flood control authoriza-

16. See also 81 CONG. REC. 7007, 75th Cong. 1st Sess., July 9, 1937.

17. 109 CONG. REC. 24815, 24816, 24822, 88th Cong. 1st Sess.

tion. After the Clerk read Senate amendment No. 26, Speaker Pro Tempore Carl Albert, of Oklahoma, recognized Mr. Clifford Davis, of Tennessee:

Mr. Speaker, I offer a motion.  
The Clerk read as follows:

Mr. Davis of Tennessee moves that the House insist upon its disagreement to Senate Amendment No. 26.

MR. [ARNOLD] OLSEN of Montana: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Olsen of Montana moves that the House recede from its disagreement to the amendment of the Senate No. 26 and concur therein.

THE SPEAKER PRO TEMPORE: The gentleman from Tennessee [Mr. Davis] is recognized for 1 hour.

MR. DAVIS of Tennessee: Mr. Speaker, I yield 5 minutes to the gentleman from Arizona [Mr. Udall].

MR. [MORRIS K.] UDALL: Mr. Speaker, I commend the gentleman from Tennessee [Mr. Davis] and his committee for the constructive work that they have done on this bill. However, I rise in support of the preferential motion which has been offered by the gentleman from Montana [Mr. Olsen]. . . .

The question was taken; and on a division (demanded by Mr. Olsen of Montana) there were—ayes 66, noes 132.

So the motion was rejected.

THE SPEAKER:<sup>(18)</sup> The question is on the motion offered by the gentleman

18. John W. McCormack (Mass.).

from Tennessee [Mr. Davis] to insist on its disagreement to the Senate amendment.<sup>(19)</sup>

**§ 10.29 The defeat of a motion to recede and concur is not equivalent to insisting upon disagreement.**

On July 9, 1937,<sup>(20)</sup> the House was considering a Senate amendment in disagreement to H.R. 7493, War Department appropriations for nonmilitary activities for fiscal 1938.

THE SPEAKER:<sup>(1)</sup> The question is on the motion of the gentleman from Pennsylvania to recede and concur in the Senate amendment.

The question was taken; and on a division<sup>(2)</sup> (demanded by Mr. Snyder of Pennsylvania) there were ayes 3 and noes 95.

So the motion was rejected.

THE SPEAKER: The Chair respectfully suggests to the gentleman from Pennsylvania [Mr. Snyder] that in view of

19. See also 108 CONG. REC. 19945, 87th Cong. 2d Sess., Sept. 19, 1962.

20. 81 CONG. REC. 7007, 75th Cong. 1st Sess.

1. William B. Bankhead (Ala.).

2. The word "division" as it is used here refers to a method of voting during which Members stand and are counted as either "aye" or "no" on the question at issue. It should not be confused with a division into two separate motions of the motion to recede and concur.

the last action, the gentleman should move that the House insist on its disagreement to the Senate amendment. In other words, some disposition should be made of that amendment, and not leave it up in the air.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. [MALCOLM C.] TARVER: If the gentleman from Pennsylvania [Mr. Snyder] does not desire to make a motion to further insist upon the disagreement of the House to the Senate amendment, will the Chair recognize some other member of the committee to make such a motion?

THE SPEAKER: The Chair will recognize some other member of the committee to make such a motion if the chairman of the committee does not desire to make the motion.

MR. [J. BUELL] SNYDER of Pennsylvania: I make that motion, Mr. Speaker.<sup>(3)</sup>

***Withdrawal of Motion To Recede and Concur; Amendments in Disagreement, Motions in Order Following Rejection of First***

**§ 10.30 If a preferential motion to recede and concur in**

3. See also 109 CONG. REC. 24823, 88th Cong. 1st Sess., Dec. 17, 1963; and 108 CONG. REC. 19945, 87th Cong. 2d Sess., Sept. 19, 1962.

**a Senate amendment reported from conference in disagreement is withdrawn or defeated, a motion to recede and concur with an amendment is in order and preferential to a motion to insist on disagreement.**

When a Senate amendment in disagreement was before the House, following the adoption of the conference report on the legislative branch appropriations bill for fiscal year 1977, the manager of the bill moved that the House insist on disagreement. A preferential motion to recede and concur was offered, then withdrawn to permit the offering of a motion to recede and concur with an amendment. Proceedings were as follows:<sup>(4)</sup>

THE SPEAKER:<sup>(5)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 56: Page 35, line 1 insert:

RESTORATION OF WEST CENTRAL  
FRONT OF CAPITOL

Notwithstanding any other provision of law, the Architect of the Capitol, under the direction of the Senate

4. 122 CONG. REC. 31899, 31900, 31902, 31905, 31906, 94th Cong. 2d Sess., Sept. 22, 1976.

5. Carl Albert (Okla.).



and House Office Building Commissions acting jointly, is directed to restore the West Central Front of the United States Capitol (without change of location or change of the present architectural appearance thereof), \$25,000,000, to remain available until expended: *Provided*, That the Architect of the Capitol, under the direction of such Commissions acting jointly, is authorized and directed to enter into such contracts including cost-plus-a-fixed-fee contracts, incur such obligations, and make such expenditures for personal and other expenses as may be necessary to carry out this paragraph. . . .

MOTION OFFERED BY MR. SHIPLEY

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Shipley moves that the House insist on its disagreement to the amendment of the Senate numbered 56.

PREFERENTIAL MOTION OFFERED BY  
MR. STRATTON

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, I offer a preferential motion to recede and concur in the Senate amendment No. 56 to the legislative appropriation conference report.

The Clerk read as follows:

Mr. Stratton moves that the House recede from its disagreement to the amendment of the Senate number 56 and concur therein.

MR. STRATTON: Mr. Speaker, will the distinguished gentleman from Illinois, the chairman, yield me 5 minutes.

MR. SHIPLEY: I yield the gentleman from New York 5 minutes. . . .

PARLIAMENTARY INQUIRY

MR. STRATTON: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: Will the gentleman from Illinois (Mr. Shipley) yield for a parliamentary inquiry?

MR. SHIPLEY: Yes, I yield to the gentleman for the purpose of making a parliamentary inquiry.

MR. STRATTON: Mr. Speaker, the gentleman from Illinois (Mr. Yates) wishes to offer a substitute motion to recede and concur with an amendment striking the cost plus fixed fee contract.

Is it in order for that motion to be offered if I withdraw my motion?

THE SPEAKER: The Chair will state that the gentleman may offer his motion if the gentleman from New York (Mr. Stratton) withdraws his preferential motion. In that event, the gentleman could offer another preferential motion, or if this preferential motion would be defeated, another preferential motion can be offered.

MR. STRATTON: I have a further parliamentary inquiry, Mr. Speaker.

Would a motion to recede and concur with an amendment be a preferential motion?

THE SPEAKER: It would be preferential over a motion to insist on disagreement.

MR. STRATTON: Mr. Speaker, I ask unanimous consent that I may be permitted to withdraw my preferential motion.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Speaker, I object.

THE SPEAKER: The gentleman from New York (Mr. Stratton) does not need unanimous consent for that purpose in the House.

Does the gentleman intend to withdraw his motion? The gentleman does not need unanimous consent to withdraw the motion that he has made.

MR. STRATTON: Mr. Speaker, if I do not need unanimous consent, then I withdraw my motion.

THE SPEAKER: The gentleman from New York (Mr. Stratton) withdraws his motion.

PREFERENTIAL MOTION OFFERED BY  
MR. YATES

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER: The Clerk will report the preferential motion.

The Clerk read as follows:

Mr. Yates moves on amendment 56 to recede and concur with the Senate on amendment No. 56 with an amendment as follows: on page 35, line 11, strike out the words "including cost-plus-fixed-fee contracts".

On lines 14 and 15, strike out the words "cost-plus-a-fixed-fee".

On line 23, strike out language after "appurtenant thereto" and strike out lines 24 and on page 36 strike out lines 1 and 2.

MR. SHIPLEY: Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. Yates). . . .

Mr. Speaker, I urge a "no" vote, and I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Illinois (Mr. Yates).

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. STRATTON: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count.

One hundred and eighty-seven Members are present, not a quorum.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 95, nays 304, not voting 31. . . .

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The question is on the motion offered by the gentleman from Illinois (Mr. Shipley).

The motion was agreed to.

### *Where Preferential Motion Is Withdrawn, Another May Take Its Place*

**§ 10.31 A preferential motion to recede and concur in a Senate amendment reported from conference in disagreement having been withdrawn<sup>(7)</sup> before action was taken thereon, another pref-**

6. John J. McFall (Calif.).

7. It does not require unanimous consent to withdraw a motion offered in the House before a decision has been taken thereon or an amendment offered thereto.

**erential motion, to recede and concur with an amendment, was then offered.**

In the 94th Congress,<sup>(8)</sup> following the adoption of H.R. 14238, the conference report on the legislative branch appropriations bill for fiscal year 1967, a controversial Senate amendment relating to the restoration of the west front of the Capitol Building was before the House, the stage of disagreement having been reached. The proceedings were as indicated below:

THE SPEAKER:<sup>(9)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 56: Page 35, line 1 insert:

RESTORATION OF WEST CENTRAL  
FRONT OF CAPITOL

Notwithstanding any other provision of law, the Architect of the Capitol, under the direction of the Senate and House Office Building Commissions acting jointly, is directed to restore the West Central Front of the United States Capitol (without change of location or change of the present architectural appearance thereof), \$25,000,000, to remain available until expended. . . .

8. 122 CONG. REC. 31899, 31900, 31902, 31905, 31906, 94th Cong. 2d Sess., Sept. 22, 1976.

9. Carl Albert (Okla.).

MOTION OFFERED BY MR. SHIPLEY

MR. [GEORGE E.] SHIPLEY [of Illinois]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Shipley moves that the House insist on its disagreement to the amendment of the Senate numbered 56.

PREFERENTIAL MOTION OFFERED BY  
MR. STRATTON

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, I offer a preferential motion to recede and concur in the Senate amendment No. 56 to the legislative appropriation conference report.

The Clerk read as follows:

Mr. Stratton moves that the House recede from its disagreement to the amendment of the Senate number 56 and concur therein.

MR. STRATTON: Mr. Speaker, will the distinguished gentleman from Illinois, the chairman, yield me 5 minutes.

MR. SHIPLEY: I yield the gentleman from New York 5 minutes. . . .

MR. STRATTON: Mr. Speaker, the gentleman from Illinois (Mr. Yates) wishes to offer a substitute motion to recede and concur with an amendment striking the cost plus fixed fee contract.

Is it in order for that motion to be offered if I withdraw my motion?

THE SPEAKER: The Chair will state that the gentleman may offer his motion if the gentleman from New York (Mr. Stratton) withdraws his preferential motion. In that event, the gentleman could offer another preferential motion, or if this preferential motion would be defeated, another preferential motion can be offered.

MR. STRATTON: I have a . . . parliamentary inquiry, Mr. Speaker.

Would a motion to recede and concur with an amendment be a preferential motion?

THE SPEAKER: It would be preferential over a motion to insist on disagreement.

MR. STRATTON: Mr. Speaker, I ask unanimous consent that I may be permitted to withdraw my preferential motion.

MR. [R. LAWRENCE] COUGHLIN [of Pennsylvania]: Mr. Speaker, I object.

THE SPEAKER: The gentleman from New York (Mr. Stratton) does not need unanimous consent for that purpose in the House.

Does the gentleman intend to withdraw his motion? The gentleman does not need unanimous consent to withdraw the motion that he has made.

MR. STRATTON: Mr. Speaker, if I do not need unanimous consent, then I withdraw my motion.

THE SPEAKER: The gentleman from New York (Mr. Stratton) withdraws his motion.

PREFERENTIAL MOTION OFFERED BY  
MR. YATES

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER: The Clerk will report the preferential motion.

The Clerk read as follows:

Mr. Yates moves on amendment 56 to recede and concur with the Senate on amendment No. 56 with an amendment as follows: on page 35, line 11, strike out the words "including cost-plus-fixed-fee contracts".

On lines 14 and 15, strike out the words "cost-plus-a-fixed-fee".

On line 23, strike out language after "appurtenant thereto" and strike out lines 24 and on page 36 strike out lines 1 and 2.

MR. SHIPLEY: Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. Yates). . . .

Mr. Speaker, I urge a "no" vote, and I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Illinois (Mr. Yates). . . .

So the preferential motion was rejected. . . .

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The question is on the motion offered by the gentleman from Illinois (Mr. Shipley).

The motion was agreed to.

## § 11. To Concur With an Amendment; To Recede and Concur With an Amendment

A motion to concur in a Senate amendment with an amendment, or to recede from disagreement to a particular Senate amendment and amend it further, if adopted, adds another level to the degree of amendments between the Houses.<sup>(11)</sup>

10. John J. McFall (Calif.).

11. See §§ 523–525, *House Rules and Manual* (1997).

Motions of this character may or may not be privileged, depending on whether the stage of disagreement has been reached.

### *Concurrence With an Amendment by Unanimous Consent*

**§ 11.1 The House may by unanimous consent take from the Speaker's table a House bill with a Senate amendment, and concur in the Senate amendment with an amendment.**

On Mar. 12, 1942,<sup>(12)</sup> the following occurred in the House:

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6550) to extend and amend Subtitle—Insurance of Title II of the Merchant Marine Act, 1936, as amended (Public, No. 677, 76th Cong.), approved June 29, 1940, and for other purposes, with a Senate amendment, and concur in the Senate amendment with the following amendment, which I send to the desk.

THE SPEAKER:<sup>(13)</sup> The Clerk will report the title of the bill and the Senate amendment, as amended.

The Clerk read the title of the bill.

The Clerk read as follows:

12. 88 CONG. REC. 1843, 77th Cong. 2d Sess.

13. Sam Rayburn (Tex.).

Mr. Bland asks unanimous consent to concur in the Senate amendment to the bill H.R. 6550, with an amendment as follows: After the word "repeal," in line 12, page 1, of the engrossed bill, insert the following before the period: "and such authority is hereby vested in the Administrator of the War Shipping Administration in conformity with the President's Executive order of February 7, 1942, No. 9054-7-FR-873."

THE SPEAKER: Is there objection?

There was no objection.

The Senate amendment as amended was agreed to.

**§ 11.2 A unanimous-consent request to take a House bill with a Senate amendment from the Speaker's table and concur with a further amendment is self-executing if not objected to, and is not severable, so that a vote is not permitted on the Senate amendment or amendment thereto.**

The parliamentary exchanges between Speaker Thomas P. O'Neill, Jr., of Massachusetts, Mr. Robert E. Bauman, of Maryland, and Mr. William E. Dannemeyer, of California, on Dec. 15, 1980,<sup>(14)</sup> illustrate the concept of a self-executing unanimous-consent re-

14. 126 CONG. REC. 34184-89, 96th Cong. 2d Sess.

quest. On this occasion, when an objection was lodged against the unanimous-consent request, the legislative action was accomplished by a motion to suspend the rules, since suspension motions happened to be in order on that day under Rule XXVII.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 644) making further continuing appropriations for fiscal year 1981, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment and the House amendment to the Senate amendment, as follows:

Strike out all after the resolving clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1981, and for other purposes, namely:

SEC. 101. (a)(1) Such amounts as may be necessary for projects or activities (not otherwise specifically provided for in this joint resolution) for which appropriations, funds, or other authority would be available in the following appropriation Acts: . . .

House amendment to Senate amendment: In lieu of the matter in-

serted by said amendment, insert the following:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenue, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1981, and for other purposes, namely: . . .

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, the gentleman from California (Mr. Danne-meyer) informs me his concern is getting a rollcall vote on agreeing to the amendments proposed by the gentleman from Mississippi (Mr. Whitten). Would it be in order to ask unanimous consent that the yeas and nays be ordered on this; the amendments the gentleman from Mississippi offers at the appropriate time?

THE SPEAKER: There is a manner in which the House can grant unanimous consent to consider the Senate amendment, and to then offer an amendment which would require a vote. There must be 217 Members voting.

The Chair has glanced around the Chamber and finds at the present a precarious number present on the floor. The Chair does not know whether the House can get a sufficient number or not. I would hope at the same time the gentleman appreciates, as he understands the law, that the Social Security Offices close in the morning. Any person who wanted social security could not go into an office. The courts in this country legally are supposed to close

tomorrow if the Congress has not passed the bill.

If there is a negotiating team negotiating at the present time with regards to the hostages, that negotiating team has no funds to pay salaries to negotiate.

Those are the complications that are apparent at the present time. It is of a serious nature. The Chair would hope that the gentleman would reconsider his action, because this matter would have to go to the other body, at which time the other body, as the Chair understands, has recessed until 12:30 to see what action this House is going to take.

The Chair does not truly know what the action of the other body would be if this were to pass here.

#### PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. DANNEMEYER: Mr. Speaker, if the gentleman from California withdraws his objection to the unanimous-consent request, what would then be the procedure whereby a Member of the House could ask for an amendment on the proposal that the gentleman from Mississippi has talked about to the proposal which came from the other body?

THE SPEAKER: There is no method by which an amendment could be offered without a change in the request by the gentleman from Mississippi. He is in charge of it. His all one unanimous-consent request. . . .

Does the Chair understand that the gentleman from New York will stop the

Government running because of a \$2 million debt that is owed to the Olympic team?

MR. DANNEMEYER: Mr. Speaker, I withdraw my reservation of objection.

MR. [SAMUEL S.] STRATTON [of New York]: I object, Mr. Speaker.

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

MR. STRATTON: I object, Mr. Speaker.

THE SPEAKER: The gentleman from New York (Mr. Stratton) objects.

Objection is heard. . . .

MR. WHITTEN: Mr. Speaker, I move to suspend the rules and take from the Speaker's table the joint resolution (H.J. Res. 644) making further continuing appropriations for fiscal year 1981, and for other purposes, with the Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the amendment to the Senate amendment, as follows:

In lieu of the matter inserted by said amendment, insert the following:

#### *Vacating Concurrence*

**§ 11.3 The House, by unanimous consent, vacated proceedings whereby it had concurred in a Senate amendment with an amendment, and then agreed to a motion to concur with a further amendment.**

On June 14, 1967,<sup>(15)</sup> Mr. Edward A. Garmatz, of Maryland, made the following request regarding H.R. 5424, appropriations for vessels, aircraft, and the construction of Coast Guard establishments:

MR. GARMATZ: Mr. Speaker, I ask unanimous consent to vacate the proceedings whereby the House concurred, with an amendment to Senate amendment No. 2 to the bill, H.R. 5424.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection.

MR. GARMATZ: Mr. Speaker, I move that the House concur in the Senate amendment No. 2 with an amendment.

The Clerk read as follows:

Mr. Garmatz moves that the House concur in Senate amendment No. 2 with the following amendment: In lieu of "\$37,663,000" insert "\$37,963,000".

The motion was agreed to.

A motion to reconsider was laid on the table.

***Agreement to Resolution for Concurrence Under Suspension of Rules***

**§ 11.4 The House agreed to a motion to suspend the rules and agree to a resolution of-**

15. 113 CONG. REC. 15843, 90th Cong. 1st Sess.

16. John W. McCormack (Mass.).

**ferred by a Member which provided for taking a House bill with a Senate amendment from the Speaker's table and concurring in the Senate amendment with a designated amendment.**

On Dec. 20, 1973,<sup>(17)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Wright Patman, of Texas, to offer the following motion:

Mr. Speaker, I move to suspend the rules and agree to the House resolution (H. Res. 753) to take from the Speaker's table the bill (H.R. 8449) to expand the national flood insurance program by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes, with Senate amendment thereto, and agree to the Senate amendments with an amendment to strike out title III of the Senate amendment in the nature of a substitute.

The Clerk read as follows:

H. RES. 753

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 8449, together with the Senate amendment thereto be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendment be, and the same

17. 119 CONG. REC. 42883, 42884, 93d Cong. 1st Sess.



is hereby, agreed to with an amendment as follows:

“Strike out title III of the Senate amendment in the nature of a substitute.”

After a brief debate the question was taken, and the motion to suspend the rules and agree to the resolution was adopted by a two-thirds majority.

***Effect of Rejection of Committee of the Whole Recommendation***

**§ 11.5 If the House disagrees to the recommendation of the Committee of the Whole that the House concur in a Senate amendment with an amendment, such Senate amendment is before the House for consideration.**

On July 12, 1945,<sup>(18)</sup> the Committee of the Whole upon consideration of Senate amendments to H.R. 3368, war agencies appropriations for 1946, recommended, *inter alia*, that the House concur in Senate amendment No. 1 with an amendment. Mr. Joseph W. Martin, Jr., of Massachusetts, rose in the House:

If we do not adopt the amendment which was just adopted in Committee

18. 91 CONG. REC. 7474, 7493, 7494, 79th Cong. 1st Sess.

of the Whole, we will then take the Senate amendment as it stands?

MR. [JOHN E.] RANKIN [of Mississippi]: No, sir.

THE SPEAKER:<sup>(19)</sup> The Senate amendment itself will be in order for consideration.

***Divisibility***

**§ 11.6 A motion to recede and concur in a Senate amendment with an amendment is divisible.**

On May 20, 1936,<sup>(20)</sup> the House was considering Senate amendments to the Department of the Interior appropriations bill, reported from conference in disagreement.

MR. [EDWARD T.] TAYLOR of Colorado: Mr. Speaker, I move that the House recede and concur in the Senate amendment with the following amendment.

The Clerk read as follows:

Mr. Taylor of Colorado moves that the House recede from its disagreement to the amendment of the Senate no. 24, with an amendment, as follows:

“In line 10, the first line of the second paragraph of said amendment, after the word ‘by’ insert the following: ‘and in accordance with.’”

MR. [JAMES P.] BUCHANAN [of Texas]: Mr. Speaker, I move that the House

19. Sam Rayburn (Tex.).

20. 80 CONG. REC. 7616, 74th Cong. 2d Sess.

further insist on its disagreement to the amendment of the Senate no. 24.

Mr. Speaker, I realize that the motion to recede and concur is a preferential motion. I ask a division of the motion to recede and concur.

THE SPEAKER:<sup>(1)</sup> The gentleman is entitled to a division of the motion. The question is, Will the House recede from its disagreement to the amendment of the Senate?

*Parliamentarian's Note:* The two parts of the proposition which are distinct and hence divisible are first, that the House recede from its disagreement to the Senate amendment, and second, that the House concur in that amendment with an amendment. Although the motions to concur in an amendment or to concur in a further amendment with an amendment may each be offered separately, the motion to concur (in an amendment) with an amendment, once offered as an entity, may not be divided. See § 11.8, *infra*.

### ***Dividing Question on Motion To Recede and Concur***

**§ 11.7 A motion to recede and concur with an amendment in a Senate amendment reported from conference in disagreement may be divided, and the Chair will en-**

1. Joseph W. Byrns (Tenn.).

**ertain the demand for a division immediately after the motion is offered.**

The proceedings of Sept. 24, 1975,<sup>(2)</sup> relating to the proper time to ask for a division of the question where a motion to recede and concur in a Senate amendment is pending are carried herein. The Chair may, as indicated, entertain the demand for a division but may proceed with debate before putting the question on the first part of the motion.

THE SPEAKER:<sup>(3)</sup> The Clerk will report the first amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 16, line 18, strike:

"SEC. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone."

MOTION OFFERED BY MR. SLACK

MR. [JOHN M.] SLACK [Jr., of West Virginia]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Slack moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows: Restore the

2. 121 CONG. REC. 30071, 30080, 30081, 94th Cong. 1st Sess.

3. Carl Albert (Okla.).

matter stricken by said amendment amended to read as follows:

"SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the operation, maintenance, property and defense of the Panama Canal."

PARLIAMENTARY INQUIRY

MR. [M. G. (GENE)] SNYDER [of Kentucky]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. SNYDER: Mr. Speaker, is this the proper time for the gentleman from Kentucky to demand a division of the question?

THE SPEAKER: It is.

MR. SNYDER: Mr. Speaker, then I demand a division of the question.

THE SPEAKER: The gentleman is entitled to a division of the question.

The Chair recognizes the gentleman from West Virginia (Mr. Slack) for 30 minutes.

MR. SLACK: Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, on June 26 the House adopted the Snyder amendment to H.R. 8121 by a vote of 246 to 164. The House language read as follows:

SEC. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any United States rights in the Panama Canal Zone.

The Senate amendment No. 8 struck this provision from the bill. After a lengthy discussion, the conferees agreed on the following language:

SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the operation, maintenance, property and defense of the Panama Canal. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, we are facing a replay of the issue which this House decisively voted on last June 26. At that time by a majority of more than 80 votes, the House supported the Snyder amendment which simply forbids the State Department to use any funds to negotiate the surrender of our sovereign rights in the Panama Canal Zone. . . .

I would sincerely request that every Member examine his conscience and vote again today in favor of the Snyder amendment, and that can be done by voting against the committee's motion to recede from our past strong stand.

THE SPEAKER: Without objection, the previous question is ordered.

There was no objection.

PARLIAMENTARY INQUIRIES

MR. SNYDER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. SNYDER: Mr. Speaker, am I correct that the parliamentary situation is such that an "aye" vote would be agreeing to the committee's recommendation and a "no" vote would be to reject it?

THE SPEAKER: An "aye" vote would be that the House will recede from disagreement to Senate amendment No. 8. A "no" vote is not to recede. In other words, a "no" vote is to vote for the po-

sition of the gentleman from Kentucky (Mr. Snyder).

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I have a further parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WRIGHT: In order that all of us may understand this in exactly the same way, an “aye” vote would support the language recommended in the conference committee report; is that correct?

THE SPEAKER: The gentleman is correct.

The question is on the motion to recede.

The question was taken; and the Speaker announced that the ayes appeared to have it. . . .

The vote was taken by electronic device, and there were—yeas 197, nays 203, not voting 33. . . .

### ***Divisibility of Motion To Concur With an Amendment***

**§ 11.8 An amendment proposed in a motion to recede and concur in a Senate amendment is divisible only if the proposed House amendment is in a form amenable to division, and a motion to strike out and insert is not subject to the demand.**

Where a motion is pending to concur with an amendment in a Senate amendment and the pro-

posed House amendment is in the form of a motion to strike out and insert, precedents do not permit a division of the question between aspects of the matter to be inserted.<sup>(4)</sup> The motion offered by Mr. William Lehman, of Florida, on Oct. 15, 1986,<sup>(5)</sup> was not in a form which permitted the Chair to divide the question.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The Clerk will designate the final amendment in disagreement.

The text of the amendment is as follows:

Senate Amendment No. 124, page 71, line 13: insert the following language:

#### TITLE VII

##### METROPOLITAN WASHINGTON AIRPORTS

SEC. 701. SHORT TITLE AND TABLE OF CONTENTS.

This title may be cited as the “Metropolitan Washington Airports Act of 1986”. . . .

SEC. 712. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

4. See Rule XVI clause 7 which states that “A motion to strike out and insert is indivisible . . .”. *House Rules and Manual* § 793 (1997).
5. 132 CONG. REC. 32127, 32131, 32134, 32135, 99th Cong. 2d Sess.
6. Kenneth J. Gray (Ill.).

MOTION OFFERED BY MR. LEHMAN OF  
FLORIDA

MR. LEHMAN of Florida: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Lehman moves that the House recede from its disagreement to the amendment of the Senate numbered 124 and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

TITLE VI—METROPOLITAN  
WASHINGTON AIRPORTS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Metropolitan Washington Airports Act of 1986". . . .

SEC. 6011. SEPARABILITY.

Except as provided in section 6007(h), if any provision of this title or the application thereof to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 6012. NONSTOP FLIGHTS.

PERIMETER RULE.—An air carrier may not operate an aircraft non-stop in air transportation between Washington National Airport and another airport that is more than 1,250 statute miles away from Washington National Airport. . . .

PARLIAMENTARY INQUIRY

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, reserving the right to object, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. CONTE: Mr. Speaker, is it permissible to separate or divide the question on the perimeter rule?

THE SPEAKER PRO TEMPORE: The answer is in the negative. In the form submitted the proposed House amendment is not divisible.

MR. CONTE: Mr. Speaker, I withdraw my reservation of objection.

**§ 11.9 A privileged motion to concur in a Senate amendment with an amendment was held not subject to a demand for a division.**

On Aug. 3, 1973,<sup>(7)</sup> the House was considering the conference report on S. 1888, the Agriculture and Consumer Protection Act of 1973. The conferees had been unable to agree so the amendment in disagreement was before the House. Mr. William R. Poage, of Texas, offered a motion to recede and concur in the Senate amendment to a House amendment with an amendment. After the previous question was ordered on that motion, Mr. William A. Steiger, of Wisconsin, rose:

Mr. Speaker, is the demand for a division of the question to concur with an amendment in order?

7. 119 CONG. REC. 28121, 28124, 93d Cong. 1st Sess.

THE SPEAKER:<sup>(8)</sup> Under the present conditions such a demand is not in order.

***Putting Motions To Recede and Concur With Amendment En Bloc***

**§ 11.10 The use of unanimous-consent agreements to permit the en bloc consideration of motions to recede and concur with amendments in a series of Senate amendments reported from conference in disagreement has been used to expedite consideration where the printed motions and proposed amendments are available, since printed in the joint statement of the managers, and there is no controversy.**

The form of a unanimous-consent request to consolidate the many motions to recede and concur with amendment into one, and make it not subject to a demand for a division of the question, is shown here. This truncated procedure, as excerpted from the Record of Sept. 25, 1992,<sup>(9)</sup> was frowned upon by the Committee on Appro-

8. Carl Albert (Okla.).

9. 138 CONG. REC. 27710, 102d Cong. 2d Sess.

priations and the Chair in earlier Congresses, but is seeing more use in the modern House.

AMENDMENTS IN DISAGREEMENT

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Pursuant to House Resolution 579, the amendments in disagreement and motions printed in the joint explanatory statement of the committee of conference to dispose of amendments in disagreement are considered as read.

The Clerk will designate the first amendment in disagreement.

MR. [BOB] TRAXLER [of Michigan]: Mr. Speaker, I ask unanimous consent that Senate amendments numbered 1, 5, 7, 9, 10, 15, 27, 28 . . . 244, 246 . . . 267, 269, 272 . . . and 303 be considered en bloc and printed in the Record, and that the motions to dispose of said amendments as printed in the joint statement of managers be considered as read and that the motions not be subject to a division of the question.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [DANA] ROHRABACHER [of California]: Mr. Speaker, I reserve the right to object.

Mr. Speaker, I wish to have some kind of assurance that amendment 267 will not be part of this unanimous-consent request.

MR. TRAXLER: Mr. Speaker, will the gentleman yield?

MR. ROHRABACHER: I yield to the gentleman from Michigan.

10. Jim McDermott (Wash.).

MR. TRAXLER: Mr. Speaker, I will amend my request to include amendment 267, to have it removed from my request.

MR. ROHRBACHER: And also amendment 245?

THE SPEAKER PRO TEMPORE: Amendment 245 is already excluded.

(The text of unanimous-consent request, as modified, is as follows:)

MR. TRAXLER: Mr. Speaker, I ask unanimous consent that Senate amendments numbered 1, 5, 7, 9, 10, 15, 27, 28, 29 . . . 244, 246 . . . 266, 269 . . . and 303 be considered en bloc and printed in the Record, and that the motions to dispose of said amendments as printed in the joint statement of managers be considered as read and that the motions not be subject to a division of the question.

MR. ROHRBACHER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: With that modification, is there objection to the request of the gentleman from Michigan?

There was no objection.

(The texts of the various Senate amendments referred to in the unanimous-consent request are as follows:)

Senate amendment No. 1: Page 3, line 2, strike out "transferred" and insert "reimbursed".

Senate amendment No. 5: Page 4, line 22, strike out "to" and insert "which may" . . .

### ***Second Motion as Not Preferential***

#### **§ 11.11 When a motion that the House recede from its**

**disagreement to a Senate amendment and concur in the same with an amendment is pending, another motion to recede and concur with an amendment is not preferential.**

On Dec. 16, 1943,<sup>(11)</sup> during consideration of the Senate amendments to H.R. 3598, the first national defense appropriation bill of 1944, the following occurred:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I move that the House recede from its disagreement to Senate amendment No. 49 and concur in the same with an amendment which I have sent to the desk.

THE SPEAKER:<sup>(12)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Cannon of Missouri moves that the House recede from its disagreement to Senate amendment No. 49 and agree to the same with an amendment as follows:

"In lieu of the sum of '\$2,800,000' named in such amendment, insert '\$700,000'; and in lieu of the sum of '\$800,000' named in such amendment, insert '\$200,000.'"

MR. [CLINTON P.] ANDERSON of New Mexico: I make a preferential motion, which I send to the desk.

THE SPEAKER: The Clerk will report the motion.

11. 89 CONG. REC. 10777, 78th Cong. 1st Sess.

12. Sam Rayburn (Tex.).

The Clerk read as follows:

Mr. Anderson of New Mexico moves that the House recede from its disagreement to Senate amendment No. 49, and agree to the same with an amendment, as follows: On page 34, line 8, strike out the figure "\$2,800,000" and insert the figure "\$1,400,000".

THE SPEAKER: The gentleman has not made a preferential motion. He has made a motion to recede from its disagreement to the Senate amendment and concur in the same, and a motion to recede and concur in the Senate amendment is already pending.<sup>(13)</sup>

***Rejection of Motion as Permitting Subsequent Motion; Recognition for Subsequent Motion***

**§ 11.12 Where one motion to recede and concur with an amendment is rejected, another motion to recede and concur with a different amendment may be offered.**

On Oct. 25, 1967,<sup>(14)</sup> the House was considering Senate amendments to H.R. 11641, public works appropriations for fiscal 1968.

MR. [MICHAEL J.] KIRWAN [of Ohio]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

13. See also 84 CONG. REC. 7747, 76th Cong. 1st Sess., June 22, 1939.

14. 113 CONG. REC. 29933, 29942, 29943, 90th Cong. 1st Sess.

Mr. Kirwan moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therein with an amendment, as follows: In lieu of the sum proposed, insert: "\$968,474,000, of which \$875,000 shall be available to continue planning on the Dickey-Lincoln School Dam and Reservoirs, Maine."

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The gentleman from Ohio is recognized. . . .

MR. KIRWAN: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Ohio [Mr. Kirwan] that the House recede from its disagreement to Senate amendment No. 2 and concur therein with an amendment. . . .

The question was taken; and there were—yeas 162, nays 236, answered "present" 1, not voting 33. . . .

So the motion was rejected. . . .

MR. KIRWAN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Kirwan moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therein with an amendment, as follows: In lieu of the sum proposed, insert "\$967,599,000".

THE SPEAKER:<sup>(16)</sup> The question is on the motion offered by the gentleman from Ohio [Mr. Kirwan] that the House recede from its disagreement to Senate

15. Carl Albert (Okla.).

16. John W. McCormack (Mass.).



amendment No. 2 and concur therein with an amendment.<sup>(17)</sup>

**§ 11.13 After agreeing to a conference report, a motion to recede and concur in a Senate amendment was rejected and (when the manager of the conference report did not seek further recognition) the Chair recognized another Member who offered a motion to further insist on disagreement.**

On Dec. 3, 1969,<sup>(18)</sup> the House had just adopted the conference report on H.R. 14159, public works appropriations for fiscal 1970, when the manager of the conference report, Mr. Joseph L. Evins, of Tennessee, was recognized:

Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Evins of Tennessee moves that the House recede from its disagreement to the amendment of the Senate numbered 5 and concur therein. . . .

MR. EVINS of Tennessee: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

17. See also 110 CONG. REC. 20625, 88th Cong. 2d Sess., Aug. 20, 1964.

18. 115 CONG. REC. 36759, 36760, 91st Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> The question is on the motion offered by the gentleman from Tennessee (Mr. Evins).

The motion was rejected.

MR. GLENN B. DAVIS of Wisconsin:<sup>(20)</sup> Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Davis of Wisconsin moves that the House insist upon its disagreement to Senate amendment numbered 5.

The motion was agreed to.

**§ 11.14 A motion to recede and concur in a Senate amendment having been defeated, the Speaker recognized a Member, who was opposed to the original motion, to offer a second motion to recede and concur with a different amendment.**

On Oct. 13, 1962,<sup>(1)</sup> the House resumed its consideration of the Senate amendments to H.R. 12900, public works appropriations for fiscal 1963.

THE SPEAKER:<sup>(2)</sup> The unfinished business is the vote on the motion of

19. Charles M. Price (Ill.).

20. Mr. Davis was a member of the minority and on the Committee on Appropriations.

1. 108 CONG. REC. 23474-76, 87th Cong. 2d Sess.

2. John W. McCormack (Mass.).

the gentleman from Missouri [Mr. Cannon].

Without objection, the Clerk will again report the motion of the gentleman from Missouri.

There was no objection.

The Clerk read as follows:

Mr. [Clarence] Cannon moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "\$791,580,500".

THE SPEAKER: The question is on the motion. . . .

The question was taken; and there were—yeas 93, nays 143, not voting 199. . . .

So the motion was rejected. . . .

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Sikes moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therein with an amendment, as follows: in lieu of the sum proposed by said amendment insert "\$792,845,500".

**§ 11.15 Where the House rejects a motion by the manager of a bill to dispose of a Senate amendment remaining in disagreement, recognition to offer another amendment is accorded a Member who led the opposition to the rejected motion.**

On Sept. 30, 1976, a conference report relating to the State and Local Fiscal Assistance Amendments of 1976<sup>(3)</sup> was ruled out on a point of order because a provision therein violated the Congressional Budget Act of 1974.

Following the Speaker's ruling on the point of order, the Senate amendment in disagreement was reported and the manager of the conference report then offered a motion to recede and concur therein with an amendment. After the reading of the motion was dispensed with, in response to a parliamentary inquiry, the Chair announced that by custom, he would divide the time on the motion between its proponent and a member of the minority party, Mr. Frank Horton, of New York.

During the 30 minutes allocated to him, Mr. Horton then proceeded to ask Members to defeat the motion; and when this in fact occurred, he was then recognized to offer another motion to dispose of the Senate amendment in disagreement.

The point of order, the parliamentary inquiries and the rele-

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3. H.R. 13367.

vant proceedings are carried below:<sup>(4)</sup>

THE SPEAKER:<sup>(5)</sup> The Chair is ready to rule.

The gentleman from Washington (Mr. Adams) makes a point of order against the conference report on the bill H.R. 13367 on the ground that section 5(a) of the conference report provides new spending authority and entitlement increment for fiscal years 1978 and 1979 over the amounts provided for in fiscal year 1977, in violation of section 303(a) of the Congressional Budget Act of 1974.

The gentleman from New York (Mr. Horton) and the gentleman from Ohio (Mr. Brown) rebut this argument by contending that a mere incremental increase in an entitlement for subsequent fiscal years is not new spending authority as prescribed in section 401(c)(2)(c) to become effective during the subsequent fiscal years, but rather, a continuation of the spending authority for fiscal year 1977, which is permitted under section 303(a).

The Chair has examined the conference report, and section 5(a) is structured so as to provide separate authorization for entitlement payments for each of the fiscal years 1977, 1978, and 1979, with a higher authorization for 1978 and 1979 than for 1977.

In the opinion of the Chair, such a separate increase in entitlement authorizations is new spending au-

thority to become effective during those subsequent fiscal years, which may not be included in a bill or an amendment prior to the adoption of the first concurrent resolution for fiscal years 1978 and 1979, which does not come within the exception contained in section 303(b) for new budget authority, and which does not come within the section 401(d) revenue-sharing exception—applicable only to contract or borrowing spending authority as defined in subsections (a) and (b) of section 401(c)—cited by the gentleman from Ohio.

The Chair therefore sustains the point of order against the conference report.

#### AMENDMENT IN DISAGREEMENT

THE SPEAKER: The Clerk will report the Senate amendment in disagreement.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976". . . .

MR. [JACK B.] BROOKS [of Texas] (during the reading): Mr. Speaker, I ask unanimous consent that the Senate amendment in disagreement be considered as read and printed in the Record.

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

There was no objection.

MOTION OFFERED BY MR. BROOKS

MR. BROOKS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

4. 122 CONG. REC. 34075, 34080, 34085, 34090, 34092, 34097, 94th Cong. 2d Sess., Sept. 30, 1976.

5. Carl Albert (Okla.).

Mr. Brooks moves that the House recede from its disagreement and concur in the Senate amendment to the House bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972 and for other purposes, with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976". . . .

MR. BROOKS (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

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

MR. HORTON: Mr. Speaker, I reserve the right to object. . . .

Mr. Speaker, I am reserving the right to object on the unanimous-consent request to have the motion considered as read.

I wanted to ask the gentleman from Texas (Mr. Brooks) whether he is going to explain the motion to the House.

MR. BROOKS: Mr. Speaker, if the gentleman will yield, I look forward to that opportunity to explain it as my distinguished friend, the gentleman from New York (Mr. Horton) desires. . . .

THE SPEAKER: Does the gentleman from Texas desire to make a brief explanation of the amendment? If not, the gentleman from Ohio (Mr. Brown) desires to have the amendment read.

MR. BROOKS: Mr. Speaker, as soon as I am recognized, I will be pleased to explain the amendment in detail.

THE SPEAKER: The Chair will state that at this time the gentleman from Texas can be recognized only if the gentleman from Ohio yields under his reservation.

MR. [CLARENCE J.] BROWN of Ohio: I yield.

MR. [JOHN W.] WYDLER [of New York]: Mr. Speaker, I object.

THE SPEAKER: The Clerk will read the amendment.

The Clerk continued to read the amendment.

MR. BROWN of Ohio: Mr. Speaker, I withdraw my reservation of objection and ask unanimous consent that the amendment be considered as read.

THE SPEAKER: The Chair understands the gentleman to withdraw his reservation of his point of order and to ask to dispense with further reading.

Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE SPEAKER: The Chair recognizes the gentleman from Texas, Mr. Brooks.

PARLIAMENTARY INQUIRY

MR. HORTON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. HORTON: Mr. Speaker, I would like to ask what the allocation of time is on this particular motion.

THE SPEAKER: The Chair will state that the rule provides, of course, for 30 minutes on a side under consideration of a conference report but the practice has been followed, if the Chair recalls correctly, of allotting 30 minutes to a side on a motion when a conference report is ruled out on a point of order.

Under that procedure, the gentleman from Texas (Mr. Brooks) will be recognized for 30 minutes.

The Chair would inquire who will be handling the matter on the minority side?

MR. HORTON: Mr. Speaker, I will be handling time on this side.

THE SPEAKER: And the gentleman from New York (Mr. Horton) will be recognized for 30 minutes for debate only.

The Chair recognizes the gentleman from Texas (Mr. Brooks) for 30 minutes. . . .

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentleman from New York (Mr. Horton) is recognized for 3 minutes.

MR. HORTON: Mr. Speaker, I take this time to explain briefly what the parliamentary situation is and what it is that we will be voting on. . . .

Mr. Speaker, I am asking the Members to vote against the Brooks amendment and to vote for an amendment which I subsequently will offer, which will provide for the \$600 million. It would also provide that it will be indexed so that it will not be subject to a point of order.

Mr. Speaker, I urge the Members to vote "no" on the Brooks amendment and vote "aye" on the amendment which I will offer, for myself and on behalf of the gentleman from North Carolina (Mr. Fountain), the chairman of the subcommittee, on behalf of the gentleman from Florida (Mr. Fuqua); a conferee and a member of the subcommittee; on behalf of the gentleman from New York (Mr. Wydler); and also on

behalf of the gentleman from Ohio (Mr. Brown), all members of the subcommittee who also were conferees. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

MOTION OFFERED BY MR. HORTON

MR. HORTON: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Horton moves that the House recede and concur in the Senate amendment to H.R. 13367, with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "State and Local Fiscal Assistance Amendments of 1976". . . .

MR. HORTON (during the reading): Mr. Speaker, I move that further reading of the amendment be dispensed with and that it be printed in the Record.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New York?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from New York (Mr. Horton) will be recognized for 30 minutes, and the gentleman from Texas (Mr. Brooks) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York.

### § 11.16 Following the adoption of a conference report on a supplemental appro-

6. Richard W. Bolling (Mo.).

**priation bill, the House rejected a motion to recede from disagreement to a Senate amendment and concur therein with an amendment, and then agreed to a motion to recede and concur with another amendment.**

On May 20, 1971,<sup>(7)</sup> the House was considering the Senate amendments reported back from conference in disagreement to H.R. 8190, supplemental appropriations for fiscal 1971.

MR. [GEORGE H.] MAHON [of Texas]:  
Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 57 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment insert:

OFFICE OF THE SECRETARY  
CIVIL SUPERSONIC AIRCRAFT DEVELOPMENT TERMINATION

For expenses necessary for the termination of the civil supersonic aircraft program, and for refund of amounts contributed by airlines toward the civil supersonic aircraft research and development program, \$155,800,000, to remain available until expended.

7. 117 CONG. REC. 16197, 16198, 92d Cong. 1st Sess.

THE SPEAKER:<sup>(8)</sup> The question is on the motion offered by the gentleman from Texas. . . .

The question was taken; and there were—yeas 118, nays 156, answered “present” 1, not voting 157. . . .

So the motion was rejected.

The Speaker again recognized Mr. Mahon:

Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 57 and concur therein with an amendment, as follows: In lieu of the matter proposed by said amendment, insert the following:

OFFICE OF THE SECRETARY  
CIVIL SUPERSONIC AIRCRAFT DEVELOPMENT TERMINATION

For expenses, not otherwise provided for, necessary for the termination of development of the civil supersonic aircraft and to refund the contractors' cost shares, \$97,300,000, to remain available until expended.

### *Debate*

#### **§ 11.17 Debate on a motion to concur in a Senate amendment with an amendment is under the hour rule.**

On June 15, 1943,<sup>(9)</sup> the House was considering Senate amend-

8. Carl Albert (Okla.).

ments in disagreement to H.R. 1648, Treasury and Post Office appropriations for fiscal 1944. Mr. Louis E. Ludlow, of Indiana, offered a motion to recede and concur which was divided on demand of Mr. John Taber, of New York. After the House voted to recede, Mr. Frank B. Keefe, of Wisconsin, offered a preferential motion to concur with an amendment.

MR. KEEFE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(10)</sup> The gentleman will state it.

MR. KEEFE: Am I correct in the assumption that there is now 1 hour's time for discussion of this subject and that the time is under the control of the gentleman from Indiana [Mr. Ludlow]?

THE SPEAKER: The gentleman is correct. The gentleman from Indiana made the original motion.

*Parliamentarian's Note:* See Rule XXVIII clause 2(a),<sup>(11)</sup> for current procedure for debating amendments in disagreement.

### § 11.18 Debate on a motion to recede and concur with an amendment is not in order

9. 89 CONG. REC. 5899, 5900, 78th Cong. 1st Sess.

10. Sam Rayburn (Tex.).

11. *House Rules and Manual* § 912a (1997).

### after the yeas and nays have been ordered.

On Oct. 25, 1967,<sup>(12)</sup> the House was considering amendments of the Senate in disagreement to H.R. 11641, public works appropriations for fiscal 1968. Speaker John W. McCormack, of Massachusetts, recognized Mr. Michael J. Kirwan, of Ohio:

Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Kirwan moves that the House recede from its disagreement to the amendment of the Senate numbered 2 and concur therein with an amendment, as follows: In lieu of the sum proposed, insert "\$967,599,000".

THE SPEAKER: The question is on the motion offered by the gentleman from Ohio [Mr. Kirwan] that the House recede from its disagreement to Senate amendment No. 2 and concur therein with an amendment.

MR. [JOHN J.] RHODES of Arizona: Mr. Speaker on that I demand the yeas and nays.

The yeas and nays were ordered.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GIAIMO: Mr. Speaker, is it the parliamentary situation at the present time in regard to the amendment No. 2

12. 113 CONG. REC. 29943, 90th Cong. 1st Sess.

such that it would provide almost \$1 billion for construction by the Corps of Engineers, and that we are voting on these funds without the \$875,000 for Dickey-Lincoln?

THE SPEAKER: The Chair will state that the House has before it the motion by the gentleman from Ohio that the House recede from its disagreement to the amendment of the Senate numbered 2, and concur therein with an amendment, as follows: In lieu of the sum proposed, insert "\$967,599,000".

MR. GIAIMO: In other words, Mr. Speaker, this takes out the \$875,000 for Dickey-Lincoln?

THE SPEAKER: That is not within the prerogative of the Chair to state.

MR. GIAIMO: Mr. Speaker, can we get an explanation from the committee?

THE SPEAKER: The Chair will state that it is too late for that. However, it is the understanding of the Chair that would be the result.

### *Where Manager Yields for Amendment*

**§ 11.19 The manager of a conference report controlling the floor on a motion to dispose of an amendment in disagreement, by yielding to another to offer an amendment to his motion, loses the floor and the Member to whom yielded then controls one hour of debate on his amendment and has the right to move the previous ques-**

### **tion on the amendment and the original motion.**

On Sept. 8, 1977,<sup>(13)</sup> after adoption of the conference report on the Defense appropriation bill for fiscal 1978, an amendment in disagreement pertaining to the funding of the B-1 bomber was reported. Mr. Mahon's original motion was to fund the program. Mr. Addabbo's amendment reduced the funding. The proceedings show the consequences of yielding for an amendment to the manager's motion.

MOTION OFFERED BY MR. MAHON

MR. [GEORGE E.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 41 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment insert: "\$7,693,400,000" . . .

MR. MAHON: Mr. Speaker, I hope we have had a fair debate on the issues. My motion provides for the continuation of the B-1 program, and I rise in further support of my motion and in opposition to the Addabbo amendment.

By previous arrangement, in order to be absolutely fair with the House and give the House an opportunity to work its will, I yield to the gentleman from

13. 123 CONG. REC. 28122, 28130-32, 95th Cong. 1st Sess.



New York (Mr. Addabbo) for the purpose of offering an amendment.

AMENDMENT OFFERED BY MR. ADDABBO  
TO THE MOTION OFFERED BY MR. MAHON

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Speaker, I offer an amendment to the motion offered by the gentleman from Texas (Mr. Mahon).

The Clerk read as follows:

Amendment offered by Mr. Addabbo to the motion offered by Mr. Mahon: In lieu of the sum proposed to be inserted by said motion insert: "\$6,262,000,000".

MR. ADDABBO: Mr. Speaker, I will not take the hour. By previous arrangement and agreement with the chairman of the full committee, the gentleman from Texas (Mr. Mahon), who has been kind enough to recognize me at this time for the purpose of offering this amendment, the agreement was that I would after offering the substitute move the previous question so that we would have a clear vote on the question of whether or not to fund the B-1. . . .

Mr. Speaker, I move the previous question on the amendment to the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The question is on the amendment offered by the gentleman from New York (Mr. Addabbo) to the motion offered by the gentleman from Texas (Mr. Mahon).

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

MR. ADDABBO: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 202, nays 199, not voting 33. . . .

So the amendment to the motion was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Texas (Mr. Mahon), as amended.

The motion, as amended, was agreed to.

### *Effect of Rejection of Previous Question*

**§ 11.20 Where a motion to concur in a Senate amendment with an amendment is pending, defeat of the previous question permits the offering of any proper motion.**

On May 14, 1963,<sup>(15)</sup> the House was considering the Senate amendments in disagreement to H.R. 5517, supplemental appropriations for fiscal 1963. A motion

14. George E. Brown, Jr. (Calif.).

15. 109 CONG. REC. 8506, 8509, 88th Cong. 1st Sess.

to recede and concur was divided and the House voted to recede from its disagreement to Senate amendment No. 76, whereupon Mr. Albert Thomas, of Texas, moved to concur with an amendment.

MR. [AUGUST E.] JOHANSEN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman will state it.

MR. JOHANSEN: If the previous question is defeated, will it then be in order for the gentleman from Iowa to offer his motion?<sup>(17)</sup>

THE SPEAKER: If the previous question is defeated, any proper motion can be made at that time.

MR. JOHANSEN: I thank the Speaker.

**§ 11.21 A motion to recede and concur with an amendment to a Senate amendment in disagreement is subject to amendment if the previous question is voted down.**

On Dec. 11, 1967,<sup>(18)</sup> the House was considering Senate amendments reported in disagreement from a conference on H.R. 7977,

16. John W. McCormack (Mass.).

17. Mr. H. R. Gross, of Iowa, had signaled his intention to offer an amendment

18. 113 CONG. REC. 35811, 35833, 90th Cong. 1st Sess.

the Postal Revenue and Federal Salary Act of 1967. After Speaker John W. McCormack, of Massachusetts, recognized Mr. Thaddeus J. Dulski, of New York, to offer a motion to recede and concur with an amendment, Mr. H. R. Gross, of Iowa, rose:

Mr. Speaker, at this point may I make a parliamentary inquiry?

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, would the Senate amendment be subject to amendment if this motion is adopted, or prior to the adoption of this amendment?

THE SPEAKER: The motion is to recede from disagreement to the Senate amendment and concur therein with an amendment.

MR. GROSS: With an amendment?

THE SPEAKER: Yes.

MR. GROSS: Would that be subject to an amendment, Mr. Speaker?

THE SPEAKER: It would be, if the previous question on the motion is voted down.

MR. GROSS: I thank the Speaker.

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

***Where Previous Question Is Defeated on Original Motion To Dispose of Senate Amendment***

**§ 11.22 After rejection of the previous question on an original motion to dispose of a Senate amendment reported from conference in disagreement, the Member leading the opposition to the previous question was recognized for an undivided hour on his amendment to the pending motion.**

During the proceedings of Sept. 17, 1992,<sup>(19)</sup> Mr. George E. Brown, of California, waged the previous question fight against the motion offered by the manager of the bill, Mr. Tom Bevill, of Alabama, the subcommittee chairman so that he would be entitled to recognition to offer his own amendment. The debate time on a motion following defeat of the previous question is governed by Rule XIV clause 2.<sup>(20)</sup>

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate Amendment No. 37: Page 33, line 4, strike out all after "only)," down to and including "research" in line 9 and insert "\$2,971,583,000, to

remain available until expended, of which \$300,000 shall be available only for planning funds for the Bishop Science Center, State of Hawaii; the Ambulatory Research and Education Building, Oregon Health Sciences University; and the Center for Energy and Environmental Resources, Louisiana State University, Baton Rouge, Louisiana, and of which \$4,000,000 shall be derived by transfer from the Geothermal Resources Development Fund".

MOTION OFFERED BY MR. BEVILL

MR. BEVILL: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Bevill moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein with an amendment, as follows: In lieu of the matter stricken and inserted by said amendment, insert "\$3,015,793,000 to remain available until expended, of which \$94,800,000 shall be available only for the Bishop Science Center, State of Hawaii; the Ambulatory Research and Education Building, Oregon Health Sciences University; the Center for Energy and Environmental Resources, Louisiana State University, Baton Rouge, Louisiana; the Advanced Technologies Institute, University of Connecticut; the Biomedical Research Facility, University of Alabama at Birmingham; the Cancer Treatment Facility for the Indiana University School of Medicine at Indianapolis, Indiana; the Cancer Institute of New Jersey; the Northeast Environmental Resource and Renewal Facility, Mayfield, Pennsylvania; Center for Advanced Industrial Process, Washington State University, Washington; and the Hahnemann University Ambulatory

19. 138 CONG. REC. 25432, 25433, 25437, 25438, 102d Cong. 2d Sess.

20. See *House Rules and Manual* § 758 (1997).

1. John W. Cox, Jr. (Ill.).

Care and Teaching Center in Philadelphia, Pennsylvania.”

MR. BROWN: Mr. Speaker, I am opposed to the motion and I ask for 20 minutes of the time allotted for debate.

THE SPEAKER PRO TEMPORE: Is the gentleman from Indiana [Mr. Myers] opposed to the motion?

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I am not opposed.

THE SPEAKER PRO TEMPORE: The gentleman from Alabama [Mr. Bevill] will be recognized for 20 minutes, the gentleman from California [Mr. Brown] will be recognized for 20 minutes, and the gentleman from Indiana [Mr. Myers] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Alabama [Mr. Bevill].

MR. BEVILL: Mr. Speaker, I reserve the balance of my time. . . .

THE SPEAKER PRO TEMPORE: The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. BEVILL: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present. The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 157, nays 203, not voting 72, as follows: . . .

So the previous question was not ordered.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. BROWN TO THE MOTION OFFERED BY MR. BEVILL

MR. BROWN: Mr. Speaker, I offer an amendment to the motion offered by the gentleman from Alabama [Mr. Bevill] on amendment No. 37.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment to the motion.

The Clerk read as follows:

Amendment offered by Mr. Brown to the motion offered by Mr. Bevill: Strike “the Bishop Science Center” and all that follows through “Philadelphia, Pennsylvania” and insert in lieu thereof “making competitive, merit-review awards to academic research facilities, to the extent otherwise authorized by law”.

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Brown] is recognized for 1 hour.

#### PARLIAMENTARY INQUIRY

MR. MYERS of Indiana: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. MYERS of Indiana: Mr. Speaker, a Member in opposition to this motion is not entitled to half the time?

THE SPEAKER PRO TEMPORE: On an amendment to a motion, the hour is controlled by the proponent of the amendment.

MR. MYERS of Indiana: I thank the Chair. . . .

THE SPEAKER PRO TEMPORE: Without objection the previous question is ordered.

There was no objection.

*Yielding for Amendment*

**§ 11.23 An amendment to a motion to concur in a Senate amendment with an amendment may not be offered unless the Member having the floor yields for that purpose.**

On July 21, 1947,<sup>(2)</sup> the House was considering amendments of the Senate reported back in disagreement from a conference on H.R. 3123, Department of the Interior appropriations for fiscal 1948. Mr. Robert F. Jones, of Ohio, obtained a division of a motion to recede and concur offered by Mr. Matthew H. Ellsworth, of Oregon. The House voted to recede and Mr. Jones offered a motion to recede and concur with an amendment.

MR. ELLSWORTH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(3)</sup> The gentleman will state it.

MR. ELLSWORTH: Is an amendment to that motion in order or a substitute for that motion?

THE SPEAKER: Not unless the gentleman from Ohio yields for that purpose.

MR. JONES of Ohio: I do not yield for that purpose.

2. 93 CONG. REC. 9621, 9622, 80th Cong. 1st Sess.

3. Joseph W. Martin, Jr. (Mass.).

MR. ELLSWORTH: Is an amendment to that motion in order?

THE SPEAKER: Only if the gentleman from Ohio would yield.<sup>(4)</sup>

*Amendment of Language Not in Disagreement*

**§ 11.24 After the stage of disagreement between the two Houses has been reached it is not in order by way of a motion to recede and concur with an amendment to amend a part of the bill not in disagreement.**

On June 10, 1940,<sup>(5)</sup> the House was considering Senate amendment No. 78 to H.R. 9209, military establishment appropriations, which had been reported back from conference still in disagreement. Speaker William B. Bankhead, of Alabama, recognized Mr. John B. Snyder, of Pennsylvania:

Mr. Speaker, I move to recede and concur with an amendment which I send to the desk.

The Clerk read as follows:

4. See also 109 CONG. REC. 8506, 8509, 88th Cong. 1st Sess., May 14, 1963.

The motion would also be amendable if the previous question thereon were defeated.

5. 86 CONG. REC. 7895, 76th Cong. 3d Sess.

Mr. Snyder moves to recede and concur in the Senate amendment No. 78 with an amendment as follows: Strike out the matter inserted by said amendment, and in line 17, page 33 of the House engrossed bill, insert before the period the following: "and, in addition, \$470,000 for the acquisition of a site for such building, the design for which shall be prepared under the direction and supervision of the Secretary of War and Surgeon General of the Army, who shall select the architect".

MR. [JOHN] TABER [of New York]: Mr. Speaker, I rise to a point of order. . . .

I shall feel obliged to make a point of order against the part of the amendment beginning with the comma in the first line thereof and continuing through the balance of the language, because it is legislation on an appropriation bill; not authorized by law; and that it is not an amendment to an amendment to which it is offered, it being an amendment to the language on page 37, line 6, to which paragraph the Senate made no amendment whatever. On the further ground that it is an amendment beyond the range of those that might be offered to an amendment in disagreement at this time.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. SNYDER: I concede the point of order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair sustains the point of order.

6. William P. Cole, Jr. (Md.).

### *Germaneness of Amendment Contained in Motion*

**§ 11.25 An amendment contained in a motion to recede and concur in a Senate amendment with an amendment need not be confined to the differences between the House bill and the Senate amendment, but must be germane to such Senate amendment.**

On May 29, 1936,<sup>(7)</sup> the House was considering Senate amendments reported from conference still in disagreement on the agriculture appropriations bill for fiscal 1937. Mr. William M. Colmer, of Mississippi, offered a motion to recede and concur with an amendment. Mr. Thomas L. Blanton, of Texas, rose with a point of order:

Mr. Speaker, I make the point of order that the proposed amendment to the Senate amendment embraces provisions that are not in conference; that the gentleman can propose only such things as are embraced within the jurisdiction of the conference; and the amendment exceeds that matter by releasing restrictions that have already been agreed to by the conferees.

7. 80 CONG. REC. 8341-44, 74th Cong. 2d Sess.

THE SPEAKER:<sup>(8)</sup> As the Chair reads the amendment offered by the gentleman from Mississippi, it contains exactly the same language as the first portion of the Senate amendment except the amount is \$40,000 instead of \$80,000.

MR. BLANTON: But, Mr. Speaker, it releases restrictions that have been agreed upon.

THE SPEAKER: In the opinion of the Chair the amendment is germane.

MR. BLANTON: Mr. Speaker, only those matters that were embraced within the jurisdiction of the conferees may be offered as amendments.

THE SPEAKER: This Senate amendment was reported back to the House still in disagreement, as a matter of fact, and is now before the House for such action as the House may see fit to take. The gentleman from Mississippi has offered a motion to recede and concur in the Senate amendment with an amendment. The Chair has held that the amendment is germane and therefore overrules the point of order.<sup>(9)</sup>

**§ 11.26 In considering a Senate amendment in disagreement, a motion to recede from disagreement and concur in the amendment of the Senate with an amendment not rele-**

8. Joseph W. Byrns (Tenn.).

9. See also 86 CONG. REC. 6184, 6185, 76th Cong. 3d Sess., May 15, 1940; and 81 CONG. REC. 971, 75th Cong. 1st Sess., Feb. 8, 1937.

**vant to the subject matter, and which in effect sought to amend a part of the bill not in disagreement, was held not germane.**

On July 2, 1943,<sup>(10)</sup> the House was considering the amendments in disagreement to H.R. 2481, agriculture appropriations for fiscal 1944.

MR. [STEPHEN] PACE [of Georgia]: Mr. Speaker, I offer a motion which is at the Clerk's desk.

The Clerk read as follows:

Mr. Pace moves that the House recede and concur in the amendment of the Senate with an amendment as passed by the House (lines 13 to 24 on page 76 and lines 1 and 2 on page 77) and insert the following in lieu thereof:

**"FEDERAL CROP INSURANCE ACT**

**"Administrative and operating expenses: For operating and administrative expenses under the Federal Crop Insurance Act, approved February 16, 1938, as amended (7 U.S.C. 1501-1518; 55 Stat. 255-256) \$3,500,000, including the employment of persons and means in the District of Columbia and elsewhere, printing and binding, purchase of lawbooks, books of reference, periodicals, and newspapers, together with the unobligated balance of the appropriation for this purpose for the fiscal year 1943."**

10. 89 CONG. REC. 7041, 78th Cong. 1st Sess.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, I make the point of order against the language of the motion offered by the gentleman from Georgia that it is not relevant to the subject matter. The motion is offered in part in lieu of language which has not been stricken from the bill and in regard to which the two Houses are not in disagreement.

THE SPEAKER:<sup>(11)</sup> Does the gentleman from Georgia [Mr. Pace] desire to be heard upon the point of order?

MR. PACE: Mr. Speaker, I think that technically the point of order is good. I ask unanimous consent to have the opportunity to restate the amendment. It will be observed by the Chair that while it does strike out the House language, it immediately reinserts it word for word. It is not in substance a striking out of a single word in the House language, except that it inserts an amendment word for word that incorporates the House language with the suggested changes.

THE SPEAKER: That does not cure the situation. As the matter stands, the gentleman has offered a motion to strike out certain language that the two Houses have agreed to. The Chair sustains the point of order made by the gentleman from Georgia [Mr. Tarver].

### *Germaneness of Amendment to Motion*

#### **§ 11.27 Where there was pending a motion to concur in a Senate amendment to a**

11. Sam Rayburn (Tex.).

**House amendment to a Senate bill with a further amendment, the Speaker indicated, in response to a parliamentary inquiry, that any amendment offered to the pending motion upon rejection of the previous question thereon must be germane to the amendment contained in the motion.**

On Aug. 3, 1973,<sup>(12)</sup> the House was considering the Senate substitute for the House amendment in the nature of a substitute for S. 1888, the Agriculture and Consumer Protection Act of 1973, which the conferees had reported in total disagreement. Mr. William R. Poage, of Texas, offered a motion to concur in the Senate substitute with an amendment. During the debate on this motion, Mr. William L. Dickinson, of Alabama, raised a parliamentary inquiry:

Mr. Speaker, as I understand the situation now, it is a very delicate parliamentary situation. What we are voting on is a Senate amendment to a House amendment to a Senate bill. That means it has been amended to the first degree, and with the chairman of the Committee on Agriculture adding this innocuous amendment, that is an

12. 119 CONG. REC. 28121, 28122, 93d Cong. 1st Sess.



amendment to the second degree, and no more are allowed.

My question is, On the motion for the previous question, if the question is voted down, should a substitute or an amendment be offered to the motion of the chairman, must it be germane to the innocuous amendment?

THE SPEAKER:<sup>(13)</sup> The amendment proposed by the gentleman from Texas is now before the House. The amendment contained in the motion of the gentleman from Texas would be subject to a germane amendment if the previous question on this motion were rejected.

## § 12. To Insist or Adhere

If both Houses insist or adhere in their positions, the bill fails. Only if they agree to proceed to conference, or to recede from their disagreement, insistence, or adherence, can reconciliation be achieved.<sup>(14)</sup>

### *Adherence Distinguished From Insistence*

#### § 12.1 *Parliamentarian's Note: Adherence is to be distin-*

13. Carl Albert (Okla.).

14. *House Rules and Manual* §§ 521, 522, 553, 554 (1997).

**guished from insistence in that adherence represents an uncompromising position and may not be accompanied by a request for a conference.**

### *Insistence After Refusal To Recede and Concur*

§ 12.2 **The House having refused to recede from its disagreement to a Senate amendment and concur therein the motion to further insist may be entertained.**

On Apr. 29, 1965,<sup>(15)</sup> the House was considering Senate amendment No. 15 to H.R. 7091, supplemental appropriations, which had been reported back from conference still in disagreement.

MR. [GEORGE H.] MAHON [of Texas]:  
Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 15 and concur therein. . . .

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The question is on the motion offered by the gentleman from Texas [Mr. Mahon].

15. 111 CONG. REC. 8867, 8871, 89th Cong. 1st Sess.

16. Carl Albert (Okla.).

The question was taken; and on a division (demanded by Mr. Mahon) there were—ayes, 45, nays, 93.

So the motion was rejected.

MR. MAHON: Mr. Speaker, I move that the House insist on its disagreement to the amendment of the Senate numbered 15.

The motion was agreed to.<sup>(17)</sup>

***Precedence of Motions in Disposing of Senate Legislative Amendment on General Appropriation Bill***

**§ 12.3 In the 103d Congress, the House altered the traditional precedence of motions addressing amendments in disagreement on a general appropriation bill, to make one motion to insist on disagreement the most preferential where the initial motion proposed by the managers would change existing law.**

Adopted as part of the rules package proposed by the Majority Leader, Mr. Richard A. Gephardt, of Missouri, on Jan. 5, 1993, the change was in Rule XXVIII clause 2(b)(2).<sup>(18)</sup> There was little debate

on this particular change, but the expressed motivation was to give a committee having jurisdiction over a legislative amendment the opportunity to protect that jurisdiction from Senate encroachment by way of an amendment to a general appropriation bill. In his explanation of the resolution, the Majority Leader stated: "It is hoped that this procedure will both deter and allow the House to better consider Senate legislative language in appropriation bills."

The conditions for utilizing the privileged motion are that: (1) the Senate amendment has been reported from conference in disagreement; (2) the manager's motion, as signaled in the statement of the managers or revealed when the amendment is pending, is to change existing law—by concurring in the Senate amendment or concurring with an amendment which does not remove the legislative effect of the amendment; and (3) that the motion to insist on disagreement is made by the chairman of the appropriate legislative committee or his designee.

17. See also 89 CONG. REC. 10777-79, 78th Cong. 1st Sess., Dec. 16, 1943.

18. See *House Rules and Manual* § 912c (1997).

The pertinent excerpts from the Record of Jan. 5, 1993,<sup>(19)</sup> during consideration of House Resolution 5, adopting the rules of the House for the 103d Congress, are set out below:

The Clerk read the resolution, as follows:

H. RES. 5

*Resolved*, That the Rules of the House of Representatives of the One Hundred Second Congress, including applicable provisions of law or concurrent resolution that constituted rules of the House at the end of the One Hundred Second Congress, are adopted as the Rules of the House of Representatives of the One Hundred Third Congress, with the following amendments to the standing rules, to wit: . . .

(16) In clause 2(b) of rule XXVIII, insert "(1)" after "(b)" and add the following new subparagraph at the end:

"(2) During consideration of such an amendment to a general appropriation bill, if the original motion offered by the floor manager proposes to change existing law, then pending such original motion and before debate thereon one motion to insist on disagreement to the amendment proposed by the Senate shall be preferential to any other motion to dispose of that amendment if offered by the chairman of a committee having jurisdiction of the subject matter of the amendment or by a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the origi-

nal motion. The previous question shall be considered as ordered on such a preferential motion to its adoption without intervening motion." . . .

MR. GEPHARDT: Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentlewoman from New York [Ms. Slaughter], and I yield 30 minutes to the gentleman from New York [Mr. Solomon], on behalf of the minority.

THE SPEAKER:<sup>(20)</sup> The Chair recognizes the gentlewoman from New York [Ms. Slaughter].

MS. [LOUISE M.] SLAUGHTER [of New York]: Mr. Speaker, I yield myself such time as I may consume. . . .

The next amendment is designed to address the problem of Senate amendments to appropriations bills which contain legislative language. If an amendment in technical disagreement to an appropriations bill conference report proposes to change existing law, then a motion to insist on disagreement to the amendment shall have preference, if made by the chairman of a committee having jurisdiction over the subject matter of the amendment. The motion would be debated for 1 hour divided between its proponent and the proponents of the original motion to dispose of the amendment. It is hoped that this procedure will both deter and allow the House to better consider Senate legislative language in appropriations bills.

19. 139 CONG. REC. 49, 50, 53, 54, 103d Cong. 1st Sess.

20. Thomas S. Foley (Wash.).

***Elevated Status of Motion To Insist When Pending Motion on an Amendment to Appropriation Bill Proposes Change in Law***

**§ 12.4 Although the motion to insist on disagreement is normally not the most preferential motion when Senate amendments in disagreement are before the House, such a motion does have the most preferential status where the initial motion to recede and concur with an amendment proposes a change in existing law.**

On Oct. 20, 1993,<sup>(1)</sup> the House for the first time utilized the new rule giving the legislative committee of jurisdiction the right to insist on disagreement to a Senate amendment which invades its legislative jurisdiction by an amendment attached to a general appropriation bill and reported in disagreement.

The proceedings during the consideration of H.R. 2520, the Interior appropriations bill for fiscal year 1994, were as shown:

1. 139 CONG. REC. 25608, 103d Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 124: Page 80, after line 5 insert:

SEC. 321. FOREST SERVICE SEPARATION PAY.—(a) In order to avoid or minimize the need for involuntary separations, effective for the period beginning upon the date of enactment of this Act through and including September 30, 1994, the Secretary of Agriculture, under such regulations and subject to such conditions as the Secretary of Agriculture may prescribe, shall have authority to offer separation pay to employees of the Forest Service to the same extent the Secretary of Defense is authorized to offer separation pay to employees of a defense agency in section 5597 of title 5, United States Code.

(b) In the event that an authority is enacted to offer separation incentive similar to such section 5597 of title 5, United States Code, but applicable to employees in the executive branch generally, the authority under subsection (a) shall terminate. . . .

MOTION OFFERED BY MR. YATES

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Yates moves that the House recede from its disagreement to the amendment of the Senate numbered 124, and concur therein with an amendment, as follows:

2. Kweisi Mfume (Md.).

In lieu of the matter inserted by said amendment, insert:

"SEC. 320. FOREST SERVICE SEPARATION PAY.—(a) In order to avoid or minimize the need for involuntary separations, effective for the period beginning upon the date of enactment of this Act through and including September 30, 1994, the Secretary of Agriculture, under such regulations and subject to such conditions as the Secretary of Agriculture may prescribe, shall have authority to offer separation pay to employees of the Forest Service to the same extent the Secretary of Defense is authorized to offer separation pay to employees of a defense agency in section 5597 of title 5, United States Code.

"(b) In the event that an authority is enacted to offer separation pay or a voluntary separation incentive similar to such section 5597 of title 5, United States Code, but applicable to employees in the executive branch generally, the authority under subsection (a) shall terminate. . . .

PREFERENTIAL MOTION OFFERED BY  
MR. CLAY

MR. [WILLIAM L.] CLAY [of Missouri]: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Pursuant to clause 2(b)(2) of rule XXVIII, Mr. Clay moves to insist on disagreement to Senate amendment numbered 124.

THE SPEAKER PRO TEMPORE: The Chair finds that the motion offered by the gentleman from Illinois [Mr. Yates] proposes changes in existing law as written and is within the jurisdiction of the Committee on Post Office and Civil Service. So the chairman of that committee, the gentleman from Missouri

[Mr. Clay] is then recognized to offer a preferential motion which the Clerk will report by title.

The Clerk re-read the preferential motion.

THE SPEAKER PRO TEMPORE: The gentleman from Missouri [Mr. Clay] will be recognized for 30 minutes and the gentleman from Illinois [Mr. Yates] will be recognized for 30 minutes.

MR. CLAY: Mr. Speaker, I yield myself such time as I may consume.

**§ 12.5 The rejection of a motion to recede and concur is not equivalent to the affirmation of a motion that the House insist on disagreement.**

On Sept. 19, 1962,<sup>(3)</sup> the House had just adopted the conference report on H.R. 12648, agricultural appropriations for fiscal 1963.

THE SPEAKER:<sup>(4)</sup> The further unfinished business is the vote on the motion of the gentleman from Georgia [Mr. Forrester] which the Clerk will report.

The Clerk read as follows:

Mr. [Elijah L.] Forrester moves that the House recede and concur in the amendment of the Senate numbered 19.

THE SPEAKER: The question is on the motion. . . .

3. 108 CONG. REC. 19945, 87th Cong. 2d Sess.
4. John W. McCormack (Mass.).

The question was taken, and there were—yeas 143, nays 223, answered “present” 1, not voting 68. . . .

So the motion was rejected. . . .

The result of the vote was announced as above recorded.

THE SPEAKER: The question now recurs on the motion of the gentleman from Mississippi [Mr. Whitten] that the House insist on its disagreement to the Senate amendment.

The motion was agreed to.

A motion to reconsider was laid on the table.

***All Matters in Disagreement Must Be Reconciled Before Bill Can Become Law***

**§ 12.6 Pending a motion in the Senate to recede from its one amendment remaining in disagreement with the House following adoption of the conference report in both Houses and disposition of all other amendments, the Presiding Officer stated: (1) that if the motion were rejected, a motion to further insist upon the amendment and to request a further conference on that one amendment would be in order; but (2) that action on the entire bill would remain incomplete and the bill could not proceed to enrollment until the**

**remaining amendment in disagreement was resolved.**

Before a bill can be presented to the President as an enactment, both Houses must agree to the same text and must, through the amendment process and conference procedures, reach concurrence on each item therein.<sup>(5)</sup>

On May 22, 1975,<sup>(6)</sup> H.R. 5899, supplemental appropriations for fiscal year 1975, which had been sent to conference with 58 amendments in disagreement, was again on the Senate floor, the House having messaged to the Senate its insistence on disagreement to one remaining Senate amendment which had not been reconciled. When a motion in the Senate to recede from that last Senate amendment was offered, the following inquiry was directed to the Chair:

MR. [JOHN L.] MCCLELLAN [of Arkansas]: Mr. President, I move that the Senate recede from its amendment No. 107.

THE PRESIDING OFFICER:<sup>(7)</sup> First, the Chair will lay before the Senate the House amendment in disagreement to

5. See 5 Hinds' Precedents §§ 6233–6240.

6. 121 CONG. REC. 16127–29, 94th Cong. 1st Sess.

7. Theodore F. Stevens (Alaska).

Senate amendment No. 107, which the clerk will report.

The legislative clerk read as follows:

The House insists on its disagreement to Amendment No. 107.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas. . . .

MR. [JACOB K.] JAVITS [of New York]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. JAVITS: If the motion is rejected, will a motion to refuse to recede and to request the conferees to return to conference be in order?

THE PRESIDING OFFICER: A motion to insist and ask for a further conference would then be in order.

MR. JAVITS: I thank my colleague.

Have the conferees been discharged by the Senate?

THE PRESIDING OFFICER: The conferees have been discharged in the House and a new conference would have to be appointed. The conference would be on one issue.

MR. JAVITS: I thank the Chair. . . .

THE PRESIDING OFFICER: Does the Chair understand the inquiry is whether or not the bill will be delayed until the one item that is in conference is determined? Is that the inquiry?

MR. McCLELLAN: State the parliamentary inquiry.

MR. [JAMES B.] ALLEN [of Alabama]: I asked the question, though I think it is pretty well known, since at this stage of the proceeding both Houses have agreed to more than \$14 billion in appropriations, if the motion made by the Senator from Arkansas that the Senate

recede from its amendment does not carry, then these \$14 billion in appropriations will, at least for the time, fall. Is that correct?

THE PRESIDING OFFICER: The action on the bill would not be complete. The Chair does not recognize the reference to the appropriations falling. They would not be complete. The bill would not be prepared to be sent to the President.

MR. ALLEN: A new conference would have to be appointed and delay would take place?

THE PRESIDING OFFICER: The whole bill would be delayed until that one item was resolved. That is correct. . . .

So the motion was rejected.

MR. JAVITS: Mr. President, I move that the Senate further insist on its amendment.

THE PRESIDING OFFICER: The question is on agreeing to the motion.

The motion was agreed to. . . .

MR. ROBERT C. BYRD [of West Virginia]: Mr. President, I shall shortly move to stand in recess awaiting the call of the Chair, pending whatever action the House may wish to take in view of the action that has just been taken by the Senate. The House may further insist upon its disagreement and ask for a conference, or it may concur. Therefore, until we hear further from the House, I move that the Senate stand in recess awaiting the call of the Chair.

The motion was agreed to, and at 4:50 p.m., the Senate took a recess subject to the call of the Chair.

### *Failure To Address Title Amendment in Conference*

**§ 12.7 Every House amendment to a Senate bill must be reconciled before the Senate can enroll one of its bills sent to conference; and where conferees had neglected to address a House amendment to the title of a Senate bill, the House receded from its title amendment after the adoption of the conference report.**

The proceedings relating to the consideration of the conference report on S. 327 in the 94th Congress are carried below:<sup>(8)</sup>

MR. [ROY A.] TAYLOR of North Carolina: Mr. Speaker, I call up the conference report on the Senate bill (S. 327) to amend the Land and Water Conservation Fund Act of 1965, as amended, to establish the National Historic Preservation Fund, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 2, 1976.) . . .

8. 122 CONG. REC. 29753, 29758, 29759, 94th Cong. 2d Sess., Sept. 10, 1976.  
9. Lucien N. Nedzi (Mich.).

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. TAYLOR of North Carolina: Mr. Speaker, I ask unanimous consent that the House recede from its amendment to the title of the Senate bill.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from North Carolina?

There was no objection.

***Insistence After Refusal To Recede***

**§ 12.8 A division of the question having been demanded on a motion to recede and concur in a Senate amendment, the Speaker indicated that refusal of the House to recede was not equivalent to insisting upon disagreement—the House could adhere—and that the House would vote separately on the motion to insist upon disagreement.**

On June 25, 1973,<sup>(11)</sup> the House was considering Senate amendment No. 83 to H.R. 7447 (supplemental appropriations, fiscal

10. Carl Albert (Okla.).  
11. 119 CONG. REC. 21171, 21172, 93d Cong. 1st Sess.



1973), which had been reported from conference in disagreement. Speaker Carl Albert, of Oklahoma, recognized Mr. George H. Mahon, of Texas:

Mr. Speaker, I offer a motion.  
The Clerk read as follows:

Mr. Mahon moves that the House insist on its disagreement to the amendment of the Senate numbered 83.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House recede from its disagreement to the amendment of the Senate numbered 83 and concur therein.

MR. MAHON: Mr. Speaker, I demand a division of the question.

THE SPEAKER: The question is, Shall the House recede from its disagreement to the amendment of the Senate numbered 83? . . .

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, a parliamentary inquiry. . . .

Mr. Speaker, my parliamentary inquiry is this: Am I correct, Mr. Speaker, that a "no" vote on the motion offered by the gentleman from Texas (Mr. Mahon) to recede would uphold the House position on the supplemental?

The motion offered by the gentleman from Connecticut (Mr. Giaimo) was to recede and concur, but the chairman, the gentleman from Texas (Mr. Mahon) divided the question, and the vote is on a motion to recede. Therefore a "no"

vote on the motion to recede would uphold the position of the House?

THE SPEAKER: The Chair can state that if the "no" vote prevails, the next vote would be on the motion to insist on the House's position.<sup>(12)</sup>

**§ 12.9 A motion to recede and concur in a Senate amendment having been divided and the House having refused to recede, a motion to insist upon disagreement and request a further conference was entered.**

On June 29, 1973,<sup>(13)</sup> a Senate amendment to H.R. 8410, providing for a temporary increase in the public debt limitation, was reported back from conference in technical disagreement. Mr. Wilbur D. Mills, of Arkansas, offered a motion to recede from the Senate amendment and concur therein with an amendment. The Speaker, Carl Albert, of Oklahoma, then recognized Mr. William A. Steiger, of Wisconsin:

Mr. Speaker, on the motion of the gentleman from Arkansas I demand a division of the question.

12. But see 103 CONG. REC. 15816, 85th Cong. 1st Sess., Aug. 23, 1957.

13. 119 CONG. REC. 22402, 22403, 93d Cong. 1st Sess.

THE SPEAKER: A division is demanded. The question is, Shall the House recede from its disagreement to the amendment of the Senate? . . .

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 190, not voting 58. . . .

So the motion to recede was rejected. . . .

MR. MILLS of Arkansas: Mr. Speaker, I move that the House insist on its disagreement and request a further conference with the Senate.

The motion was agreed to.

**§ 12.10 The stage of disagreement having been reached, the motion to recede and concur takes precedence of the motion to insist on disagreement; but where the motion to recede and concur is divided, and the House refuses to recede, a motion to insist is then entertained.**

On Dec. 22, 1969,<sup>(14)</sup> the House was considering Senate amendment No. 33 to H.R. 15209, supplemental appropriations for fiscal 1970, reported from conference in disagreement.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

14. 115 CONG. REC. 40915, 40921, 40922, 91st Cong. 1st Sess.

The Clerk read as follows:

Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 33 and concur therein.

THE SPEAKER:<sup>(15)</sup> For what purpose does the gentleman from New Jersey rise?

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Speaker, I ask that the question be divided. Mr. Speaker, I have a motion at the desk.

MR. MAHON: Mr. Speaker, I do not yield for a motion at this time.

THE SPEAKER: The gentleman from New Jersey demands a division?

MR. THOMPSON of New Jersey: The gentleman does.

THE SPEAKER: The question is, Will the House recede from its disagreement to the amendment of the Senate numbered 33? . . .

MR. MAHON: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The gentleman from New Jersey (Mr. Thompson) demanded a division on the motion made by the gentleman from Texas (Mr. Mahon).

The question is on the motion offered by the gentleman from Texas (Mr. Mahon) that the House recede from its disagreement to the amendment of the Senate numbered 33. . . .

The question was taken; and there were—yeas 156, nays 208, answered “present” 1, not voting 68. . . .

So the motion was rejected. . . .

MR. [FRANK T.] BOW [of Ohio]: Mr. Speaker, I offer a motion.

15. John W. McCormack (Mass.).

The Clerk read as follows:

Mr. Bow moves that the House insist on its disagreement to the amendment of the Senate numbered 33.

THE SPEAKER: The question is on the motion offered by the gentleman from Ohio (Mr. Bow).

The motion was agreed to.

### *Effect of Insisting*

#### **§ 12.11 When the House insists upon its amendment and the Senate insists on disagreement the bill goes to conference and conferees may bring in a compromise report if they so desire.**

On Mar. 16, 1942,<sup>(16)</sup> the House was considering its amendments reported from conference in disagreement to S. 2208, the second war powers bill of 1942. The Speaker, Sam Rayburn, of Texas, recognized Mr. Hatton W. Sumners, also of Texas:

Mr. Speaker, I move that the House insist upon its amendment numbered 32, and yield myself 10 minutes. . . .

MR. [EARL C.] MICHENER [of Michigan]: There seems to be a slight misunderstanding as to what is before the House. As I understand the matter, the chairman of the Judiciary Committee has made a motion that the conferees

insist on the position of the House; that is, if that motion carries, and if the conferees do insist, title VIII will be out of the bill entirely, or at least the matter must come back to the House. Am I correct?

MR. [CHARLES F.] McLAUGHLIN [of Nebraska]: Mr. Speaker, if the Chair will permit me, that is not the situation. . . .

MR. [CLARENCE E.] HANCOCK [of New York]: Will the gentleman yield?

MR. MICHENER: I yield to the gentleman from New York.

MR. HANCOCK: The gentleman from Nebraska will remember that it was our hope that this bill with this title would come back to the House for instructions, and it was my hope that the chairman of the committee would make his motion in the form of a request for instructions. Before abandoning title VIII entirely, the gentleman from Nebraska and myself wished to have an expression of the sentiment of the House.

MR. McLAUGHLIN: The gentleman is correct.

MR. MICHENER: That cannot be accomplished under the parliamentary procedure in the House, as presently presented. The gentleman from Nebraska and the gentleman from New York are suggesting doing something that cannot be done at this time under the rules of the House. That is why I am asking for a clarification by the Speaker as to just what the situation is.

16. 88 CONG. REC. 2508, 2512, 2513, 77th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> The Chair may say that there are two things the House may do: The House may insist on the amendment, or it can recede from it. If the bill goes to conference, then the conferees have the subject before them, to be considered by the conferees, if the Senate insists on its position. . . .

MR. McLAUGHLIN: If we recede, we vote to pass without further action by the conferees the bill in the form in which it was prior to the time the Judiciary Committee, by committee amendment, moved that this title be stricken out, and prior to the time the House adopted that amendment. If we vote to insist, then we send it back to conference for action by the conferees. Is that not the situation?

THE SPEAKER PRO TEMPORE: If the House adopted the pending motion, then it goes back to the Senate for further consideration. It goes to the Senate first before it goes to conference.

MR. McLAUGHLIN: If the Senate does not agree with our action in accepting the Sumners motion insisting on the House amendment, then the matter will have to go to conference?

THE SPEAKER PRO TEMPORE: That is correct.

MR. McLAUGHLIN: In that event the conferees on the part of the House and the conferees on the part of the Senate will have within their power and discretion the right to bring in any proposal which they see fit to bring back to the House and to the Senate?

THE SPEAKER PRO TEMPORE: It will be before the conference and the con-

ferrees may bring in a compromise report, if they so desire.

### *Concurrence as Precluding Motion To Further Disagree*

§ 12.12 **The Chair informed a Member that no further opportunity to move that the House disagree to a Senate amendment would be in order if the House, having receded, concurred with an amendment.**

On May 14, 1963,<sup>(18)</sup> the House was considering Senate amendment No. 76 to H.R. 5517, supplemental appropriations for fiscal 1963. Mr. Albert Thomas, of Texas, moved that the House recede and concur with an amendment. After Mr. Thomas moved the previous question on his motion, Mr. George Meader, of Michigan, rose:

Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(19)</sup> The gentleman will state it.

MR. MEADER: If the previous question is ordered and the vote is favorable on the motion of the gentleman from Texas, will there be an opportunity to move that the House further disagree to the Senate amendment No. 76?

17. Richard M. Duncan (Mo.).

18. 109 CONG. REC. 8509, 88th Cong. 1st Sess.

19. John W. McCormack (Mass.).

THE SPEAKER: At this point the Chair will answer the gentleman's parliamentary inquiry in the negative; no.

### *Insistence After Rejection of Conference Report*

**§ 12.13** If a conference report is rejected, the amendments of the Senate are again before the House; and a motion to further insist on disagreement with the amendment of the Senate and request further conference is in order.

On Sept. 20, 1962,<sup>(20)</sup> the House was considering the conference report on H.R. 12391, the Food and Agricultural Act of 1962. Mr. Thomas G. Abernethy, of Mississippi, raised the following parliamentary inquiry:

If the motion to adopt the conference report is defeated, would it be in order for the conferees to return to conference on an appropriate motion?

THE SPEAKER:<sup>(1)</sup> It would be in order for some Member to offer a motion that the House insist on its position and ask for a further conference.

20. 108 CONG. REC. 20094, 20129, 87th Cong. 2d Sess.

1. John W. McCormack (Mass.).

### *Recognition if Conference Report Is Rejected*

**§ 12.14** If a conference report is rejected, recognition for a motion to further insist on disagreement and request further conference is within the discretion of the Chair.

On Sept. 20, 1962,<sup>(2)</sup> the House was considering the conference report on H.R. 12391, the Food and Agricultural Act of 1962. Mr. Thomas G. Abernethy, of Mississippi, posed the following question:

If the motion to adopt the conference report is defeated, would it be in order for the conferees to return to conference on an appropriate motion?

THE SPEAKER:<sup>(3)</sup> It would be in order for some Member to offer a motion that the House insist on its position and ask for a further conference.

MR. ABERNETHY: Could any Member of the House offer that motion?

THE SPEAKER: That would depend upon recognition of the Chair.

### *Effect of Rejection of Motion To Insist*

**§ 12.15** Rejection of a motion to insist upon disagreement to a Senate amendment is not

2. 108 CONG. REC. 20094, 20129, 87th Cong. 2d Sess.

3. John W. McCormack (Mass.).

**tantamount to concurrence and further action is required to dispose of the Senate amendment.**

On Sept. 19, 1962,<sup>(4)</sup> the House adopted the conference report on H.R. 11151, the legislative appropriation bill for fiscal 1963. The following occurred:

THE SPEAKER:<sup>(5)</sup> The further unfinished business is the vote on a motion of the gentleman from Oklahoma [Mr. Steed] which the Clerk will report.

The Clerk read as follows:

Mr. [Thomas J.] Steed moves that the House insist upon its disagreement to the amendment of the Senate numbered 44. . . .

The question was taken; and there were—yeas 125, nays 248, not voting 62. . . .

So the motion was rejected. . . .

MR. STEED: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Steed moves the House recede from its disagreement to the amendment of the Senate numbered 44, and concur therein.

THE SPEAKER: The question is on the motion of the gentleman from Oklahoma.

The motion was agreed to.

- 
4. 108 CONG. REC. 19945-47, 87th Cong. 2d Sess.  
5. John W. McCormack (Mass.).

A motion to reconsider was laid on the table.

***Resolution Providing for Insistence***

**§ 12.16 The House may adopt a resolution taking a Senate bill with House amendments from the Speaker's table, insisting on House amendments, and agreeing to a further conference.**

On Aug. 12, 1964,<sup>(6)</sup> Speaker Pro Tempore Carl Albert, of Oklahoma, recognized Mr. B. F. Sisk, of California:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 818 and ask for its immediate consideration.

The Clerk read as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill (S. 1007) to guarantee electric consumers in the Pacific Northwest first call on electric energy generated at Federal hydroelectric plants in that region and to guarantee electric consumers in other regions reciprocal priority, and for other purposes, with House amendments thereto, be, and the same is hereby, taken from the Speaker's table; that the House insists on its amendments to said bill and agrees to the further conference requested by the Senate on the disagreeing votes thereon.

- 
6. 110 CONG. REC. 19194, 19195, 88th Cong. 2d Sess.

MR. SISK: Mr. Speaker, I yield 30 minutes to the gentleman from Ohio [Mr. Brown] and pending that, I yield myself such time as I may consume. . . .

Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* A motion to further insist on the House amendment and agree to the further conference requested by the Senate was privileged, for the stage of disagreement had been reached when the House insisted on its amendment and agreed to the Senate request for a conference on Oct. 2, 1963. That conference had reported back in disagreement on Dec. 19, 1963. Instead of using the motion route, hearings before the Committee on Rules were requested so that matters in disagreement could be compromised. When it was found that differences could be resolved by further conference, the Committee on Rules reported this resolution.

***Insistence by Unanimous Consent***

**§ 12.17 The House has agreed to a unanimous-consent request taking a House bill with Senate amendments from the Speaker's table and further insisting on disagreement to the Senate amendments.**

On Oct. 11, 1962,<sup>(7)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Jamie L. Whitten, of Mississippi:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill, H.R. 12648, with Senate amendments Nos. 2, 19, 44, and 47 through 54, and further insist upon disagreement to said amendments.

THE SPEAKER: Is there objection to the request of the gentleman from Mississippi [Mr. Whitten]?

There was no objection.

*Parliamentarian's Note:* Since the stage of disagreement had already been reached, a motion for this purpose was privileged and the Member could have proceeded by moving to insist rather than seeking unanimous consent.

7. 108 CONG. REC. 23206, 87th Cong. 2d Sess.





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# House-Senate Conferences

## A. INTRODUCTORY

### § 1. In General

This chapter examines House-Senate conferences, the procedures by which the two Houses arrive at conference, the appointment and instruction of the conference managers (conferees), and the contents and consideration of conference reports.<sup>(1)</sup> The reader is urged to consult chapter 32, *supra*, for a discussion of messages between the Houses and the various motions for the disposal of amendments between the Houses.

All matters in disagreement between the two Houses must be resolved before a bill can proceed to enrollment and presentation to the President. Both Houses must agree to the same text, no matter how trivial the discrepancy.<sup>(2)</sup>

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1. For comparable precedents that occurred prior to 1935, consult 5 Hinds' Precedents §§ 6254-6589, 7 Cannon's Precedents §§ 1571-1578, and 8 Cannon's Precedents §§ 3209-3332.

2. See §§ 1.4, 1.5, *infra*.

Differences between the two Houses which are unresolved through the regular exchange of amendments between the Houses may be reconciled at a conference to which both send managers (conferees).<sup>(3)</sup> Although conferences are usually asked on disagreements concerning legislative amendments, they may be sought on any matter on which a difference of opinion exists between the Houses.<sup>(4)</sup> Matters brought to conference have included differences over an amendment to a proposed amendment to the Con-

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3. The words "managers" and "conferees" will be used interchangeably here, although a technical distinction may be drawn. Thus the word managers refers to the representatives of either the House or Senate and applies to them severally in their capacity as agents of their respective Houses. The term conferees refers to the managers on the part of both Houses acting jointly at a conference.

4. *House Rules and Manual*, Jefferson's Manual § 530 (1997).

stitution<sup>(5)</sup> as well as differences regarding the respective prerogatives of the two Houses.<sup>(6)</sup> In one instance a conference was held concerning the instructions to House conferees at an existing conference.<sup>(7)</sup> In another instance a conference was held on the issue of the proper procedure in an impeachment proceeding.<sup>(8)</sup>

A conference may be requested only by the House that possesses the official papers;<sup>(9)</sup> and although in the past the House which disagreed to the amendments of the other usually left it to the other

House to request a conference,<sup>(10)</sup> an accepted practice in recent years has been for the disagreeing House to request the conference.

The House that requests a conference does so by messaging such request, together with the official papers, to the other House. The House agreeing to conference likewise conveys this response and the papers by message to the requesting House. The managers on the part of the requesting House then bring the papers to conference. At the close of a successful conference the papers change hands and the managers on the part of the agreeing House take the papers<sup>(11)</sup> and this House acts first on the conference report.<sup>(12)</sup> Where there is one amendment in disagreement between the Houses, that is the only matter in conference. Where there are multiple amendments to be reconciled, the conferees may reach agreement on some—and state their compromise in a conference report. If they reconcile their differences on some, but not all, they may file a report encompassing those on which they

5. *House Rules and Manual* § 530 (1997); and 5 Hinds' Precedents § 7037.

6. *House Rules and Manual* § 531 (1997); and 2 Hinds' Precedents §§ 1485, 1487, 1488, 1491, 1495.

7. 5 Hinds' Precedents § 6401.

8. *House Rules and Manual* § 531 (1997); and 3 Hinds' Precedents § 2304.

9. See § 1.1, *infra*. The official papers consist of the engrossed copy of the bill attested by either the Clerk of the House or the Secretary of the Senate, all engrossed amendments, all special acts concurring in amendments with amendments, all messages transmitting the foregoing between the Houses (all similarly attested), and finally the conference report and joint statement signed by the managers on the part of both Houses.

10. *House Rules and Manual* § 533 (1997); and 5 Hinds' Precedents §§ 6278–6285.

11. See § 24.3, *infra*.

12. See §§ 24.3, 24.5, *infra*.

agree and report to their respective Houses that they remain in disagreement on others. When this happens, the House acts first on the "partial" conference report and then addresses separately, by motion, those that yet require reconciliation amendments. When a conference ends in total disagreement the papers do not change hands, but remain with the managers of the House that requested the conference, and that House therefore acts first on the amendments in disagreement.<sup>(13)</sup>

Conferences are but one means to the desired end of bringing the two Houses into agreement on a particular matter. When a disagreement ceases to exist, a conference becomes unnecessary. Thus, where one House had requested a conference to which the second House had agreed, and the requesting House receded from its position before the conference could occur, such action passed the bill and allowed its enrollment and transmission to the President.<sup>(14)</sup>

On rare occasions requests for conferences have been denied.<sup>(15)</sup> Sometimes one House will reject a

request for a conference, and recede from its disagreement or from the amendment causing the disagreement, thereby rendering such conference unnecessary.<sup>(16)</sup>

Prior to the 89th Congress motions to request or agree to a conference were not privileged in the House before the stage of disagreement had been reached between the two Houses.<sup>(17)</sup> However, in 1965, the rules of the House were amended to expedite the process whereby legislation could be sent to conference.<sup>(18)</sup> Rule XX clause 1, now gives the Speaker discretion to recognize a Member at any time<sup>(19)</sup> to offer a motion to disagree to Senate amendments and request or agree to a conference, or to insist on House amendments and request or agree to a conference, if such motion is authorized by the commit-

13. See § 24.13, *infra*.

14. 5 Hinds' Precedents § 6319.

15. See § 1.10, *infra*; and 5 Hinds' Precedents §§ 6313-6315.

16. See 5 Hinds' Precedents §§ 6316-6318.

17. The "stage of disagreement" is reached when one House informs the other of its disagreement concerning a particular matter. See 6 Cannon's Precedents §§ 756, 757.

18. Rule XX clause 1, *House Rules and Manual* §§ 827, 828 (1997), as amended by H. Res. 8, 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965. See § 2.1, *infra*.

19. See §§ 3.2, 3.3, *infra*.

tee (or committees) having jurisdiction over the subject matter of the bill or resolution at issue. Thus, it is no longer necessary for the two Houses to reach a formal stage of disagreement before such motion for conferences becomes privileged. Before this change in the rules, bills and resolutions were usually sent to conference by unanimous consent,<sup>(20)</sup> pursuant to resolutions reported from the Committee on Rules,<sup>(1)</sup> or by motions to suspend the rules.<sup>(2)</sup>

### *Possession of Official Papers as Basis for Request*

#### **§ 1.1 A conference may be requested only by the House in possession of the papers.**

On Sept. 1, 1960,<sup>(3)</sup> Senator John J. Williams, of Delaware, alluded to reports in the press that attempts would be made in the House to block consideration of Senate amendments to H.R. 13062, to amend the Sugar Act of 1948. He then posed this parliamentary inquiry:

20. See generally §§ 2.36–2.39, *infra*.

1. See generally §§ 2.29–2.33, *infra*.

2. See §§ 2.34, 2.35, *infra*.

3. 106 CONG. REC. 18980, 86th Cong. 2d Sess. See § 3.1, *infra*.

Under the rules, in the present situation, could the Senate request a conference at this moment if it wished?

THE PRESIDING OFFICER:<sup>(4)</sup> In the absence of the papers being before the Senate, there would be no power in the Senate to request a conference. For the Senate to have the power to act, the papers would have to be before the Senate.

### *Replacing Lost Official Papers*

#### **§ 1.2 Where the official papers are lost or destroyed, the House and Senate can authorize their recreation by the Clerk of the House and Secretary of the Senate.**

The concurrent resolution carried here was considered by unanimous consent, adopted by the House (and later by the Senate); it authorized the preparation of duplicate original “official papers” where the original ones had been misplaced in the Senate.<sup>(5)</sup>

MR. [NORMAN Y.] MINETA [of California]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 414) directing the preparation of duplicate conference papers on H.R. 5930.

The Clerk read the title of the concurrent resolution.

4. Gale W. McGee (Wyo.).

5. 128 CONG. REC. 26058, 97th Cong. 2d Sess., Sept. 29, 1982.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Is there objection to the request of the gentleman from California?

MR. [ELLIOTT H.] LEVITAS [of Georgia]: Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from California if he would explain the effect of the concurrent resolution.

MR. MINETA: Mr. Speaker, will the gentleman yield?

MR. LEVITAS: I yield to the gentleman from California.

MR. MINETA: Mr. Speaker, this concurrent resolution merely recreates papers which apparently have been lost. It does not approve or constitute approval of the conference report.

I expect the bring that conference report before the House tomorrow.

MR. LEVITAS: Further reserving the right to object, and I will not object, I wanted to make certain that it did not constitute approval of the conference report by the adoption of the concurrent resolution.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 414

*Resolved by the House of Representatives (the Senate concurring), That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of*

the conference papers on the bill (H.R. 5930) to extend the aviation insurance program for five years.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

***Amendments Remaining in Disagreement After Adoption of Conference Report***

**§ 1.3 Where both Houses have adopted a conference report on a bill and amendments thereto, but certain amendments are still in disagreement between them, a further conference may be asked on the remaining amendments.**

On Sept. 24, 1962,<sup>(7)</sup> Mr. Albert Thomas, of Texas, asked unanimous consent that the House agree to a further conference requested by the Senate.

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12711) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, and offices, for the fiscal year ending June 30, 1963, and for other purposes, further insist on disagreement to the Senate amendments and agree to the further conference asked by the Senate.

6. John P. Murtha, Jr. (Pa.).

7. 108 CONG. REC. 20489, 87th Cong. 2d Sess.

May I explain that the other body adopted all of the conference report on the independent offices appropriation bill except three items, and we are asking unanimous consent to go back to conference on those three items.

The Speaker, John W. McCormack, of Massachusetts, hearing no objection to the unanimous-consent request, appointed five House conferees.

***All Matters in Disagreement Must Be Reconciled Before Bill Can Become Law***

**§ 1.4 Pending a motion in the Senate to recede from its one amendment remaining in disagreement with the House following adoption of the conference report in both Houses and disposition of all other amendments, the Presiding Officer stated: (1) that if the motion were rejected, a motion to further insist upon the amendment and to request a further conference on that one amendment would be in order; but (2) that action on the entire bill would remain incomplete and the bill could not proceed to enrollment until the remaining amendment in disagreement was resolved.**

Before a bill can be presented to the President as an enactment, both Houses must agree to the same text and must, through the amendment process and conference procedures, reach concurrence on each item therein.<sup>(8)</sup>

On May 22, 1975,<sup>(9)</sup> H.R. 5899, supplemental appropriations for fiscal year 1975, which had been sent to conference with 58 amendments in disagreement, was again on the Senate floor, the House having messaged to the Senate its insistence on disagreement to one remaining Senate amendment which had not been reconciled. When a motion in the Senate to recede from that last Senate amendment was offered, the following inquiry was directed to the Chair:

MR. [JOHN L.] MCCLELLAN [of Arkansas]: Mr. President, I move that the Senate recede from its amendment No. 107.

THE PRESIDING OFFICER:<sup>(10)</sup> First, the Chair will lay before the Senate the House amendment in disagreement to Senate amendment No. 107, which the clerk will report.

The legislative clerk read as follows:

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8. See 5 Hinds' Precedents §§ 6233-6240.
  9. 121 CONG. REC. 16127-29, 94th Cong. 1st Sess.
  10. Theodore F. Stevens (Alaska).



The House insists on its disagreement to Amendment No. 107.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Arkansas. . . .

MR. [JACOB K.] JAVITS [of New York]: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. JAVITS: If the motion is rejected, will a motion to refuse to recede and to request the conferees to return to conference be in order?

THE PRESIDING OFFICER: A motion to insist and ask for a further conference would then be in order.

MR. JAVITS: I thank my colleague.

Have the conferees been discharged by the Senate?

THE PRESIDING OFFICER: The conferees have been discharged in the House and a new conference would have to be appointed. The conference would be on one issue.

MR. JAVITS: I thank the Chair. . . .

THE PRESIDING OFFICER: Does the Chair understand the inquiry is whether or not the bill will be delayed until the one item that is in conference is determined? Is that the inquiry?

MR. MCCLELLAN: State the parliamentary inquiry.

MR. [JAMES B.] ALLEN [of Alabama]: I asked the question, though I think it is pretty well known, since at this stage of the proceeding both Houses have agreed to more than \$14 billion in appropriations, if the motion made by the Senator from Arkansas that the Senate recede from its amendment does not carry, then these \$14 billion in appropriations will, at least for the time, fall. Is that correct?

THE PRESIDING OFFICER: The action on the bill would not be complete. The Chair does not recognize the reference to the appropriations falling. They would not be complete. The bill would not be prepared to be sent to the President.

MR. ALLEN: A new conference would have to be appointed and delay would take place?

THE PRESIDING OFFICER: The whole bill would be delayed until that one item was resolved. That is correct. . . .

So the motion was rejected.

MR. JAVITS: Mr. President, I move that the Senate further insist on its amendment.

THE PRESIDING OFFICER: The question is on agreeing to the motion.

The motion was agreed to. . . .

MR. ROBERT C. BYRD [of West Virginia]: Mr. President, I shall shortly move to stand in recess awaiting the call of the Chair, pending whatever action the House may wish to take in view of the action that has just been taken by the Senate. The House may further insist upon its disagreement and ask for a conference, or it may concur. Therefore, until we hear further from the House, I move that the Senate stand in recess awaiting the call of the Chair.

The motion was agreed to, and at 4:50 p.m., the Senate took a recess subject to the call of the Chair.

***Failure To Address Title Amendment in Conference***

**§ 1.5 Every House amendment to a Senate bill must be reconciled before the Senate can enroll one of its bills sent to conference; and where conferees had neglected to address a House amendment to the title of a Senate bill, the House receded from its title amendment after the adoption of the conference report.**

The proceedings relating to the consideration of the conference report on S. 327 in the 94th Congress are carried below:<sup>(11)</sup>

MR. [ROY A.] TAYLOR of North Carolina: Mr. Speaker, I call up the conference report on the Senate bill (S. 327) to amend the Land and Water Conservation Fund Act of 1965, as amended, to establish the National Historic Preservation Fund, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

11. 122 CONG. REC. 29753, 29758, 29759, 94th Cong. 2d Sess., Sept. 10, 1976.

12. Lucien N. Nedzi (Mich.).

(For conference report and statement, see proceedings of the House of September 2, 1976.) . . .

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MR. TAYLOR of North Carolina: Mr. Speaker, I ask unanimous consent that the House recede from its amendment to the title of the Senate bill.

THE SPEAKER:<sup>(13)</sup> Is there objection to the request of the gentleman from North Carolina?

There was no objection.

***Rejection of Conference Report After Concurrence in Amendments***

**§ 1.6 Where one House adopts a conference report and concurs in certain amendments of the other House reported back from conference in disagreement, and the latter House then rejects the conference report, action on the amendments to which both Houses have agreed is nevertheless completed, and only those amendments which remain in disagreement are properly the subjects of a**

13. Carl Albert (Okla.).

**further conference between the two Houses.**

On Dec. 29, 1970,<sup>(14)</sup> the managers on the part of the House on the Defense Department appropriations bill (H.R. 19590) submitted the following statement:

The managers on the part of the House at the further conference on the disagreeing votes of the two Houses on certain of the amendments of the Senate to the bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of such amendments, namely:

The House, on December 16, 1970, adopted the first conference report on the bill (H. Report 91-1759) and then adopted motions relating to amendments reported in technical disagreement. Four amendments of the Senate which had been reported in technical disagreement—Nos. 15, 18, 29, and 48—were concurred in by the House without change. Thus, those four amendments are not at issue in the accompanying conference report or amendments in disagreement.

***Joint Nature of Conference Committee***

14. 116 CONG. REC. 43804-07, 91st Cong. 2d Sess.

**§ 1.7 A committee of conference is a joint committee composed of managers on the part of each House.**

On July 31, 1935,<sup>(15)</sup> Mr. George Huddleston, of Alabama, presented to the House a report signed only by the managers on the part of the House on S. 2796, the Public Utilities Act of 1935. The report explained that the desired conference never occurred because the Senate managers were accompanied by an employee of the Public Works Administration. The House managers requested an executive session, the Senate managers refused, and the conference was prevented. Mr. Sam Rayburn, of Texas, raised a point of order.

MR. RAYBURN: Mr. Speaker, I make the point of order that the paper read is not a report of the conference committee; that a conference report or a disagreement must be signed by a majority of the Members of the House conference committee and of the Senate conference committee and that this statement or paper has no standing in the House.

THE SPEAKER:<sup>(16)</sup> The Chair will hear the gentleman from Alabama.

15. 79 CONG. REC. 12237-39, 74th Cong. 1st Sess.

16. Joseph W. Byrns (Tenn.).

Mr. Huddleston, responding to the point of order, explained that the report was intended to forestall a motion to discharge under what is now Rule XXVIII clause 1(c).<sup>(17)</sup>

Mr. Speaker, this is submitted as a report so that the House conferees cannot be charged on tomorrow, which will be the next day after the twentieth day on which they were appointed, with default and failure to make a report within 20 days. . . .

THE SPEAKER: The gentleman from Alabama [Mr. Huddleston] has presented a paper which purports to be a report signed by three of the House conferees on S. 2796, from which it appears that the conferees have not been able up to this time to reach an agreement. The gentleman from Texas [Mr. Rayburn] makes the point of order that this paper cannot be considered as a report, inasmuch as the Senate conferees have not affixed their signatures. The gentleman from Alabama frankly states that he has filed this statement for the purpose of forestalling any action that may be taken under rule XXVIII, which rule authorizes any Member as a matter of the highest privilege to move to discharge and appoint conferees or to instruct conferees after a period of 20 days has elapsed from the time of their appointment when they have failed to make a report on the matter committed to them. The Chair does not think that the rules of

the House can be circumvented in that manner. . . .

A committee of conference is a joint committee composed of managers appointed on the part of each House. The managers of each House vote the sentiment of the House which they represent. In casting their votes they do so as separate committees and nothing may be agreed upon without the concurrent action of the two committees composing this joint committee, commonly called the "conference committee."

In instant case, the gentleman from Alabama admits that this purported report which he has presented has not been agreed to by the managers on the part of the Senate. Under such circumstances, the Chair does not believe that it is a report within the meaning of our parliamentary practice, and the Chair, therefore, sustains the point of order.

### *Actions of Senate Managers at Conference*

**§ 1.8 A resolution alleging that the Senate managers of a conference committee had insisted upon having experts and counsel present at a committee meeting over the objections of the managers of the House, and that such Senate conferees had refused to consider the matter of differences committed to them unless they were permitted to have present their experts and counsel and instructing**

<sup>17</sup> *House Rules and Manual* § 910 (1997).

**conferees to insist on the exclusion of outside advisors, was held not to involve a question of the privilege of the House.**

On July 29, 1935,<sup>(18)</sup> Mr. George Huddleston, of Alabama, presented to the House House Resolution 311 which he contended rectified an alleged violation of the privileges of the House, to wit: the insistence of the managers on the part of the Senate to bring with them to a conference on S. 2796 (the Public Utilities Act of 1935) certain counsel and advisors. The resolution provided that the House managers be instructed to insist that a conference be held with only the conferees of the two Houses in attendance. Mr. John E. Rankin, of Mississippi, made a point of order against the resolution on the ground that it did not state a question of a privilege of the House. He explained:

MR. RANKIN: . . . We have appointed conferees on the part of the House. They have a right to say whom they shall take into the conference. They have a right to say what advisers they shall select. If a question arose on that proposition, it might furnish a question of privilege or a question that would go

18. 79 CONG. REC. 12007, 12008, 12012, 12013, 74th Cong. 1st Sess.

to the integrity of the proceedings of the House.

That is the point, Mr. Speaker, on which this privilege hinges—whether or not it involves a question that goes directly to the integrity of the proceedings of the House of Representatives. To say that the Senate committee, when it brings its experts to advise them and to assist them in working out the parliamentary or the legislative problems involved, is a matter that goes to the integrity of the proceedings of the House of Representatives I submit does not meet the requirement; and therefore the resolution is not privileged.

Mr. Thomas L. Blanton, of Texas, also made a point of order against the resolution:

I make the point of order that under rule XXVIII of the House of Representatives, after the Speaker appoints conferees, until the conferees make a report and file their report and statement here and have it printed, or unless 20 days have elapsed, and a proper motion is made under rule XXVIII<sup>(19)</sup> to discharge the conferees, the House loses jurisdiction entirely over the conferees until one of those two events happen.

Speaker Joseph W. Byrns, of Tennessee, also referred to what is now Rule XXVIII clause 1(c), in making his ruling.

THE SPEAKER: . . . That clause was adopted on December 8, 1931, in the

19. Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

first session of the Seventy-second Congress. Of course, the House had an object in adopting that rule. It was to preserve to the House the right to exercise authority, as the Chair construes it, in a matter pending between the House and Senate, insofar as its own conferees were concerned. . . .

Now, it must be assumed that the House had an object in providing that 20 days must elapse before the motion may be made, and the Chair assumes that that object was to give the conferees that length of time in which to come to an agreement, if possible. . . .

Now, there were two courses which the conferees could have pursued: One was to report a disagreement, which has not been done. The other was to wait for 20 days, under this rule, and then to proceed under its provisions as a matter of the highest privilege. If the conferees had reported a disagreement, it would be in order for the House to take such action as it pleased, either with reference to instructions or to sending them back for further consideration.

. . . The Chair thinks that that is a matter of procedure that should be determined by the conferees. In the event that the conferees are unable to agree, it seems to the Chair that the remedy is provided in rule XXVIII. The Chair does not believe that under the facts stated a question of privilege is involved. The Chair, therefore, sustains the point of order.

**§ 1.9 It is in order in debate while discussing a question of privilege of the House involving the procedure of**

**a conference committee to state what occurred in the conference committee session but such license does not permit a Member to refer to a Senator by name.**

On July 29, 1935,<sup>(20)</sup> the House was considering a point of order raised by Mr. John E. Rankin, of Mississippi, against a resolution offered by Mr. George Huddleston, of Alabama, which purported to raise a question of a privilege of the House. Mr. Huddleston had contended that the insistence of the Senate managers on the attendance at the conference on S. 2796, the Public Utilities Act of 1935, of Mr. Ben Cohen, who had counseled the Senate on the drafting of the bill, prevented the conferees from meeting in a free and fair conference. During the ensuing debate, Mr. John G. Cooper, of Ohio, one of the House managers stated:

. . . After all that hard work are we going to sit in the conference committee with Mr. Cohen there, with all his suggested changes and amendments that he would like to have incorporated in the bill? Senator Wheeler is the man—

20. 79 CONG. REC. 12011, 74th Cong. 1st Sess.

MR. RANKIN: Mr. Speaker, the gentleman from Ohio has no right to speak about a Senator by name on the floor of the House.

MR. COOPER of Ohio: Mr. Speaker, I apologize, but I will say that the Senator, who is chairman of the conference committee, stated to us that if Mr. Cohen could not sit in at the conference there would be no conference. . . .

MR. RANKIN: Mr. Speaker, I make the point of order that the gentleman has no right to criticize Members of the Senate on the floor of the House, whether he calls them by name or not. This tirade against the Senate is in violation of the rules of the House.

THE SPEAKER:<sup>(1)</sup> The rule provides that Members shall not criticize a Member of the other body in a discussion on the floor. As the Chair understands the gentleman, he is not referring to a Senator by name, but stating what occurred in the conference committee.

### *Conference Refused*

#### **§ 1.10 The Senate may insist (as opposed to adhere) upon its amendment and disagree to a conference asked by the House.**

On Mar. 20, 1951,<sup>(2)</sup> the House, with Speaker Sam Rayburn, of Texas, presiding, received a message from the Senate:

1. Joseph W. Byrns (Tenn.).

2. 97 CONG. REC. 2683, 82d Cong. 1st Sess.

A message from the Senate by Mr. Woodruff, its enrolling clerk, announced that the Senate insists upon its amendment to the bill (H.R. 2615) entitled "An act to amend the Agricultural Adjustment Act of 1938, as amended," disagreed to by the House, and disagrees to the conference asked by the House on the disagreeing votes of the two Houses thereon.

### ***Senate Rejection of Conference Report Before Official Papers Were Received***

#### **§ 1.11 Instance where the Senate, by unanimous consent, deemed a conference report "rejected" even though the official papers thereon had not been received from the House.**

On Nov. 19, 1989,<sup>(3)</sup> by unanimous consent, the Senate agreed that if a conference report then under debate in the House were accepted by the House, it would be considered as rejected when received in the Senate. The unusual request is carried here as one more example of how the course of business sometimes can be expedited by abnormal procedures.

3. 135 CONG. REC. 30156, 30157, 30159, 101st Cong. 1st Sess.

UNANIMOUS-CONSENT REQUEST—H.R.  
3607MEDICARE CATASTROPHIC COVERAGE  
REPEAL

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, in a moment I am going to ask for unanimous consent that the conference report on H.R. 3607, the catastrophic health care legislation, be rejected by the Senate when that report is received by the Senate, which we expect to be shortly this evening.

Prior to presenting the request, I would like to describe for the information of Senators the status of that matter and the purpose of this request.

The two bodies have enacted legislation on this matter which are not identical. By an overwhelming vote, the House passed legislation to repeal the program. By unanimous vote, the Senate passed legislation to substantially modify the legislation.

The conferees have been unable to agree on a compromise between those two positions, despite days of effort.

The conference report in effect accepts the House position on repeal. It will be approved by the House, and it is the purpose of this unanimous-consent request to have that rejected by the Senate for the purpose of enabling this matter to be returned to conference, in the hopes that a final good-faith effort on both sides can be made to achieve a compromise which will be acceptable to both bodies.

There are many Senators who favor repeal, among them the distinguished Senator from Florida [Mr. Graham]; both distinguished Senators from Ne-

vada [Mr. Reid and Mr. Bryan], and others. . . .

THE PRESIDING OFFICER: Is there objection?

MR. [BOB] GRAHAM [of Florida]: Mr. President, will the Senator yield for a question?

MR. MITCHELL: Certainly.

MR. GRAHAM: Am I correct that there has been a conference committee report issued on this matter, which the House is preparing to consider?

MR. MITCHELL: Yes.

MR. GRAHAM: And that conference committee has the approval of the conferees from both the House and the Senate?

MR. MITCHELL: A majority of the conferees, yes.

MR. GRAHAM: If the House passes the conference report and it then comes to the Senate, if the Senate were to also agree to the conference report, would that not be disposition of the matter?

MR. MITCHELL: That would be. . . .

THE PRESIDING OFFICER: Is there objection to the unanimous-consent request propounded by the majority leader? If not, that will be the order of the Senate.

*Where House "Blue-slips" Senate Request for Conference*

§ 1.12 Where the Senate had amended a House-passed general appropriation bill, insisted on its amendments and requested a conference, and the House thereafter returned the measure to the Senate ("blue-slipped" the



bill) because one of the Senate amendments violated the constitutional authority of the House to originate revenue measures, the Senate proceeded to modify the offending amendment, again insisted, requested a "new" conference with the House, and again appointed the same managers.

On Aug. 12, 1994,<sup>(4)</sup> the Senate amended a paragraph of the agricultural appropriation bill for fiscal year 1995 by adding a "user fee" amendment which permitted the Federal Food and Drug Administration to charge fees for services in excess of the cost of the services provided. In the House, the Committee on Ways and Means—and ultimately the House—viewed the Senate amendment as one "raising revenue." Members of the Committee on Appropriations, fearing a protracted delay if the bill was "blue-slipped," lobbied to let the matter go to conference where the managers pledged they would be successful in dropping the amendment; and if the House managers were not successful in this opposition,

4. 140 CONG. REC. 21655, 21656, 103d Cong. 2d Sess.

they would support an effort in the House to return the conference report to the Senate to protect the House's constitutional authority.

The resolution adopted by the House returning the bill to the Senate, a portion of the House debate, and the proceedings in the Senate to modify the amendment are carried.

PRIVILEGES OF THE HOUSE—RETURNING  
TO THE SENATE THE SENATE  
AMENDMENTS TO H.R. 4554

MR. [SAM] GIBBONS [of Florida]: Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 518) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 518

*Resolved*, That Senate amendment No. 83 to the bill H.R. 4554 making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1995, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this house and that such bill with the Senate amendments thereto be respectfully returned to the Senate with a message communicating this resolution.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The resolution constitutes a question of privileges of the House.

The gentleman from Florida [Mr. Gibbons] will be recognized for 30 minutes, and the gentleman from California [Mr. Thomas] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. Gibbons].

MR. GIBBONS: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 518 is a simple resolution returning to the Senate the bill, H.R. 4554, because it contravenes the constitutional requirements that revenue measures originate only in the House of Representatives.

Specifically, the Senate amendments to H.R. 4554 provide that amounts are to be credited to the appropriations for the Food and Drug Administration "from fees established and collected to cover the costs of regulation of products under the jurisdiction of the Food and Drug Administration." These fees are not limited to cover only the costs of providing specified regulatory activities. Further, the FDA would not be required to change the fees, in appropriate amounts, only to those persons who benefit from such regulatory activities. Instead, the Senate amendments would allow the FDA to charge a broad cross-section of the public in order to fund the costs of its activities in general. Thus, these fees are not true regulatory fees, but constitute revenues which would fund the Government generally. . . .

I yield to the gentleman from Wisconsin.

MR. [DAVID R.] OBEY [of Wisconsin]: Let me simply say that what is at issue here is whether or not the House will take an action which is called blue-slipping the appropriation bill for agriculture for the coming fiscal year. The reason the Committee on Ways and Means wants to do that is because the Senate inappropriately adopted an amendment which is clearly an effort simply to legislate more spending in the agriculture appropriation bill above the amount that would be allowed for the budget caps, and the way they do that is to inappropriately use a revenue device. I grant that. As chairman of the Committee on Appropriations, I fully appreciate the need for the Senate to cease and desist on items like this. But there are a number of ways that it can be done it seems to me. The committee can, if it chooses, pursue its right today. . . .

An alternative manner in which to proceed would still preserve the rights of the Committee on Ways and Means to blue-slip this bill when it comes back from conference if the offending provision has not been removed. I have made it quite clear, both orally and in a letter to the chairman of the committee, that our committee will not come back from conference with that offending provision. We reject it outright and would insist that it not be included.

After further debate, the privileged motion offered by Mr. Gibbons was agreed to.

5. Jim McDermott (Wash.).

The pertinent proceedings in the Senate were as follows:<sup>(6)</sup>

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT—MESSAGE FROM THE HOUSE

MR. [WENDELL H.] FORD [of Kentucky]: I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4554.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That Senate amendment No. 83 to the bill H.R. 4554 making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1995, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill with the Senate amendments thereto be respectfully returned to the Senate with a message communicating this resolution.

MR. FORD: Madam President, I ask unanimous consent the Chair lay before the Senate a message on H.R. 4554, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for fiscal year 1995, which was returned to the Senate by the House; that Senate amendment 83 be modified with the amendment I now

6. 140 CONG. REC. 22127, 22128, 103d Cong. 2d Sess., Aug. 12, 1994.

send to the desk; that the Senate insist on its amendments, request a new conference with the House, and that those Senators currently serving as conferees on this bill be reappointed.

THE PRESIDING OFFICER: Without objection, the amendment will be modified.

The amendment is as follows:

In lieu of Senate amendment No. 83, insert the following: "On page 70 of the bill insert the following after line 6: *Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be preemptorily removed without a hearing from his or her position because of remarks made during personal time regarding Departmental policies or proposed policies.*"

MR. FORD: I yield the floor, Madam President.

THE PRESIDING OFFICER: The Senator from Nebraska is recognized for 15 minutes.

*Parliamentarian's Note:* On July 15, 1994, where a similar conflict over a "revenue" amendment on an appropriation bill had resulted in a "blue-slip" action by the House,<sup>(7)</sup> the Senate<sup>(8)</sup> authorized the reengrossment of its amendments, striking the one to which the House objected.

7. See 140 CONG. REC. 16593, 16594, 103d Cong. 2d Sess., July 14, 1994 (H.R. 4539).

8. 140 CONG. REC. 16832, 16840, 103d Cong. 2d Sess.

## § 2. Motions, Resolutions, and Requests for Conference

### *Motion for Conference*

#### § 2.1 In the 89th Congress, Rule XX clause 1 was amended to make in order a motion to send a bill to conference.

On Jan. 4, 1965,<sup>(9)</sup> Mr. Carl Albert, of Oklahoma, called up House Resolution 8.

MR. ALBERT: Mr. Speaker, I offer a resolution and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 8

*Resolved*, That the Rules of the House of Representatives of the Eighty-eighth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby adopted as the Rules of the House of Representatives of the Eighty-ninth Congress, with the following amendments therein as a part thereof, to wit . . .

In rule XX, strike out clause 1 and insert:

"1. Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union, if, originating in the House, it

would be subject to that point: *Provided, however*, That a motion to disagree with the amendments of the Senate to a House bill or resolution and request or agree to a conference with the Senate, or a motion to insist on the House amendments to a Senate bill or resolution and request or agree to a conference with the Senate, shall always be in order if the Speaker, in his discretion, recognizes for that purpose and if the motion is made by direction of the committee having jurisdiction of the subject matter of the bill or resolution." . . .

MR. ALBERT: . . . [N]ow I yield to our distinguished Speaker, the gentleman from Massachusetts [Mr. McCormack].

MR. [JOHN W.] MCCORMACK: . . . Certainly when a bill is going to conference the regular procedure is for the Member in charge to ask unanimous consent for the bill to go to conference. In 19 cases out of 20 or even 29 cases out of 30 unanimous consent is granted. It is very seldom unanimous consent is not granted for a bill to go to conference. This proposed rule would permit the will of the House to be ascertained and the majority of the Members present and voting then could send the bill to conference.

### *Raising Question of Consideration Against Motion To Send to Conference*

§ 2.2 A Member may raise the question of consideration (Rule XVI clause 3) against a motion to send a bill to conference under Rule XX clause 1; but since the question of consideration is not subject

9. 111 CONG. REC. 21-25, 89th Cong. 1st Sess.

**to debate, it is not subject to the motion to lay on the table. However, an affirmative vote on the question of consideration is subject to the motion to reconsider, and that motion can be laid on the table.**

On Oct. 4, 1994,<sup>(10)</sup> the Chair had just ruled that a motion to send to conference S. 21, the California Desert Protection Act of 1994, offered by Mr. George Miller, of California, was properly before the House under Rule XX clause 1.<sup>(11)</sup> Before the proponent of the motion was recognized for debate, a Member raised the question of consideration. When the Speaker stated the question: "Will the House now consider the motion?", the proponent of the underlying motion moved to lay on the table the question of consideration. When that motion was ruled inapplicable, a motion to reconsider the decision of the House to consider the motion was entertained and then, by motion, laid on the table.

MR. [JOHN T.] DOOLITTLE of California: Mr. Speaker, pursuant to rule XVI,

10. 140 CONG. REC. 27643, 27644, 103d Cong. 2d Sess.

11. *House Rules and Manual* § 827 (1997).

I ask that the question of consideration be put.

MR. MILLER of California: Mr. Speaker, I move to table the motion.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The motion to table is not in order at this point. . . .

So the House agreed to consider the motion offered by the gentleman from California [Mr. Miller].

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: Without objection, a motion to reconsider is laid on the table.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

MR. MILLER of California: Mr. Speaker, I move to reconsider the vote on the question of consideration.

MR. [BILL] RICHARDSON [of New Mexico]: Mr. Speaker, I move to lay the motion to reconsider on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from New Mexico [Mr. Richardson] to lay on the table the motion to reconsider offered by the gentleman from California [Mr. Miller].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

12. William J. Hughes (N.J.).

***Motion To Table Motion To Go to Conference***

**§ 2.3 A motion to send a bill to conference, being debatable under the hour rule, is subject to the motions under Rule XVI clause 4; and when the previous question is ordered on the motion, a motion to lay on the table the substantive motion to go to conference is preferential and is first put.**

After protracted parliamentary proceedings to prevent consideration of a motion to send a bill to conference under Rule XX clause 1,<sup>(13)</sup> the motion was eventually debated. When the previous question was moved by the proponent of the motion after debate, the following proceedings ensued:<sup>(14)</sup>

MR. [GEORGE] MILLER of California: Mr. Speaker, pursuant to rule XX, I have been directed by the Committee on Natural Resources to insist on the House amendment to S. 21, the California Desert Protection Act, and agree to a conference. The California Desert Protection Act upgrades Death Valley and Joshua Tree National Monument, and in addition the legislation desig-

nates approximately 3.9 million acres of wilderness.

Mr. Speaker, I ask unanimous consent that the time allotted be equally divided between the majority and the minority, which, I believe, entitles the minority to 30 minutes and the majority to 30 minutes.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Miller] will be recognized for 30 minutes, and the gentleman from Utah [Mr. Hansen] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. Miller]. . . .

MR. MILLER of California: . . . Agreement has now been reached on both sides of the aisle in the Senate to allow us to go to conference. The motions have been made and carried out, and the Senate awaits the House in the conference committee. . . .

THE SPEAKER PRO TEMPORE: All time of the gentleman from Utah [Mr. Hansen] has expired.

MR. MILLER of California: Mr. Speaker, I yield back the balance of my time and I move the previous question.

MOTION TO TABLE OFFERED BY MR. LEWIS OF CALIFORNIA

MR. [JERRY] LEWIS of California: Mr. Speaker, I move to table the previous question.

THE SPEAKER PRO TEMPORE: Does the gentleman from California move to lay

13. *House Rules and Manual* § 827 (1997).

14. See 140 CONG. REC. 27644-52, 103d Cong. 2d Sess., Oct. 4, 1994 (S. 21).

15. William J. Hughes (N.J.).

on the table the original motion to go to conference.

MR. LEWIS of California: The previous question, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman from California he cannot lay on the table the motion for the previous question.

MR. LEWIS of California: Mr. Speaker, I move that the pending motion be laid on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Lewis] to table the motion offered by the gentleman from California [Mr. Miller] to go to conference.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. LEWIS of California: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 144, nays 259, not voting 31. . . .

Mr. Lewis of Florida changed his vote from “nay” to “yea.”

So the motion to table the motion to [go to conference] was rejected.

The result of the vote was announced as above recorded.

#### PARLIAMENTARY INQUIRY

MR. [JOHN T.] DOOLITTLE [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. DOOLITTLE: Mr. Speaker, was the motion to reconsider laid on the table?

THE SPEAKER PRO TEMPORE: No.

MR. DOOLITTLE: I ask unanimous consent to lay it on the table, in that event.

THE SPEAKER PRO TEMPORE: Without objection, a motion to reconsider the motion to lay on the table the motion to go to conference is laid on the table.

The question is on ordering the previous question on the motion to go to conference.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

#### RECORDED VOTE

MR. [HOWARD P. (BUCK)] MCKEON [of California]: Mr. Speaker, on that I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 265, noes 144, not voting 25. . . .

Mr. Zeliff and Mr. Hall of Texas changed their vote from “aye” to “no.”

So the previous question was ordered.

The result of the vote was announced as above recorded.

MR. [BILL] BAKER of California: Mr. Speaker, I move to reconsider the vote by which the House agreed to ordering the previous question.

MR. MILLER of California: Mr. Speaker, I move to table the motion offered by the gentleman from California [Mr. Baker].

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Miller] to table the motion offered by the gentleman from California [Mr. Baker] to reconsider the vote on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. BAKER of California: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 273, noes 143, not voting 18. . . .

So the motion to table was agreed to.

***Motion To Commit Motion To Go to Conference***

**§ 2.4 After the previous question had been ordered on a motion to send a bill to conference, a motion to commit that motion to another committee having partial jurisdiction over the bill was entertained, rejected, and a motion to reconsider that vote was then laid on the table.**

Under Rule XVII clause 1,<sup>(16)</sup> a motion to commit is in order “pending the motion for, or after the previous question shall have

16. *House Rules and Manual* § 804 (1997).

been ordered” on a pending motion. On the occasion noted here,<sup>(17)</sup> the motion was offered after the previous question had been ordered on the motion to send S. 21, the California Desert Protection Act, which had been reported by the Committee on Interior and Insular Affairs, to conference. The motion to commit was therefore not subject to debate (but would have been, under Rule XVII, if offered pending the motion for the previous question). This rather innovative use of the motion to commit, to refer the matter to the committee to which the bill had been sequentially referred but which had not reported to the House, is noted here.

## MOTION TO COMMIT

MR. [RANDY (DUKE)] CUNNINGHAM [of California]: Mr. Speaker, pursuant to rule XVII, clause 1, I move to commit the motion to go to conference to the Committee on Merchant Marine and Fisheries.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The question is on the motion offered by the gentleman from California [Mr. Cunningham] to commit the motion to go to conference to the Committee on Merchant Marine and Fisheries.

17. See 140 CONG. REC. 27652–54, 103d Cong. 2d Sess., Oct. 4, 1994.

18. William J. Hughes (N.J.).



The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

## RECORDED VOTE

MR. CUNNINGHAM: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 141, noes 277, not voting 16. . . .

MOTION TO RECONSIDER THE VOTE ON  
MOTION TO COMMIT

MR. [HOWARD P. (BUCK)] McKEON [of California]: Mr. Speaker, I move to reconsider the vote by which the House did not agree to the motion to commit.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. McKeon] who voted on the prevailing side to reconsider the vote by which the House did not agree to the motion to commit.

MOTION TO TABLE OFFERED BY MR.  
MILLER OF CALIFORNIA

MR. [GEORGE] MILLER of California: Mr. Speaker, I move to lay on the table the motion to reconsider the vote offered by the gentleman from California [Mr. McKeon].

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Miller] to lay on the table the motion to reconsider the vote offered by the gentleman from California [Mr. McKeon].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. McKEON: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 280, noes 141, not voting 13. . . .

So the motion to lay on the table the motion to reconsider the vote on the motion to commit the motion to agree to a conference was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Miller] to insist on the House amendments and agree to a conference on S. 21.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. [JERRY] LEWIS of California: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 283, noes 140, not voting 11. . . .

MR. [JOHN T.] DOOLITTLE [of California]: Mr. Speaker, I move to reconsider the vote by which the House has agreed to the motion to agree to go to conference on S. 21.

MR. MILLER of California: Mr. Speaker, I move to lay on the table the motion to reconsider offered by the gentleman from California [Mr. Doolittle].

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> The question is on the motion to lay on the table the motion to reconsider.

19. George E. Brown, Jr. (Calif.).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. DOOLITTLE: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were ayes 282, noes 140, not voting 12. . . .

Mr. Jacobs changed his vote from "no" to "aye."

So the motion to lay on the table the motion to reconsider was [agreed to].

***Motion Where Unanimous Consent Not Granted***

**§ 2.5 Where objection is raised to a unanimous-consent request to take a House bill with Senate amendment from the Speaker's table and request a conference with the Senate, the bill remains on the table and is subject to further action by the House; and it may be sent to conference by motion under Rule XX clause 1 if such action is authorized by the legislative committee having jurisdiction of the legislation.**

On May 29, 1968,<sup>(20)</sup> Speaker John W. McCormack, of Massa-

20. 114 CONG. REC. 15499, 90th Cong. 2d Sess.

chusetts, recognized Mr. Emanuel Celler, of New York:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5037) to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment and request a conference with the Senate thereon.

The Clerk read the title of the bill.

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

MR. [RICHARD H.] POFF [of Virginia]: Mr. Speaker, reserving the right to object, in order that the House may be fully advised as to the procedural options and alternatives I propose to propound under my reservation a series of parliamentary inquiries.

Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. POFF: If objection is registered to the unanimous-consent request, will the effect be to send the bill either to the Committee on Rules or to the Committee on the Judiciary for a resolution instructing the chairman of the Committee on the Judiciary to make a motion that the bill go to conference?

THE SPEAKER: In response the Chair will say if objection is made to the unanimous-consent request the bill will remain on the Speaker's desk. The Committee on the Judiciary could take action to authorize the chairman or any

Member to make a motion to take the bill from the Speaker's desk for the purpose of sending it to conference.

### *Motion To Request Conference*

**§ 2.6 If there is an objection to a unanimous-consent request to take a House bill, with Senate amendment, from the Speaker's table and ask for a conference, a motion to achieve the same goal is in order, if authorized by the appropriate committee (and if the Speaker agrees to recognize for the motion).**

On Aug. 26, 1976,<sup>(1)</sup> Speaker Carl Albert, of Oklahoma, responded to a parliamentary inquiry about the available methods for getting to conference as follows:

MR. [DAVID N.] HENDERSON [of North Carolina]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8603) to amend title 39, United States Code, with respect to the organizational and financial matters of the U.S. Postal Service and the Postal Rate Commission, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

1. 122 CONG. REC. 27828, 27831, 94th Cong. 2d Sess.

THE SPEAKER: Is there objection to the request of the gentleman from North Carolina? . . .

#### PARLIAMENTARY INQUIRY

MR. [WILLIAM V.] ALEXANDER [Jr., of Arkansas]: Mr. Speaker, I desire to put a parliamentary inquiry to the Chair.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. ALEXANDER: Mr. Speaker, if an objection is heard, is it not so that the procedure that would be followed is for the chairman of the committee to go to the committee, convene the committee, and get a motion to come back to the floor asking for a conference, and that that then would be subject to 1 hour of general debate? Is that not so?

THE SPEAKER: That is one avenue of approach, the gentleman is correct. . . .

MR. ALEXANDER: Mr. Speaker, I agree with the gentleman from North Carolina (Mr. Henderson). I do not want to delay the proceedings of this body either, and I will not object. However, I will advise the Speaker that I have a motion to instruct at the desk which I will insist upon offering immediately following the granting of the unanimous-consent request.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

**§ 2.7 Pursuant to Rule XX clause 1, the House may, on motion, disagree to Senate amendments to House amendments to a Senate bill**

**and request a conference with the Senate.**

On Dec. 17, 1970,<sup>(2)</sup> Mr. B. F. Sisk, of California, offered the following motion:

Mr. Speaker,<sup>(3)</sup> pursuant to rule XX of the Rules of the House of Representatives and at the direction of the Committee on Agriculture, I move to take from the Speaker's table the bill (S. 1181) to amend section 8c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended, to permit projects for paid advertising under marketing orders, to provide for a potato research and promotion program, and to amend section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, to provide for the extension of restrictions on imported commodities imposed by such section to imported raisins, olives, and prunes, with the Senate amendments to the House amendments thereto, disagree to the Senate amendments to the House amendments, and request a conference with the Senate thereon. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from California. . . .

The question was taken; and there were—yeas 214, nays 145, not voting 75.<sup>(4)</sup> . . .

2. 116 CONG. REC. 42195, 91st Cong. 2d Sess.

3. John W. McCormack (Mass.).

4. See also 118 CONG. REC. 7540, 92d Cong. 2d Sess., Mar. 8, 1972.

***Point of Order Against Request To Go to Conference***

§ 2.8 When the pending business was a unanimous-consent request to send a bill to conference, a point of order under Rule XX clause 1, and Rule XXIII clause 3, requiring consideration of Senate amendments in Committee of the Whole, has no application, and the point of order was overruled.

On Sept. 28, 1962,<sup>(5)</sup> the following occurred on the floor of the House:

MR. [THOMAS J.] MURRAY [of Tennessee]: Mr. Speaker,<sup>(6)</sup> I ask unanimous consent to take from the Speaker's table the bill (H.R. 7927) to adjust postal rates and for other purposes, together with the Senate amendment thereto, disagree to the Senate amendment and request a conference with the Senate thereon.

The Clerk read the title of the bill.

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

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, and I do so initially for the purpose of raising a point of order, the point of order being that H.R. 7927 contains a

5. 108 CONG. REC. 21149, 21150, 87th Cong. 2d Sess.

6. John W. McCormack (Mass.).

pay increase bill which has never been considered by the House of Representatives, involving some \$1 billion.

Mr. Speaker, I invoke rule XX which provides as follows, paragraph 1:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the State of the Union if, originating in the House, it would be subject to that point of order. . . .

Mr. Speaker, I further call attention to rule XXIII, paragraph 3, entitled "Bills Required To Be Considered in Committee of the Whole." Rule XXIII, paragraph 3, provides:

All motions or propositions involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.

Mr. Speaker, I submit that the regular prescribed order under the rules is for the Speaker to refer such propositions as H.R. 7927 to the standing committee having jurisdiction.

THE SPEAKER: The Chair will state that the rules mentioned by the gentleman from Iowa are not involved at the present time. The matter before the House is the unanimous-consent request to send a bill to conference. The unanimous-consent request, if granted,

would waive all rules mentioned by the gentleman from Iowa.

Is there objection to the request of the gentleman from Tennessee?

MR. GROSS: Mr. Speaker, I object.

THE SPEAKER: Objection is heard.

### *Entertaining Request for Conference in Legislative Schedule*

**§ 2.9 Where a series of bills are being considered under suspension of the rules and the Speaker has announced that votes will be postponed until the completion of the series, the practice of the House is to defer a request to send one of the bills to conference until after the completion of the deferred votes, so as to prevent interruption of five-minute votes by a possible motion to instruct and debate thereon.**

The motion to instruct conferees at the time of original appointment is subject to one hour of debate and is, of course, susceptible to a demand for the yeas and nays or a record vote. Such a debate and vote would lengthen the time required for taking a series of postponed votes, and for this reason the House has adopted the practice described here. In this

instance,<sup>(7)</sup> there were seven deferred votes; the yeas and nays were ordered on all. The bill which was sent to conference was, in fact, subject to a motion to instruct when it was called up at the end of the votes on the seven bills.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Pursuant to the provisions of clause 3(b)(3), rule XXVII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all of the additional motions to suspend the rules on which the Chair has postponed further proceedings.

The unfinished business is the question of suspending the rules and passing the bill H.R. 8059, as amended.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Michigan (Mr. Conyers) that the House suspend the rules and pass the bill H.R. 8059, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 420, nays 0, not voting 14. . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

7. See 123 CONG. REC. 35024–26, 35029, 35030, 95th Cong. 1st Sess., Oct. 25, 1977.

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

The title was amended so as to read: “A bill to amend title 18 of the United States Code relating to the sexual exploitation of minors, and for other purposes.”

A motion to reconsider was laid on the table.

MR. [JOHN] CONYERS [Jr., of Michigan]: Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows. . . .

MR. CONYERS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Conyers moves to strike out all after the enacting clause of the Senate bill S. 1585, and to insert in lieu thereof the provisions of H.R. 8059, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: “A bill to amend title 18 of the United States Code relating to the sexual ex-

ploitation of minors, and for other purposes.”

A motion to reconsider was laid on the table.

A similar House bill (H.R. 8059) was laid on the table.

THE SPEAKER PRO TEMPORE: The unfinished business is the question of suspending the rules and passing the bill H.R. 8358.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Michigan (Mr. Nedzi) that the House suspend the rules and pass the bill H.R. 8358, on which the yeas and nays are ordered. . . .

After the vote on H.R. 8358, four more suspensions and four more yea and nay votes intervened before the following request was entertained:

MR. CONYERS: Mr. Speaker, I ask unanimous consent to insist on the House amendment to the Senate bill (S. 1585) to amend title 18, United States Code, to make unlawful the use of minors engaged in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine, or other print or visual medium, or live performance, and for other purposes, and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, reserving the right to object, I have a motion to instruct the conferees. I just want my rights to be protected.

THE SPEAKER PRO TEMPORE: The gentleman's rights will be protected.

MR. ASHBROOK: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan?

There was no objection.

PREFERENTIAL MOTION TO INSTRUCT CONFEREES OFFERED BY MR. ASHBROOK

MR. ASHBROOK: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Ashbrook moves that the managers on the part of the House in the conference on the Senate bill S. 1585 be instructed to agree to those provisions of the Senate bill that were included on page 5, line 12, through page 7, line 2, of the Senate bill.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio (Mr. Ashbrook) is recognized for 1 hour.

### *Committee Authorization for Motions To Go to Conference*

§ 2.10 A motion to go to conference under Rule XX clause 1, is entertained at the discretion of the Speaker when authorized by the committee having jurisdiction of the measure, and where more than one committee has exercised jurisdiction and reported the measure, the motion discloses that each has authorized the motion.

The form of the motion to go to conference, as excerpted from the proceedings of July 7, 1988,<sup>(9)</sup> is carried to show that all committees which reported the measure met and authorized the action taken by the chairman of the Committee on Ways and Means, which, while the "lead committee," having reported first, had an equal number of conferees with the two other primary committees. The bill had not been referred to the Committee on Agriculture, but its jurisdiction was claimed at the time the measure was being readied for conference.

APPOINTMENT OF CONFEREES ON H.R. 1720, FAMILY WELFARE REFORM ACT OF 1987

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, pursuant to clause 1 of the House rule XX and by direction of the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce, I move to take from the Speaker's table the bill H.R. 1720, to replace the existing AFDC program with a new Family Support Program which emphasizes work, child support, and need-based family support supplements, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the educa-

tion, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference requested by the Senate.

THE SPEAKER:<sup>(10)</sup> Does the gentleman from Illinois [Mr. Rostenkowski] seek time on the motion?

MR. ROSTENKOWSKI: Yes, I do, Mr. Speaker.

THE SPEAKER: The gentleman from Illinois [Mr. Rostenkowski] is recognized for 1 hour. . . .

The Chair appoints the following conferees on H.R. 1720, the Family Welfare Reform Act:

From the Committee on Ways and Means, for consideration of the House bill (except title X), and the Senate amendment (except sections 203(b)(5), 203(b)(6), 302, 303, 402(d), and 509), and modifications committed to conference: Messrs. Rostenkowski, Downey of New York [and 8 more Members were named and listed].

From the Committee on Education and Labor, for consideration of title I and sections 202, 511, and 804 of the House bill, and title II and sections 502, 503, 506, 507, and 508 of the Senate amendment, and modifications committed to conference: Messrs. Hawkins, Ford of Michigan [and 8 more Members were named and listed].

From the Committee on Energy and Commerce, for consideration of title IV of the House bill, and sections

9. 134 CONG. REC. 16772, 16779, 100th Cong. 2d Sess.

10. James C. Wright, Jr. (Tex.).



203(b)(5), 203(b)(6), 302, 303, 402(d), 402(f), 404, 508, 509, 510, and 704 of the Senate amendment, as well as that portion of section 201 of the Senate amendment which adds a new section 417(f)(6) to the Social Security Act, and modifications committed to conference: Messrs. Dingell, Waxman [and 8 more Members were named and listed].

From the Committee on Agriculture, for consideration of title X and section 801 of the House bill, and modifications committed to conference: Messrs. de la Garza, Panetta [and 8 more Members were named and listed].

**§ 2.11 Although a motion to go to conference under Rule XX clause 1 normally must be authorized by all committees having been included in a joint referral of the bill, a “lead” committee under the specific terms of such a referral may act alone to generate the motion.**

H.R. 5269, the Comprehensive Crime Control Act of 1990, was referred jointly to five House committees; but the Committee on the Judiciary was signaled as the “lead” committee by the terms of the referral: the remaining four committees were directed to report to the House within three days of the filing of a report by the Committee on the Judiciary. After Judiciary reported, other committees were added as “sequential”

referrals. Ten committees were included in the mix of conferees. The motion to go to conference, which was not contested, is carried here.<sup>(11)</sup>

MR. [JACK B.] BROOKS [of Texas]: Mr. Speaker, I move to take from the Speaker’s table the bill (H.R. 5269) to control crime, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The question is on the motion offered by the gentleman from Texas [Mr. Brooks].

The motion was agreed to.

### *Committee Authorization To Move To Go to Conference*

**§ 2.12 A motion to send a bill to conference under Rule XX clause 1, is privileged if offered at the direction of the only committee that reported the measure to the House and need not be authorized by a committee which has received a referral, joint or sequential, but has not reported thereon.**

On Oct. 4, 1994,<sup>(13)</sup> the House had before it a motion to insist on

11. 136 CONG. REC. 34090, 101st Cong. 2d Sess., Oct. 25, 1990.

12. Michael R. McNulty (N.Y.).

13. 140 CONG. REC. 27642, 27643, 103d Cong. 2d Sess.

its amendments to a Senate bill and agree to a conference requested by the Senate. Before debate on the motion began, a point of order was raised that the motion was not in order, not having been authorized by one of the committees of the House to which the Senate bill had been referred. The point of order and the Chair's response are included here.

REQUEST FOR APPOINTMENT OF  
CONFEREES ON S. 21, CALIFORNIA  
DESERT PROTECTION ACT OF 1994

MR. [GEORGE] MILLER of California: Mr. Speaker, pursuant to clause 1, rule XX, and by the direction of the Committee on Natural Resources, I move to take from the Speaker's table the Senate bill (S. 21) to designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks and the Mojave National Monument, and for other purposes with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

MR. [JAMES V.] HANSEN [of Utah]: Mr. Speaker, I ask unanimous consent that the time for debate be equally divided between the majority and the minority.

POINT OF ORDER

MR. [RICHARD V.] POMBO [of California]: Mr. Speaker, I have a point of order.

THE SPEAKER PRO TEMPORE:<sup>14</sup> The gentleman will state his point of order.

MR. POMBO: Mr. Speaker, I make a point of order that the Committee on Merchant Marine and Fisheries to which the bill S. 21 was referred, has not authorized the pending motion in violation of clause 1 of rule XX.

THE SPEAKER PRO TEMPORE: The gentleman makes a point of order that the motion is out of order.

Does the gentleman from California desire to be heard on the point of order?

MR. MILLER of California: Mr. Speaker, to make the point of order that the primary committee of jurisdiction was authorized to ask to go to conference.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

MR. POMBO: Mr. Speaker, may I be heard on that before the Chair responds?

THE SPEAKER PRO TEMPORE: The gentleman is recognized to be heard further on the point of order.

MR. POMBO: Mr. Speaker, I serve on both the Committee on Natural Resources and the Committee on Merchant Marine and Fisheries, to which S. 21 was also referred. Unfortunately, the referral to Merchant Marine and Fisheries was very short and that committee did not file a report on the bill. The net result is that my Merchant Marine and Fisheries colleagues did not have an opportunity to debate this bill in committee. Now it appears that the Committee on Merchant Marine and Fisheries will not have a role in making the recommendation to the

14. William J. Hughes (N.J.).

House with regard to insisting or receding from the Senate amendments to S. 21.

Mr. Speaker, it is my understanding that, under rule XX and the precedents of the House, a privileged motion to go to conference must be authorized by both committees to which a bill has been jointly referred. I have been told that this precedent was decided prior to the time when sequential referrals were used in the House. I believe that the interests of the House would be best served if this interpretation were extended to sequential as well as joint referrals to ensure that all committees of jurisdiction on a bill will be treated as equal partners in the process.

I do not believe that the Speaker has yet ruled on this precise issue and insist on my point of order to clarify the matter.

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

MR. MILLER of California: Yes, Mr. Speaker. The Committee on Natural Resources is the primary committee of jurisdiction here. There was a referral to the Committee on Merchant Marine and Fisheries. They could have exercised whatever actions they decided to. They did not decide to do that. By reason of the fact that we remain the primary committee, we have been instructed by our committee to go to conference on this matter.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from California makes the point of order that, to be privileged under clause 1 of rule XX, the motion must be authorized not only

by the Committee on Natural Resources but also by the Committee on Merchant Marine and Fisheries.

Under clause 1 of rule XX, a motion to send a bill to conference is always in order if the Speaker, in his discretion, recognizes for that purpose and if the motion is made at the direction of all reporting committees having original jurisdiction over the bill. The Chair is guided by the precedent of September 26, 1978,<sup>(15)</sup> standing for the proposition that the motion must be authorized by each committee of joint referral that has reported the measure to the House.

In the instant case, the Committee on Merchant Marine and Fisheries was a committee of sequential referral of the House bill and did not report thereon to the House. The instant motion is therefore, offered at the direction of the only committee of original referral of the House bill, and the only committee that reported thereon to the House—the Committee on Natural Resources. Accordingly, the motion is privileged under clause 1 of rule XX.

The point of order is overruled.

### *Repetition of Motion To Go to Conference*

**§ 2.13 Rule XX clause 1 provides that it shall always be in order for the Speaker, in his discretion, to recognize for a motion to disagree to a Senate amendment and re-**

15. See 124 CONG. REC. 31623, 95th Cong. 2d Sess.

**quest or agree to a conference if the motion is authorized by the committee having jurisdiction over the bill; this rule has been interpreted by the Speaker to permit the repetition of such a motion (1) where the committee had met again (after the House's rejection of the first motion) to authorize its chairman to make a second motion and (2) where no other motions were then in order to dispose of the Senate amendment, the stage of disagreement not having been reached.**

On Oct. 3, 1972,<sup>(16)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Carl D. Perkins, of Kentucky, to move to take from the Speaker's table H.R. 7130, to amend the Fair Labor Standards Act of 1938, with the Senate amendments thereto, disagree to the Senate amendments and request a conference with the Senate thereon. Mr. John B. Anderson, of Illinois, rose with a point of order.

MR. ANDERSON of Illinois: Mr. Speaker, I make a point of order that the motion of the gentleman from Kentucky is contrary to the provisions of clause 1 of rule XX, disregards the es-

tablished precedents of the House and is not in order, and I request an opportunity to be heard on the point of order.

THE SPEAKER: The gentleman may be heard on his point of order.

MR. ANDERSON of Illinois: Mr. Speaker, the gentleman from Kentucky's motion, to take the bill H.R. 7130 from the Speaker's desk, to disagree with the Senate amendments, and request a conference with the Senate thereon, is in violation of clause 1 of rule XX.<sup>(17)</sup> . . .

On August 1, 1972, the Committee on Education and Labor directed the gentleman from Kentucky to make a motion to disagree with the Senate amendments to the bill H.R. 7130 and to request a conference. A motion pursuant to the direction of the committee was made on August 1 and defeated by a rollcall vote of 198 to 190—*Congressional Record* pages 26152–26156. Furthermore, motion to reconsider was at that time made and laid on the table. Reconsideration of the original motion is therefore not in order. . . .

Mr. Speaker, it is a firmly settled canon of general parliamentary law, including the rules and precedents of this body, that once motions have been made, and have failed, similar motions cannot be made during the same stage of proceedings. To permit otherwise would be to obviate any semblance of orderly procedure. . . .

The Chair is aware of the precedent found in section 6325 of volume V of

16. 118 CONG. REC. 33502, 33503, 92d Cong. 2d Sess.

17. *House Rules and Manual* § 827 (1997).

Hinds' Precedents. That precedent has the following summary in its caption:

A motion to request a conference on disagreeing votes of the two Houses having been rejected, may not be repeated at the same stage of the question, even though a recess of Congress may have intervened.

This precedent is clear. The present motion of the gentleman from Kentucky is not in order, and clause 1 of rule XX was not intended to supersede this precedent or to grant more than one opportunity for the House to work its will on this issue. . . .

THE SPEAKER: Does the gentleman from Kentucky (Mr. Perkins) desire to be heard on the point of order?

MR. PERKINS: Yes, Mr. Speaker.

THE SPEAKER: The gentleman from Kentucky is recognized.

MR. PERKINS: Mr. Speaker, the point of order should not be sustained. The rule of the House under which I am proceeding is clause 1 of rule XX which in part reads:

*Provided, however,* That a motion to disagree with the amendments of the Senate to a House Bill or Resolution and request or agree to a conference with the Senate or a motion to insist on the House amendments to a Senate Bill or Resolution and request or agree to a conference with the Senate, *shall always be in order* if the Speaker, in his discretion recognizes for that purpose and if the motion is made by the direction of the Committee having jurisdiction over the subject matter of the bill or resolution.

Mr. Speaker, the rule is very clear. It says this motion shall always be in order if two conditions are met. First, the Speaker must recognize a Member for the purpose of making the motion and

second, the motion must be made after the committee having jurisdiction over the subject matter has directed the Member to make the motion.

Mr. Speaker, the committee has directed me to make this motion.

It is certainly true that on August 1 the House Education and Labor Committee directed me to make a similar motion under the rule with respect to this legislation and the motion was made and defeated. But subsequent to that time and specifically on Tuesday, August 8, 1972, the committee directed that I make this motion with respect to this legislation. . . .

THE SPEAKER: The Chair is ready to rule. The gentleman from Kentucky has moved, pursuant to clause 1 of rule XX, that the House disagree with the amendments of the Senate to the bill H.R. 7130 and request a conference with the Senate. The gentleman states that he has been authorized to make this motion by the Committee on Education and Labor by its action of August 8, 1972.

The gentleman from Illinois (Mr. Anderson) has raised a point of order against this motion on the ground that since the House has once rejected such a motion, it cannot be repeated.

In support of his argument, the gentleman cites a precedent which is found in volume V, section 6325, of Hinds' Precedents.

The Chair has examined that precedent—which carries the following headnote:

A motion to request a conference on disagreeing votes of the two Houses having been rejected, may not be repeated at the same stage of

the question, even though a recess of Congress may have intervened.

The Chair believes that precedent is clearly distinguishable from the present situation. In that case, which the Chair notes occurred in the 34th Congress, the two Houses had reached the stage of disagreement with respect to the Senate amendments to the House bill. The stage of disagreement having been reached, there were other motions available in the House which could be used to dispose of the amendments in disagreement. A reading of that precedent shows that after the Speaker had declined to recognize for a second motion that the House ask a further conference with the Senate, the first such motion having already been rejected, the House at a later time did in fact consider the motions to recede from disagreement and to adhere.

In the present situation, the Chair notes that the stage of disagreement has not been reached. Any action on the Senate amendments to the House bill—that is to take the bill from the Speaker's table and to concur, to concur with amendment, to disagree—would have to be by unanimous consent.

The only motion which is in order under the present situation under the rules of the House is to disagree and ask a conference.

The Chair thinks it should also be pointed out that rule XX, clause 1—the portion thereof making such a motion in order—was adopted in the 89th Congress.

It is obviously a much later expression of the House than the precedent cited from the 34th Congress.

*Parliamentarian's Note:* No further action was taken by the House on the Senate amendment to H.R. 7130 and the bill remained on the Speaker's table at the expiration of the 92d Congress.

### *Debate on Motion*

**§ 2.14 A Member making a motion to send a bill to conference under Rule XX clause 1 is recognized for one hour and is in control of the debate on the motion.**

On Aug. 1, 1972,<sup>(18)</sup> Mr. Carl D. Perkins, of Kentucky, offered a motion to take from the Speaker's table H.R. 7130, amending the Fair Labor Standards Act of 1938, with Senate amendments thereto, disagree to the amendments and request a conference with the Senate thereon. Mr. John L. Erlenborn, of Illinois, posed a parliamentary inquiry.

MR. ERLNBORN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(19)</sup> The gentleman will state it.

MR. ERLNBORN: Is there time to debate the motion offered by the gentleman from Kentucky?

18. 118 CONG. REC. 26153, 26156, 92d Cong. 2d Sess.

19. Carl Albert (Okla.).

THE SPEAKER: It is under the 1-hour rule. The gentleman from Kentucky controls the time. The gentleman from Kentucky is recognized.<sup>(20)</sup>

**§ 2.15 The previous question having been ordered on a motion to send a bill to conference under Rule XX clause 1, further debate may be had on the motion only by unanimous consent.**

On July 9, 1970,<sup>(1)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Thomas E. Morgan, of Pennsylvania.

MR. MORGAN: Mr. Speaker, pursuant to the provisions of clause 1, rule XX, and by direction of the Committee on Foreign Affairs, I move to take from the Speaker's table the bill (H.R. 15628) to amend the Foreign Military Sales Act, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER: The gentleman from Pennsylvania (Mr. Morgan) is recognized for 1 hour on his motion.

MR. MORGAN: Mr. Speaker, I have no desire to use any time and there has been no request for any time, and in an

effort to move the legislation along I will move the previous question. . . .

Mr. Speaker, I move the previous question on the motion.

THE SPEAKER: The question is on ordering the previous question. . . .

The question was taken; and there were—yeas 247, nays 143, not voting 41. . . .

MR. MORGAN: Mr. Speaker, notwithstanding the fact that the previous question has been ordered on my motion to go to conference, I ask unanimous consent that there now be 1 hour of debate, one-half to be controlled by myself and one-half by the gentleman from Michigan (Mr. Riegle) who has announced that he will propose a motion to instruct the conferees.

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

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, I object.

***Recognition for Motion To Go to Conference Is at Discretion of Speaker***

**§ 2.16 A motion to go to conference under Rule XX clause 1 is in order at the Speaker's discretion, when authorized by the committee of jurisdiction; and the Speaker has exercised his discretion not to recognize the chairman of the reporting committee for the motion where he has referred a nongermane Senate amendment to the bill to an-**

20. See also 116 CONG. REC. 5722, 91st Cong. 2d Sess., Mar. 3, 1970; and 114 CONG. REC. 23935, 90th Cong. 2d Sess., July 29, 1968.

1. 116 CONG. REC. 23518, 23524, 91st Cong. 2d Sess.

**other committee having jurisdiction over the amendment.**

On June 28, 1984,<sup>(2)</sup> the Speaker declined to recognize the chairman of a House committee to send a bill to conference under Rule XX clause 1, where he had earlier on that day acceded to the request of another House committee to refer a particular Senate amendment because of a valid jurisdictional claim.

MOTION OFFERED TO CONSIDER SENATE AMENDMENT TO H.R. 1310, EMERGENCY MATHEMATICS AND SCIENCE EDUCATION ACT

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 1310) to provide assistance to improve elementary, secondary, and postsecondary education in mathematics and science; to provide a national policy for engineering, technical, and scientific personnel; to provide cost sharing by the private sector in training such personnel; to encourage creation of new engineering, technical, and scientific jobs; and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(3)</sup> The Chair would advise the gentleman from Kentucky [Mr.

Perkins] that the Chair has referred a portion of the Senate amendment to the gentleman's committee and to the Committee on the Judiciary.

Consequently, under the rule, the gentleman is not recognized to make the motion. . . .

MR. PERKINS: Mr. Speaker, there is not one thing in this so-called equal access or the math and science bill that refers to any legal remedy.

I do not want to see this bill sent to a burial committee.

In view of the Speaker's ruling, the only committees that have jurisdiction over this bill are the Committee on Education and Labor and the Committee on Science and Technology. . . .

I repeat again, I know this referral is not justified under the law to the Committee on the Judiciary. . . .

THE SPEAKER: . . . In the opinion of the Parliamentarian, as stated to the Speaker, the Committee on the Judiciary has partial jurisdiction over a portion of the Senate amendment. This was a nongermane Senate amendment. The Speaker is following the precedent that he has announced in this Congress.

The gentleman is asking for the unusual and in fairness, the committee has not had hearings on it. The Judiciary Committee is entitled to a referral and the Chair is referring the matter to that committee and to the Committee on Education and Labor until August 6. . . .

REFERRAL OF SENATE AMENDMENT  
UNDER TIME LIMITATION

Pursuant to clause 5, rule X and clause 2, rule XXIV, the Senate amendment to the bill (H.R. 1310) to

2. 130 CONG. REC. 19770, 19983, 98th Cong. 2d Sess.

3. Thomas P. O'Neill, Jr. (Mass.).



provide assistance to improve elementary, secondary, and postsecondary education in mathematics and science; to provide a national policy for engineering, technical, and scientific personnel; to provide cost sharing by the private sector in training such personnel; to encourage creation of new engineering, technical, and scientific jobs; and for other purposes, was referred from the Speaker's table to the Committees on Education and Labor and the Judiciary, for a period ending not later than August 6, 1984, solely for consideration of such provisions of title VIII of the Senate amendment as fall within the jurisdictions of the committees under clauses 1(g) and (m), rule X.

*Parliamentarian's Note:* When the Speaker exercises his authority under Rule X clause 5(a) to refer a Senate amendment to a House bill to a House committee, he does so by indicating the referral on the official papers at the desk. The referral is later noted in the Journal and the *Congressional Record* for that date. Such a referral would not prevent the motion to go to conference, if the Speaker wished to exercise his discretion and recognize for a motion properly authorized by a committee. In the instant case, the committee to which he had earlier that same day referred the Senate amendment had not had an opportunity to evaluate the amendment.

***Motion To Agree to Conference,  
No Layover Required***

**§ 2.17 The motion to send a bill to conference under Rule XX clause 1,<sup>(4)</sup> is privileged when the House is in possession of the official papers and the appropriate committee has authorized the motion and the Speaker, in his discretion, recognizes for the motion.**

The motion to go to conference before the stage of disagreement was added to the House rules in 1965.<sup>(5)</sup> There is no requirement for a "layover" period before the motion can be made and a Member may seek the Speaker's recognition immediately after the appropriate committee (or committees) has authorized the motion. The inquiry asked of the Chair on Mar.

4. *House Rules and Manual* § 827 (1997).

5. See 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965 (H. Res. 5). Before the adoption of this rules change, a conference was normally asked by unanimous consent or by a motion to suspend the rules, unless the Committee on Rules reported, and the House adopted, a special order giving the motion a privileged status.

20, 1975,<sup>(6)</sup> carried below, is illustrative:

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Speaker, in accordance with rule XX of the House rules and by direction of the Committee on Appropriations, I move to take from the Speaker's table the bill (H.R. 4592) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1975, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(7)</sup> The question is on the motion offered by the gentleman from Louisiana (Mr. Passman).

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object.

THE SPEAKER: The Chair will state that no objection is in order.

The motion was agreed to.

#### PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, does this report not have to lay over for a period of time prior to the request being made for conferees?

THE SPEAKER: Not for the appointment of conferees.

MR. BAUMAN: Then, Mr. Speaker, it is in order today?

THE SPEAKER: The motion to send the bill to conference is in order today.

MR. BAUMAN: I thank the Chair.

THE SPEAKER: The Chair appoints the following conferees: Messrs. Passman, Long of Maryland, Roush, Obey, Bevill, Chappell, Koch, Early, Mahon, Shriver, Conte, Coughlin, and Cederberg.

### *Amendment to Motion*

**§ 2.18 The Speaker has indicated that a motion to send a bill to conference under Rule XX clause 1, could not be amended to include instructions to House conferees, but that a motion to instruct could be offered following the adoption of the motion to go to conference.**

On Oct. 19, 1971,<sup>(8)</sup> Mr. F. Edward Hébert, of Louisiana, introduced the following motion after objection was heard to a unanimous-consent request to the same effect.

MR. HÉBERT: Mr. Speaker, by direction of the Committee on Armed Services, I move to take from the Speaker's table the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons,

6. 121 CONG. REC. 7646, 94th Cong. 1st Sess.

7. Carl Albert (Okla.).

8. 117 CONG. REC. 36832-35, 92d Cong. 1st Sess.

and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes, together with Senate amendments, thereto disagree to the Senate amendments, and agree to the conference request by the Senate.

THE SPEAKER:<sup>(9)</sup> The gentleman from Louisiana is recognized for 1 hour on his motion.

MR. HÉBERT: . . . Mr. Speaker, I move the previous question on the motion.

THE SPEAKER: The question is on ordering the previous question on the pending motion.

MR. [LUCIEN N.] NEDZI [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. NEDZI: Mr. Speaker, is the motion of the gentleman from Louisiana amendable?

THE SPEAKER: Not if the previous question is ordered.

MR. NEDZI: If the previous question is voted down, can the motion be amended by instructing the conferees?

THE SPEAKER: Not on this particular motion, but a motion to instruct is in order following the adoption of the motion of the gentleman from Louisiana.

MR. NEDZI: Do I understand correctly that a motion to instruct as an amendment to the motion of the gentleman from Louisiana is not in order?

THE SPEAKER: This motion now under consideration only goes to the question of sending the bill to conference.

9. Carl Albert (Okla.).

### *Vote on Motion*

§ 2.19 Where there was pending a motion under Rule XX clause 1, to send a bill to conference, the Speaker indicated that a majority and not a two-thirds vote would be required to adopt the motion.

On Nov. 16, 1971,<sup>(10)</sup> after Mr. George H. Mahon, of Texas, moved pursuant to Rule XX clause 1, to send House Joint Resolution 946 (continuing appropriations for fiscal 1972) to conference, Mr. H. R. Gross, of Iowa, posed several parliamentary inquiries.

MR. GROSS: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER:<sup>(11)</sup> The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, my second parliamentary inquiry is this: This would require a two-thirds vote; would it not?

THE SPEAKER: The Chair will state that it would not require a two-thirds vote; only a majority vote.

### *Rules Committee Resolutions Agreeing to or Requesting Conference*

§ 2.20 The House may adopt a resolution taking from the

10. 117 CONG. REC. 41555, 92d Cong. 1st Sess.

11. Carl Albert (Okla.).

**Speaker's table a House bill with Senate amendments, disagreeing to the amendments, and agreeing to a conference requested by the Senate.**

On Aug. 9, 1949,<sup>(12)</sup> Mr. J. Vaughan Gary, of Virginia, sought unanimous consent to take from the Speaker's table the bill H.R. 4830 with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate. After Mr. Vito Marcantonio, of New York, objected to the request, the following occurred:

Mr. Lyle, from the Committee on Rules, reported the following privileged resolution (H. Res. 320, Rept. No. 1241), which was referred to the House Calendar and ordered to be printed:

*Resolved*, That upon the adoption of this resolution the bill (H.R. 4830) making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendments be, and they are hereby, disagreed to and that the conference requested by the Senate on the disagreeing votes of the two Houses be, and the same is hereby, agreed to.

12. 95 CONG. REC. 11139-42, 81st Cong. 1st Sess.

MR. [JOHN E.] LYLE [Jr., of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 320 and ask for its immediate consideration.

The Clerk read the resolution. . . .

THE SPEAKER:<sup>(13)</sup> The question is, Will the House now consider the resolution?

The question was taken; and on a division (demanded by Mr. Marcantonio) there were—ayes 298, noes 4.

So (two-thirds having voted in favor thereof) the House agreed to consider the resolution.<sup>(14)</sup>

THE SPEAKER: The gentleman from Texas [Mr. Lyle] is recognized. . . .

MR. LYLE: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

MR. MARCANTONIO: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The resolution was agreed to.<sup>(15)</sup>

**§ 2.21 The House may adopt a resolution taking a Senate bill, with a Senate amendment to a House amendment**

13. Sam Rayburn (Tex.).

14. Resolutions reported from the Committee on Rules may not be considered on the same day they are presented to the House unless so ordered by a vote of two-thirds of the Members. Rule XI clause 4(b), *House Rules and Manual* § 729a (1997).

15. See also 100 CONG. REC. 8456, 83d Cong. 2d Sess., June 21, 1954; and 89 CONG. REC. 7309, 78th Cong. 1st Sess., July 6, 1943.

thereto, from the Speaker's table, disagreeing to the Senate amendment, and agreeing to conference.

On Mar. 14, 1962,<sup>(16)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard Bolling, of Missouri:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 561 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill (S. 1969) to amend the Federal Aviation Act of 1958, as amended, to provide for supplemental air carriers, and for other purposes, with the Senate amendment to the House amendment thereto be, and the same is hereby taken from the Speaker's table; that the House disagrees to the Senate amendment to the House amendment to the said bill and agrees to the conference requested by the Senate on the disagreeing votes thereon. . . .

THE SPEAKER: The question is on the adoption of the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: The Chair appoints the following conferees: Messrs. Harris, Williams, Staggers, Friedel, Bennett of Michigan, Springer, and Collier.

16. 108 CONG. REC. 4049, 4056, 87th Cong. 2d Sess.

### *Unanimous Consent in Lieu of Motion*

§ 2.22 A member of a House committee asked unanimous consent to insist on disagreement to Senate amendments and to agree to the further conference requested by the Senate, although a motion to accomplish that result would have been in order.

On Dec. 22, 1970,<sup>(17)</sup> Speaker Pro Tempore Carl Albert, of Oklahoma, recognized Mr. Otto E. Passman, of Louisiana, and the following occurred:

MR. PASSMAN: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 17867) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1971, and for other purposes, with Senate amendments thereto, insist on disagreement to the Senate amendments and agree to the further conference requested by the Senate.

The Clerk read the title of the bill. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Louisiana? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Pass-

17. 116 CONG. REC. 43398, 91st Cong. 2d Sess.

man, Natcher, Mrs. Hansen of Washington, and Messrs. Cohelan, Long of Maryland, McFall, Mahon, Shriver, Conte, Reid of Illinois, Riegle, and Bow.

There was no objection.

*Parliamentarian's Note:* A motion to accomplish this result was in order for two reasons. First, motions for the disposal of House bills with Senate amendments are in order after the stage of disagreement has been reached. Second, pursuant to Rule XX clause 1, the Speaker may always recognize a Member to offer such a motion if that motion is authorized by the committee having jurisdiction over the subject matter of the legislation.

*Early Example of Making in Order Appointment of Conferees on Senate Bill Anticipated During Adjournment*

**§ 2.23 The House granted unanimous consent that the House disagree to amendments of the Senate and agree to a conference, and that the Speaker appoint conferees on a bill expected from the Senate during adjournment.**

On Aug. 4, 1939,<sup>(18)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. Clifton A. Woodrum, of Virginia, to pose the following request:

The Clerk read as follows:

Mr. Woodrum of Virginia asks unanimous consent that the House disagree to the amendments of the Senate to the bill H.R. 7462, the third deficiency appropriation bill, and agree to the conference which may be asked by the Senate, and that the Speaker be authorized to appoint conferees on said bill, notwithstanding the adjournment of the House today.

THE SPEAKER: Is there objection? [After a pause.] The Chair hears none, and it is so ordered. . . .

In the event the Clerk receives the message tonight, under the unanimous-consent agreement, the Chair appoints the following conferees upon the part of the House: . . . .

The Journal entry for the following day, Aug. 5, 1939, records the message from the Senate:<sup>(19)</sup>

MESSAGE FROM THE SENATE

Pursuant to a special order agreed to on yesterday, the Clerk of the House received on that day a message from the Senate announcing that the Senate had passed with amendments, in which the concurrence of the House is requested, the bill (H.R. 7462) making

18. 84 CONG. REC. 11105, 76th Cong. 1st Sess.

19. H. Jour. p. 1083, 76th Cong. 1st Sess. (1939).

appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1939, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1939, and June 30, 1940, and for other purposes.

The message also announced that the Senate insists upon its amendments to the foregoing bill, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Adams, . . . and Mr. Townsend, conferees on the part of the Senate.

*Parliamentarian's Note:* On Aug. 5, 1939,<sup>(20)</sup> the Senate informed the House that it had passed H.R. 7462 without amendment. Hence, the authority granted by Mr. Woodrum was not utilized.

***“Deeming Resolutions”—Use in the House***

**§ 2.24 On rare occasions, the House has anticipated legislative actions of the Senate and acted in futuro, deeming certain actions to be taken by the House if and when a message is received showing that the anticipated legislative acts in fact occurred.**

20. 84 CONG. REC. 11181, 76th Cong. 1st Sess.

On Dec. 18, 1982,<sup>(1)</sup> as the House approached the end of the session, it was necessary to expedite the conclusion of the further continuing appropriation bill for fiscal year 1983. The measure was still under consideration in the Senate, but the House leadership thought it essential to begin the conference as quickly as possible.

APPOINTMENT OF CONFEREES ON HOUSE JOINT RESOLUTION 631, FURTHER CONTINUING APPROPRIATIONS, 1983

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed the joint resolution (H.J. Res. 631) with amendments, insisted upon its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. Whitten, Boland, Natcher, Smith of Iowa, Addabbo, Long of Maryland, Yates, Roybal, Bevill, Dicks, Ginn, Sabo, Dixon, Fazio, Conte, McDade,

1. 128 CONG. REC. 32137, 97th Cong. 2d Sess.

2. Thomas P. O'Neill, Jr. (Mass.).

Edwards of Alabama, Myers, Robinson, Coughlin, Kemp, and Lewis.

When the House reconvened on Dec. 19, 1982,<sup>(3)</sup> the Speaker laid before the House the following communication from the Clerk:

COMMUNICATION FROM THE CLERK  
OF THE HOUSE

THE SPEAKER: The Chair lays before the House the following communication:

WASHINGTON, D.C.,  
December 19, 1982.

Hon. THOMAS P. O'NEILL, Jr.,  
*The Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted in the Rules of the House of Representatives, the Clerk received, at 3:22 p.m. on Sunday, December 19, 1982, the following message from the Secretary of the Senate: That the Senate passed with amendments H.J. Res. 631 and requested a conference thereon.

In accordance with action taken by the House on Saturday, December 18, 1982, the Clerk has notified the Senate that the House disagreed to the amendments of the Senate to H.J. Res. 631 and agreed to a conference thereon.

With kind regards, I am,  
Sincerely,

EDMUND L. HENSHAW, Jr.,  
*Clerk, House of Representatives.*

*Parliamentarian's Note:* This procedure is contrary to the prin-

3. 128 CONG. REC. 32401, 97th Cong. 2d Sess.

ciple in Jefferson's Manual<sup>(4)</sup> that the House should not take notice of bills in the other body, until the actions are communicated to the House. However, procedural steps such as this are used when necessary under the modern practice.

***House Sometimes Anticipates Senate Action and Acts Before Formal Message Is Received***

§ 2.25 On occasion, the House anticipates Senate action, and, by unanimous consent, has established the conditions for a conference on a House bill with Senate amendment even before the Senate has acted and messaged its request for a conference to the House.

The unanimous-consent request of Sept. 26, 1984,<sup>(5)</sup> made by the chairman of the Committee on Appropriations, Mr. Jamie L. Whitten, of Mississippi, relating to House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and the Chair's anticipatory appointment of conferees are shown below.

4. *House Rules and Manual* § 308 (1997).

5. 130 CONG. REC. 27341, 98th Cong. 2d Sess.



MR. WHITTEN: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed the joint resolution (H.J. Res. 648) with amendments, insisted upon its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Mississippi? The Chair hears none and, without objection in this instance, the Chair appoints the following conferees: Messrs. Whitten, Boland, Natcher, Smith of Iowa, Addabbo, Long of Maryland, Yates, Roybal, Beville, Lehman of Florida, Dixon, Fazio, Hefner, Conte, McDade, Edwards of Alabama, Myers, Robinson, Coughlin, and Kemp.

There was no objection.

When the Senate finally messaged its action to the House on Oct. 5, 1984,<sup>(6)</sup> the Speaker made a further statement for the Record, confirming that the action which the House had anticipated had in fact occurred.

#### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed with

6. 130 CONG. REC. 30292, 98th Cong. 2d Sess.

amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 4966. An act to recognize the organization known as the Women's Army Corps Veterans' Association: . . .

The message also announced that the Senate insists upon its amendments to the joint resolution (H.J. Res. 648) "Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Hatfield, Mr. Stevens, Mr. Weicker, Mr. McClure, Mr. Garn, Mr. Cochran, Mr. Andrews, Mr. Abdnor, Mr. Kasten, Mr. D'Amato, Mr. Mattingly, Mr. Rudman, Mr. Specter, Mr. Domenici, Mr. Stennis, Mr. Byrd, Mr. Inouye, Mr. Hollings, Mr. Eagleton, Mr. Chiles, Mr. Johnston, Mr. Huddleston, Mr. Burdick, Mr. Leahy, Mr. DeConcini, and Mr. Bumpers to be the conferees on the part of the Senate.

#### ANNOUNCEMENT BY THE SPEAKER REGARDING HOUSE JOINT RESOLUTION 648, CONTINUING APPROPRIATIONS

THE SPEAKER:<sup>(7)</sup> Pursuant to the order of the House of September 26, 1984, pertaining to the joint resolution (H.J. Res. 648) making continuing appropriations for the fiscal year 1985, and for other purposes. The House is deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate

7. Thomas P. O'Neill, Jr. (Mass.).

and the Speaker to have appointed managers on the part of the House as appointed on that date.

***Putting Bill in Conference Before Senate Action***

§ 2.26 As adjournment of the 100th Congress, 1st Session approached, the House again utilized the device of “deeming” that a bill had been sent to conference, that the Speaker had appointed conferees without intervening motion, taking this action before the Senate had passed the House bill and requested a conference.

Following the granting of the request shown below,<sup>(8)</sup> the Speaker<sup>(9)</sup> proceeded to appoint conferees.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed the bill H.R. 3545, with an amendment, insisted upon its amendment, and requested a conference with the House, the House be deemed to have disagreed to the amendment of the Senate and agreed to the conference asked by the Senate, and that the Speaker be

deemed to have appointed conferees without intervening motion.

THE SPEAKER: Is there objection to the request of the gentleman from Washington? The Chair hears none, and appoints the following conferees: . . .

*Parliamentarian’s Note:* This was the fifth instance where the House had taken this unusual procedure, appointing conferees in advance of Senate action on the bill.<sup>(10)</sup>

***Deeming a Matter To Have Been Sent to Conference***

§ 2.27 By unanimous consent, the House agreed that upon receipt of a message from the Senate requesting a conference on a House-passed budget resolution, the House shall be considered to have disagreed with the Senate’s amendment, agreed to the conference requested by the Senate, that the Speaker be authorized to appoint conferees while preserving the option to the Minority Leader to offer a motion to instruct on the following day.

8. 133 CONG. REC. 35049, 100th Cong. 1st Sess., Dec. 11, 1987.

9. James C. Wright, Jr. (Tex.).

10. See, e.g., §§ 2.24, 2.25, supra.

On Oct. 18, 1990,<sup>(11)</sup> the chairman of the Committee on the Budget, anticipating that the Senate would amend the House-passed Budget Reconciliation Act (H.R. 5835) that evening, asked that the House, by unanimous consent, take the steps necessary to begin a conference with the Senate notwithstanding that the House might adjourn before the Senate completed action.

The request is as follows:

AUTHORIZING THE SPEAKER TO APPOINT CONFEREES AND PROVIDING FOR MOTION TO INSTRUCT ON H.R. 5835, OMNIBUS BUDGET RECONCILIATION ACT OF 1990

MR. [LEON E.] PANETTA [of California]: Mr. Speaker, I ask unanimous consent that upon receipt of a message from the Senate transmitting an amendment to H.R. 5835, insisting on the amendment, and requesting a conference thereon, the House shall be considered to have taken H.R. 5835 and the Senate amendment from the Speaker's table, disagreed with the Senate amendment, and agreed to the conference requested by the Senate; that the Speaker shall be authorized to appoint conferees in anticipation thereof and reserve the authority to modify the appointment at later times; and that the motion to instruct conferees otherwise in order at the time of their appointment shall instead be in

11. 136 CONG. REC. 31020, 31021, 101st Cong. 2d Sess.

order only if offered by the minority leader or his designee on the legislative day of Friday, October 19, 1990. . . .

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

### *Effect of Resolution on Motion To Instruct*

#### § 2.28 The adoption of a resolution asking for a conference does not inherently preclude a motion to instruct the House managers.

On Oct. 31, 1939,<sup>(13)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. Adolph J. Sabath, of Illinois.

MR. SABATH: Mr. Speaker, I call up House Resolution 320, which I send to the desk and ask to have read.

The Clerk read as follows:

H. RES. 320

*Resolved*, That immediately upon the adoption of this resolution, the joint resolution (H.J. Res. 306), the Neutrality Act of 1939, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table to the end that the amendments of the Senate be, and the same are hereby, disagreed to and a conference is requested with the Senate on the disagreeing votes of the two Houses.

12. Bob Traxler (Mich.).

13. 85 CONG. REC. 1092, 76th Cong. 2d Sess.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Illinois yield for a parliamentary inquiry?

MR. SABATH: Yes.

MR. RANKIN: To ask whether or not the resolution will shut off the right to offer a motion to instruct the conferees?

THE SPEAKER: It will not. The resolution now pending makes it in order to consider such matters as that propounded by the gentleman from Mississippi. If the resolution is adopted, it will in no way prohibit subsequent proceedings, or offering a motion to instruct the conferees, or amendments thereto.

***Form of Resolution Sending Bill to Conference, Precluding Motion To Instruct***

**§ 2.29 The House may pass a resolution taking from the Speaker's table a bill, disagreeing to the Senate amendments thereto, agreeing to a conference, and directing the Speaker to appoint conferees without intervening motion.**

On June 4, 1948,<sup>(14)</sup> Speaker Joseph W. Martin, Jr., of Massachusetts, recognized Mr. Leo E. Allen, of Illinois:

14. 94 CONG. REC. 7155, 7161, 80th Cong. 2d Sess.

Mr. Speaker, I call up House Resolution 624 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That, immediately upon the adoption of this resolution, the bill (H.R. 5883) making appropriations for the Department of Agriculture (exclusive of the Farm Credit Administration) for the fiscal year ending June 30, 1949, and for other purposes, with Senate amendments thereto be, and the same is hereby, taken from the Speaker's table; that the Senate amendments be, and they are hereby, disagreed to by the House; that the conference requested by the Senate on the disagreeing votes of the two Houses on the said bill be, and hereby is, agreed to by the House; and that the Speaker shall immediately appoint conferees without intervening motion. . . .

MR. ALLEN of Illinois: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 204, nays 140, not voting 87. . . .

So the resolution was agreed to. . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER: Pursuant to the resolution just passed, the Chair appoints the following conferees: Messrs. Dirksen, Plumley, H. Carl Andersen, Horan,

Phillips of California, Cannon, Shepard, and Whitten.<sup>(15)</sup>

**§ 2.30 The House has passed a special rule taking a House bill with Senate amendments from the Speaker's table, disagreeing to the amendments, agreeing to the conference requested, directing the Speaker to immediately appoint conferees without intervening motion, and giving specific authority to the conferees to agree or disagree to any Senate amendment.**

On Mar. 26, 1935,<sup>(16)</sup> Mr. John J. O'Connor, of New York, called up House Resolution 174 relating to House Joint Resolution 117, a relief measure.

MR. O'CONNOR: Mr. Speaker, I call up House Resolution 174, which I send to the desk and ask to have read.

The Clerk read as follows:

H. RES. 174

*Resolved*, That immediately upon the adoption of this resolution the joint resolution, House Joint Resolution 117, with Senate amendments thereto, be, and the same is hereby,

15. See also 96 CONG. REC. 14746, 81st Cong. 2d Sess., Sept. 13, 1950; and 92 CONG. REC. 9135, 79th Cong. 2d Sess., July 16, 1946.

16. 79 CONG. REC. 4465, 4474, 4475, 74th Cong. 1st Sess.

taken from the Speaker's table; that the Senate amendments be, and they are hereby, disagreed to by the House; that the conference requested by the Senate on the disagreeing votes of the two Houses on the said joint resolution be, and hereby is, agreed to by the House; that the Speaker shall immediately appoint managers on the part of the House without intervening motion; and that the managers on the part of the House are hereby given specific authority to agree, with or without amendment, or disagree to any amendment of the Senate to the said joint resolution notwithstanding the provisions of clause 2 of rule XX.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(17)</sup> The gentleman will state it.

MR. RANKIN: Of course, this rule is not subject to amendment at present; but if we should vote down the previous question on the rule, then the rule would be open to amendment, as I understand it.

THE SPEAKER: To any germane amendment, that is correct.

MR. O'CONNOR: Mr. Speaker, I yield 30 minutes to the gentleman from Pennsylvania [Mr. Ransley]. . . .

Mr. Speaker, I move the previous question.

THE SPEAKER: The question is on ordering the previous question. . . .

The question was taken; and there were—yeas 265, nays 108, answered "present" 1, not voting 57. . . .

So the previous question was ordered. . . .

17. Joseph W. Byrns (Tenn.).

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The question is on the adoption of the resolution. . . .

The House divided; and the tellers reported that there were—ayes 186, noes 78.

**§ 2.31 The House may adopt a resolution taking a bill with Senate amendment thereto from the Speaker's table, disagreeing to the Senate amendments, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.**

On Mar. 14, 1945,<sup>(19)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Adolph J. Sabath, of Illinois:

Mr. Speaker, I call up House Resolution 183 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 1752) to amend the Selective Training and Service Act of 1940, and for other purposes, with Senate amendments thereto be, and the same hereby is, taken from the Speaker's table to the end that all Senate amendments be, and the same are, disagreed to and a conference is requested with the Senate on the disagreeing votes of the two Houses thereon. . . .

18. Henry Ellenbogen (Pa.).

19. 91 CONG. REC. 2195, 2203, 79th Cong. 1st Sess.

THE SPEAKER: The question is on agreeing to the resolution.

The resolution was agreed to.

The Speaker appointed as conferees on the part of the House Messrs. May, Thomason, Brooks, Andrews of New York, and Short.<sup>(20)</sup>

***Use of Special Order To Send Multiply-referred Bill to Conference***

**§ 2.32 Where the authorization of four House committees was required to authorize the motion to go to conference under Rule XX clause 1, the Committee on Rules reported, and the House adopted, a special order providing that the House disagree with the Senate amendment and request a conference.**

On July 30, 1979,<sup>(1)</sup> the House agreed to a resolution sending H.R. 111, the Panama Canal Act of 1979, to conference, a unanimous-consent request to accomplish this step having been objected to. Following the adoption of the resolution, a motion was made to instruct the managers at the confer-

20. See also 104 CONG. REC. 18542, 85th Cong. 2d Sess., Aug. 19, 1958.

1. 125 CONG. REC. 21298, 21302, 21309, 96th Cong. 1st Sess.

ence to "adhere" to the House position set forth in certain sections of the House text.

PROVIDING FOR SENDING H.R. 111 TO  
CONFERENCE

MR. [LEO C.] ZEFERETTI [of New York]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 390 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

*Resolved*, That upon the adoption of this resolution the bill (H.R. 111) to enable the United States to maintain American security and interests respecting the Panama Canal, for the duration of the Panama Canal Treaty of 1977, with the Senate amendments thereto, is taken from the Speaker's table to the end that the House disagrees to the Senate amendments and requests a conference with the Senate thereof.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The gentleman from New York (Mr. Zeferetti) is recognized for 1 hour.

MR. ZEFERETTI: . . . [L]ast week on a motion to send House Resolution 111 to conference an objection was raised by an opponent of the measure. In this instance it would require the four committees who have jurisdiction over this bill to meet and vote on whether to direct the chairmen of these respective committees to offer a motion on the floor to request a conference. Unfortunately, such a procedure would require a significant amount of time and would

have delayed further consideration of this bill.

The Rules Committee has been informed by the chairman of the Merchant Marine and Fisheries Committee that it is imperative for the House and Senate conferees to begin deliberation immediately so as to effectively come to agreement at the earliest possible date. . . .

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. BAUMAN

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bauman moves that the conferees on the part of the House on the disagreeing votes of the two Houses on the bill H.R. 111, be instructed to adhere to the language of sections 101, 102, 103, 104, 105, 110 of chapter 1; sections 231, 232, 233, 234, 235, 236, and 250 of chapter 5; sections 371, 372, 373, and 374 of chapter 9 of H.R. 111 as passed by the House with respect to the matters considered therein.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is recognized for 1 hour. . . .

MR. BAUMAN: . . . Mr. Speaker, I move the previous question on the motion.

The previous question was ordered. . . .

So the motion was agreed to.

*Parliamentarian's Note:* While the House cannot "adhere and ask

2. George E. Brown, Jr. (Calif.).

a conference," since adherence is inconsistent with the request for a conference<sup>(3)</sup> and the willingness to negotiate, the form of the motion to instruct conferees did not render it subject to a point of order, and none was raised. See 8 Cannon's Precedents §§ 3230, 3237, which indicate that consistency in motions to instruct is for the House, not the Chair, to decide.

***Resolution Sending Two Senate Bills to Conference***

**§ 2.33 The House adopted a resolution reported from the Committee on Rules which had the effect of taking two Senate bills from the Speaker's table, amending and passing those bills, amending their titles, and sending those bills to conference.**

On Nov. 18, 1971,<sup>(4)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Richard Bolling, of Missouri, to call up the following resolution from the Committee on Rules:

3. See 5 Hinds' Precedents § 6303.

4. 117 CONG. REC. 42046, 42047, 42052, 92d Cong. 1st Sess.

H. RES. 710

*Resolved*, That immediately upon the adoption of [this] resolution and without the intervention of any point of order the bills of the Senate S. 2819 and S. 2820 are hereby taken from the Speaker's table; that said Senate bills are hereby amended by striking out all after the enacting clause of each such Senate bill and inserting in lieu thereof the text of the bill H.R. 9910 as passed by the House on August 3, 1971; that the said Senate bills as so amended shall be considered as read a third time and passed; that the title of each such Senate bill shall be amended by striking out such title and inserting in lieu thereof the title of H.R. 9910; that the House insists upon its amendments to each Senate bill and requests conferences with the Senate, and that the Speaker appoint managers on the part of the House to attend each such conference.

THE SPEAKER: The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour. . . .

MR. BOLLING: Mr. Speaker, some say that this rule is without precedent. I have not searched the precedents. I do not know. But I do know it is a very unusual rule, and I think it deserves explanation so that the Members who are interested will know what the rule does and what its significance is. . . .

What this does, in very frank terms, is to get before a conference the two Senate bills and the House-passed bill. Most of you will remember that the bill passed the House, went to the Senate, it was debated at length, amended and defeated. Then the Senate came back with two separate bills, which were



passed by very substantial majorities. . . .

Mr. Speaker, I urge strong support for sending the foreign aid matter to conference. That can be done by voting for this resolution.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the resolution. . . .

The question was taken; and there were—yeas 269, nays 115, not voting 46. . . .

*Parliamentarian's Note:* The House-passed bill, H.R. 9910, which provided authorizations for foreign military and economic aid, failed of passage in the Senate on Oct. 29, 1971. The Senate then passed S. 2820 (foreign military aid) on Nov. 10, and passed S. 2819 (foreign economic aid) on Nov. 11, 1971, and messaged both bills to the House. After consultations with the Speaker, the Chairmen of the Committees on Foreign Affairs and Rules, a resolution was drafted for consideration by the Committee on Rules to accomplish the result described above. It was the first instance wherein the Committee on Rules had reported a resolution providing for amendment and passage of two Senate bills. Points of order were waived against this procedure because the Senate bills

required consideration in Committee of the Whole under Rule XXIII clause 3.

### *Suspension of the Rules Asking for Conference*

§ 2.34 The House agreed, under suspension of the rules, to a resolution providing that the House insist upon its amendment to a Senate bill, ask a conference, and that the Speaker immediately appoint conferees.

On June 18, 1948,<sup>(5)</sup> Mr. Walter G. Andrews, of New York, was recognized by Speaker Joseph W. Martin, Jr., of Massachusetts, to make the following motion relating to S. 2655, the Selective Service Act of 1948:

MR. ANDREWS of New York: Mr. Speaker, I move to suspend the rules and pass the resolution, House Resolution 690, which I send to the desk.

THE SPEAKER: The Clerk will report the resolution:

The Clerk read as follows:

*Resolved,* That the House insist upon its amendment to S. 2655, ask a conference with the Senate on the disagreeing votes, and that the Speaker immediately appoint conferees. . . .

5. 94 CONG. REC. 8829, 8830, 80th Cong. 2d Sess.

THE SPEAKER: The question is, Shall the rules be suspended and the resolution passed?

The question was taken and, two-thirds having voted in favor thereof, the motion was agreed to.

THE SPEAKER: The Chair appoints the following conferees: Messrs. Andrews of New York, Short, Cole of New York, Bates of Massachusetts, Vinson, Brooks, and Kilday.

### *Suspension of Rules Agreeing to Conference*

§ 2.35 **The House suspended the rules and passed a resolution taking from the Speaker's table an appropriation bill with Senate amendments thereto, further insisted on disagreement to the Senate amendments, agreed to a further conference, and authorized the Speaker to immediately appoint conferees without intervening motion, subsequent to objection to a unanimous-consent request therefor.**

On July 27, 1956,<sup>(6)</sup> Mr. Clarence Cannon, of Missouri, sought unanimous consent to take from the Speaker's table H.R. 12350, with Senate amendments

6. 102 CONG. REC. 15157, 15158, 15169, 84th Cong. 2d Sess.

thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate. After objection was heard to this request, Speaker Sam Rayburn, of Texas, recognized Mr. Cannon to offer the following motion:

Mr. Speaker, I move to suspend the rules and pass the resolution (H. Res. 648).

The Clerk read as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 12350, with the Senate amendments thereto, be, and the same is hereby taken from the Speaker's table; that the House further insists on disagreement to the Senate amendments and agrees to the further conference requested by the Senate and the Speaker shall immediately appoint the conferees without intervening motion.

THE SPEAKER: Is a second demanded? [After a pause.] The Chair hears no request for a second.

The question is on suspending the rules and passing the resolution.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was passed.

THE SPEAKER: The Chair appoints as conferees on the part of the House: Messrs. Cannon, Kirwan, Gary, Taber, and Phillips.

### *Unanimous Consent To Send to Conference*

§ 2.36 **A House bill, with Senate amendments that require**

consideration in Committee of the Whole, may be taken from the Speaker's table, and sent to conference, by unanimous consent.

On Aug. 13, 1957,<sup>(7)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Kenneth B. Keating, of New York, to pose an inquiry concerning a civil rights bill.

MR. KEATING: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. KEATING: Specifically with regard to the bill H.R. 6127, which is now on the Speaker's desk, I wish the Speaker would advise whether a unanimous-consent request is necessary from some Member to dispose of it in some manner as a preliminary to its being sent to the Committee on Rules?

THE SPEAKER: It requires unanimous consent to take it up for consideration, send it to conference, or to agree to the amendments of the Senate.<sup>(8)</sup>

**§ 2.37 The House may agree to a unanimous-consent request sending an appropriation bill to conference and authorizing the House conferees to agree to Senate legislative**

7. 103 CONG. REC. 14568, 85th Cong. 1st Sess.

8. See also 106 CONG. REC. 18920, 86th Cong. 2d Sess., Sept. 1, 1960 (Calendar Day).

**amendments notwithstanding the restrictions contained in Rule XX clause 2.**

On June 3, 1936,<sup>(9)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 12624, the first deficiency appropriation bill, together with the Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate; also that the managers on the part of the House, notwithstanding the provisions of clause 2, rule XX, be authorized to agree to any Senate amendment with or without amendment, except the Senate amendment having to do with the Florida ship canal and the Senate amendment providing \$300,000,000 for public-works projects.

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

There was no objection.

The Chair appointed the following conferees: Mr. Buchanan, Mr. Taylor of Colorado, Mr. Oliver, Mr. Woodrum, Mr. Boyland, Mr. Cannon of Missouri, Mr. Taber, Mr. Bacon, and Mr. Thurston.

9. 80 CONG. REC. 8822, 74th Cong. 2d Sess.

***Objection to Unanimous-consent Request; Referral of Bill***

§ 2.38 Where objection is made to a unanimous-consent request to take a House bill from the Speaker's table, disagree to the Senate amendments, and ask for a conference, the Speaker in his discretion may refer the bill to the committee which reported it or hold it on the Speaker's table subject to such disposition as the House may order.

On Mar. 25, 1935,<sup>(10)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table House Joint Resolution 117, making appropriations for relief, disagree to the Senate amendments, and agree to the conference asked for by the Senate.

THE SPEAKER: The gentleman from Texas asks unanimous consent to take from the Speaker's table House Joint Resolution 117, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate. Is there objection?

10. 79 CONG. REC. 4369, 74th Cong. 1st Sess.

Mr. [MARTIN] DIES [Jr., of Texas]: Mr. Speaker, I reserve the right to object.

Mr. [LUTHER A.] JOHNSON of Texas: Mr. Speaker, I object.

Mr. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I desire to submit a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

Mr. RANKIN: Objection has just been made to sending the public-works bill to conference by unanimous consent. What course does it take now? Does it go to the committee automatically?

THE SPEAKER: It could be referred to the committee or it can lie on the Speaker's table.

§ 2.39 Objection having been made to a unanimous-consent request to take from the Speaker's table the foreign aid appropriation bill with Senate amendments thereto, disagree to the amendments, and agree to a conference, the Committee on Rules met immediately and reported out a resolution to accomplish such action; the rule was considered by a two-thirds vote and adopted that day.

On Aug. 9, 1949,<sup>(11)</sup> Speaker Sam Rayburn, of Texas, recog-

11. 95 CONG. REC. 11139, 11140, 81st Cong. 1st Sess.

nized Mr. J. Vaughan Gary, of Virginia:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4830) making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

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

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, I object. . . .

MR. [JOHN E.] LYLE [Jr., of Texas], from the Committee on Rules, reported the following privileged resolution (H. Res. 320, Rept. No. 1241), which was referred to the House Calendar and ordered to be printed:

*Resolved*, That upon the adoption of this resolution the bill (H.R. 4830) making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendments be, and they are hereby, disagreed to and that the conference requested by the Senate on the disagreeing votes of the two Houses be, and the same is, hereby agreed to.

MR. LYLE: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 320 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

*Resolved*, That upon the adoption of this resolution the bill (H.R. 4830)

making appropriations for foreign aid for the fiscal year ending June 30, 1950, and for other purposes, with the Senate amendments thereto be, and the same is hereby, taken from the Speaker's table to the end that the Senate amendments be, and they are hereby, disagreed to and that the conference requested by the Senate on the disagreeing votes of the two Houses be, and the same is hereby, agreed to.

THE SPEAKER: The question is, Will the House now consider the resolution?

The question was taken; and on a division (demanded by Mr. Marcantonio) there were—ayes 298, noes 4.

So (two-thirds having voted in favor thereof) the House agreed to consider the resolution.<sup>(12)</sup>

The resolution was agreed to, and a motion to reconsider laid on the table.<sup>(13)</sup>

### ***Speaker's Discretion Prevents Use of Motion for Dilatory Purposes***

12. A two-thirds vote was required to consider a resolution reported from the Committee on Rules on the same day on which it was reported to the House. Rule XI clause 23, *House Rules and Manual* § 729 (1973). The language, now contained in Rule XI clause 21(6), *House Rules and Manual* § 715 (1997), was amended in the 94th Congress to "permit the immediate consideration of a resolution reported from the Committee on Rules waiving this layover requirement."

13. 95 CONG. REC. 11146, 81st Cong. 1st Sess., Aug. 9, 1949.

**§ 2.40 The requirements of Rule XX clause 1—that the Speaker has discretionary authority to recognize for motions to send a bill to conference and that each such motion must be authorized by the committee having jurisdiction over the bill—prevent the use of that motion as a dilatory tactic.**

On Oct. 3, 1972,<sup>(14)</sup> Mr. Carl D. Perkins, of Kentucky, offered a motion to take from the Speaker's table H.R. 7130, to amend the Fair Labor Standards Act of 1938, with Senate amendments thereto, disagree to those amendments, and request a conference with the Senate thereon. A similar motion by Mr. Perkins had been defeated in the House on Aug. 1, 1972,<sup>(15)</sup> and he had subsequently obtained authorization from the Committee on Education and Labor to offer the motion again. Mr. John B. Anderson, of Illinois, raised a point of order.

MR. ANDERSON of Illinois: Mr. Speaker, I make a point of order that the motion of the gentleman from Kentucky is contrary to the provisions of clause 1 of rule XX, disregards the es-

14. 118 CONG. REC. 33502, 33503, 92d Cong. 2d Sess.

15. *Id.* at pp. 26153, 26156.

tablished precedents of the House and is not in order, and I request an opportunity to be heard on the point of order.

THE SPEAKER:<sup>(16)</sup> The gentleman may be heard on his point of order.

MR. ANDERSON of Illinois: . . . The gentleman from Kentucky made the motion provided for in clause 1 of rule XX and the House worked its will in refusing to send the bill to conference. Rule XX does not authorize a committee chairman to make repetitive motions on a question already determined by the House in the vain hope that he will someday wear down the patience of the Members and be successful. How many times will the gentleman from Kentucky be allowed to ride a dead horse?

Mr. Speaker, it is a firmly settled canon of general parliamentary law, including the rules and precedents of this body, that once motions have been made, and have failed, similar motions cannot be made during the same stage of proceedings. To permit otherwise would be to obviate any semblance of orderly procedure. Rule XX is no exception; it does not grant a license to committee chairmen to make a series of motions, hoping sooner or later they will be successful. Rather, the rule clearly provides for one opportunity to have the question considered by the House, and the will of the House must prevail. It would be a travesty upon this body to allow repetitive motions of this sort once the House has decided the question. . . .

THE SPEAKER: The Chair is ready to rule. The gentleman from Kentucky

16. Carl Albert (Okla.).

has moved, pursuant to clause 1 of rule XX, that the House disagree with the amendments of the Senate to the bill H.R. 7130 and request a conference with the Senate. The gentleman states that he has been authorized to make this motion by the Committee on Education and Labor by its action of August 8, 1972.

The gentleman from Illinois (Mr. Anderson) has raised a point of order against this motion on the ground that since the House has once rejected such a motion, it cannot be repeated. . . .

In the present situation, the Chair notes that the stage of disagreement has not been reached. Any action on the Senate amendments to the House bill—that is to take the bill from the Speaker's table and to concur, to concur with amendment, to disagree—would have to be by unanimous consent.

The only motion which is in order under the present situation under the rules of the House is to disagree and ask a conference.

It might be suggested that to permit repeated use of the motion under Rule XX would be to invite its use as a dilatory motion. That does not appear to the Chair to be a real possibility, since the motion can be made only by direction of the legislative committee having jurisdiction over the measure and can be called up only if the Speaker in his discretion recognizes for that purpose. Both of these restrictions would prevent its employment as a dilatory tactic.

Finally, the Chair would like to point out the precise language of the rule, which is that the motion "shall always be in order, if the Speaker, in his discretion, recognizes for that purpose and

if the motion is made by direction of the committee having jurisdiction."

For all these reasons, the Chair holds that the motion is in order and overrules the point of order made by the gentleman from Illinois (Mr. Anderson).

### § 3. When Motion Is in Order

#### *Possession of Official Papers*

#### § 3.1 A request to agree to a conference on a bill and appoint conferees is not in order until the bill and papers are received from the Senate.

On June 18, 1947,<sup>(17)</sup> Speaker Joseph W. Martin, Jr., of Massachusetts, recognized Mr. Walter G. Andrews, of New York, and the following proceedings occurred:

MR. ANDREWS of New York: Mr. Speaker, on Tuesday the House passed the bill H.R. 3303, the so-called War Department enlistment bill. The Senate passed Senate 1213, striking out all after the enacting clause in the House bill and substituting the Senate provisions. By motion of the Senate today, they request a conference. That is being messaged over to the House. I move that we agree to the conference and that the Speaker appoint conferees.

17. 93 CONG. REC. 7252, 80th Cong. 1st Sess.

THE SPEAKER: The Chair would inform the gentleman from New York that the papers have not yet arrived, and the request to agree to the conference and appoint conferees is not in order at this time.

### *Stage of Disagreement*

**§ 3.2 Rule XX clause 1 (authorizing a single motion to disagree to Senate amendments to a House bill on the Speaker's table and to request or agree to a conference if that motion is authorized by the committee having jurisdiction of the bill and if the Speaker recognizes for that purpose) was held to supersede those precedents established prior to the adoption of that rule which precluded the motion to go to conference until the stage of disagreement had been reached.**

On Aug. 1, 1972,<sup>(18)</sup> Speaker Carl Albert, of Oklahoma, recognized Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor:

Mr. Speaker, upon direction of the Committee on Education and Labor, I move to take from the Speaker's desk

18. 118 CONG. REC. 26153, 26156, 92d Cong. 2d Sess.

the bill (H.R. 7130) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage under that act, to extend its coverage, to establish procedures to relieve domestic industries and workers injured by increased imports from low-wage areas, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

MR. [JOHN N.] ERLNBORN [of Illinois]: Mr. Speaker, I make a point of order against the motion.

THE SPEAKER: The gentleman will state his point of order.

MR. ERLNBORN: Mr. Speaker, the motion to request a conference is not in order until a motion to disagree to the Senate amendments has been made and disposed of. I should like to be heard on the point of order.

THE SPEAKER: The Chair will hear the gentleman on the point of order.

MR. ERLNBORN: Mr. Speaker, Jefferson's Manual, section 535, on page 265, states:

The motion to ask a conference is distinct from motions to agree or disagree to amendments of the other House and is not in order until the House has disposed of the preferential motions to agree, recede, or insist. . . .

THE SPEAKER: The rule which the gentleman is talking about has been superseded by clause 1 of Rule XX which provides a procedure for sending bills to conference. The Chair overrules the point of order.

The question is on the motion of the gentleman from Kentucky. . . .



The question was taken; and there were—yeas 190, nays 198, not voting 44.

### *After Conference Report Ruled Out*

§ 3.3 Where a point of order against a conference report is sustained, the amendments of the Senate are again before the House, and a motion to send the bill and amendments to conference is again in order.

On Oct. 4, 1962,<sup>(19)</sup> after Speaker Pro Tempore Carl Albert, of Oklahoma, sustained a point of order against a conference report on H.R. 7927, a bill to adjust postal rates, Mr. Tom Murray, of Tennessee, offered a motion to send the bill and amendments in disagreement to conference again.

MR. MURRAY: Mr. Speaker, I move that the House insist upon its disagreement with the amendments of the Senate and request a conference with the Senate.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Tennessee.

The motion was agreed to.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the fol-

lowing conferees: Messrs. Murray, Morrison, and Corbett.

There was no objection.

### *Where Preferential Motions Are Pending*

§ 3.4 A motion to request a further conference on an amendment reported in disagreement by conferees is not in order so long as preferential motions to dispose of amendments in disagreement are pending.

On Oct. 17, 1967,<sup>(20)</sup> the House was considering the amendment in disagreement reported back from a conference on H.R. 11476, Department of Transportation appropriations for fiscal 1968. Mr. Edward P. Boland, of Massachusetts, moved that the House recede from its disagreement to Senate amendment No. 13 and concur therein. Mr. Sidney R. Yates, of Illinois, posed the following parliamentary inquiry:

This is a motion to recede and concur in the Senate amendment. What would be the effect of voting down such a motion? Will it have the effect of sending the conferees back to conference for the purpose of ironing out this particular item again?

19. 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.

20. 113 CONG. REC. 29044, 29048, 29049, 90th Cong. 1st Sess.

THE SPEAKER:<sup>(1)</sup> The amendment would still be before the House subject to another form of a motion.

MR. YATES: What would be the nature of that motion, Mr. Speaker?

THE SPEAKER: The motion could be that the House insist on its disagreement.

MR. YATES: I thank the Speaker.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, will the gentleman yield?

MR. BOLAND: I yield to the gentleman.

MR. HALL: If the gentleman from Massachusetts' motion that the House recede from its disagreement to the amendment of the Senate No. 13 and concur therein was voted down, then another motion would be in order, would it not, I would ask as a parliamentary inquiry, to instruct the conferees to maintain the position of the House or that the House insist upon its disagreement with the other body?

THE SPEAKER: The Chair will state in response to the parliamentary inquiry propounded to the Chair by the distinguished gentleman from Missouri that if the House should insist upon its disagreement, then the matter could go back to conference. . . .

MR. YATES: Mr. Speaker, if the gentleman from Massachusetts will yield further for a parliamentary inquiry, is it in order, in the event the motion to recede and concur is voted down?

THE SPEAKER: After the House has taken some specific action with relation to the amendment of the other body,

the Chair assumes that a further conference could be requested.

### *Same Day as Receipt of Senate Message*

**§ 3.5 A motion to disagree to a Senate amendment to a House joint resolution and request a conference with the Senate is in order under Rule XX clause 1 on the same day the joint resolution and Senate amendment are messaged back from the Senate, if the Speaker in his discretion recognizes for that purpose and if the motion is authorized by the committee which had reported the measure to the House.**

On Nov. 16, 1971,<sup>(2)</sup> Mr. George H. Mahon, of Texas, made a motion to take from the Speaker's table House Joint Resolution 946, making continuing appropriations for the fiscal year 1972, with a Senate amendment thereto, and request a conference with the Senate. Mr. H. R. Gross, of Iowa, raised a parliamentary inquiry:

Mr. Speaker, my parliamentary inquiry is this:

1. John W. McCormack (Mass.).

2. 117 CONG. REC. 41555, 92d Cong. 1st Sess.

Can this kind of a motion be made on the same day the message is received from the Senate?

THE SPEAKER:<sup>(3)</sup> The Chair will state to the gentleman that the answer to his question is "Yes; it can be."

## § 4. Who May Request Conference

### *Committee Chairman*

§ 4.1 The Speaker, in response to a parliamentary inquiry, indicated that only the chairman of the committee having jurisdiction of the subject matter of a bill would be recognized to ask unanimous consent to take it from the Speaker's table, disagree to any Senate amendment, and ask for a conference.

On Sept. 1, 1960,<sup>(4)</sup> the Senate messaged to the House H.R. 13062, a bill to amend the Sugar Act of 1948, as amended by the Senate. Mr. Charles A. Halleck, of Indiana, raised the following parliamentary inquiry:

3. Carl Albert (Okla.).

4. 106 CONG. REC. 18919, 18920, 86th Cong. 2d Sess. Compare § 4.7, *infra*.

Would it be in order for a unanimous-consent request to be made to send the bill that has just come from the Senate to conference?

THE SPEAKER:<sup>(5)</sup> That would be up to the gentleman from North Carolina [Mr. Cooley].<sup>(6)</sup>

MR. HALLECK: In other words, if he submitted a unanimous-consent request to send the matter to conference, that could be considered subject to an objection?

THE SPEAKER: It could be.

§ 4.2 The chairman of the Committee on Post Office and Civil Service submitted a resolution to take a House bill with Senate amendments thereto from the Speaker's table, disagree to Senate amendments and request a conference with the Senate thereon, and the Speaker recognized him to move to suspend the rules and agree thereto.

On Oct. 1, 1962,<sup>(7)</sup> Speaker John W. McCormack, of Massachusetts, recognized Tom Murray, of Tennessee, Chairman of the Committee on Post Office and Civil Serv-

5. Sam Rayburn (Tex.).

6. Harold D. Cooley was chairman of the Committee on Agriculture during the 86th Congress.

7. 108 CONG. REC. 21528, 87th Cong. 2d Sess.

ice, for the purpose of offering the following resolution in connection with H.R. 7927, the Postal Service and Federal Employees Salary Act of 1962:

MR. MURRAY: Mr. Speaker, I move to suspend the rules and agree to House Resolution 818.

The Clerk read as follows:

*Resolved*, That immediately upon the adoption of this resolution the bill H.R. 7927, with the Senate amendment thereto, be, and the same hereby is, taken from the Speaker's table, to the end that the Senate amendment be, and the same hereby is, disagreed to and a conference is requested with the Senate upon the disagreeing votes of the two Houses thereon.

**§ 4.3 Objection having been raised to a unanimous-consent request to send a bill or joint resolution to conference, the chairman of a House committee, acting by direction of that committee, may move to send the bill to conference pursuant to Rule XX clause 1.**

On Oct. 19, 1971,<sup>(8)</sup> Speaker Carl Albert, of Oklahoma, recognized F. Edward Hébert, of Louisiana, Chairman of the Committee on Armed Services, to make the following request:

8. 117 CONG. REC. 36832-35, 92d Cong. 1st Sess.

Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes, together with the Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.

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

The gentleman from Michigan objects?

MR. [DONALD W.] RIEGLE [Jr., of Michigan]: Yes, I object.

THE SPEAKER: Objection is heard.

MR. HÉBERT: Mr. Speaker, by direction of the Committee on Armed Services, I move to take from the Speaker's table the bill (H.R. 8687) to authorize appropriations during the fiscal year 1972 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes, together with Senate amendments, thereto disagree to the Senate amendments, and agree to the conference request by the Senate.

THE SPEAKER: The gentleman from Louisiana is recognized for 1 hour on his motion.

MR. HÉBERT: . . . Mr. Speaker, I move the previous question on the motion. . . .

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

The motion was agreed to.<sup>(9)</sup>

**§ 4.4 Objection having been made to a unanimous-consent request to take a House bill with Senate amendments from the Speaker's table and agree to a conference, the Committee on Appropriations met and authorized its chairman to move to send the bill to conference pursuant to Rule XX clause 1.**

On June 5, 1973,<sup>(10)</sup> George H. Mahon, of Texas, Chairman of the Committee on Appropriations, was recognized by the Speaker, Carl Albert, of Oklahoma.

MR. MAHON: Mr. Speaker, pursuant to the provisions of clause 1 of rule XX and by the authority of the Committee on Appropriations, I move to take from

9. See also 119 CONG. REC. 18116, 93d Cong. 1st Sess., June 5, 1973; and 117 CONG. REC. 41555, 92d Cong. 1st Sess., Nov. 16, 1971.

10. 119 CONG. REC. 18116, 93d Cong. 1st Sess.

the Speaker's table the bill (H.R. 7447) making further supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

Mr. Speaker, the Committee on Appropriations met this morning and authorized me to make a motion to send the second supplemental appropriation bill, 1973, H.R. 7447, to conference. Insofar as I know, there is no objection to sending the bill to conference. We would hope to meet this afternoon and begin deliberations. . . .

THE SPEAKER: Without objection, the previous question is ordered on the motion.

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.<sup>(11)</sup>

**§ 4.5 The chairman of the Committee on Agriculture, pursuant to Rule XX clause 1 and by the direction of his committee, moved to take a House bill with the Senate amendment from the Speaker's table and to send the bill to conference.**

11. See also 117 CONG. REC. 41555, 92d Cong. 1st Sess., Nov. 16, 1971; and 117 CONG. REC. 36832-35, 92d Cong. 1st Sess., Oct. 19, 1971.

On Mar. 28, 1973,<sup>(12)</sup> Speaker Carl Albert, of Oklahoma, recognized William R. Poage, Chairman of the Committee on Agriculture.

MR. POAGE: Mr. Speaker, pursuant to clause 1, rule XX, by direction of the Committee on Agriculture, I move to take from the Speaker's table the bill (H.R. 2107) to require the Secretary of Agriculture to carry out a rural environmental assistance program, with the Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Poage moves to take from the Speaker's table the bill H.R. 2107, with the Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Poage).

The motion was agreed to.

A motion to reconsider was laid on the table.<sup>(13)</sup>

### ***Authorizing Motion To Go to Conference***

#### **§ 4.6 A motion to send a bill to conference, if to be considered privileged under Rule**

12. 119 CONG. REC. 10032-34, 93d Cong. 1st Sess.

13. See also 117 CONG. REC. 22406-13, 92d Cong. 1st Sess., June 28, 1971.

**XX clause 1, must be authorized by the committees of jurisdiction; and where more than one committee has reported on the measure, each must authorize the motion.**

The form of the motion used to send to conference a bill reported from two House committees, cited from the proceedings of Sept. 26, 1978,<sup>(14)</sup> is carried here. Other examples are carried in section 2 of this chapter.

APPOINTMENT OF CONFEREES ON S. 1566, FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, pursuant to clause 1 of rule XX, and at the direction of the Permanent Select Committee on Intelligence and the Committee on the Judiciary, I move to take from the Speaker's table the Senate bill (S. 1566), the Foreign Intelligence Surveillance Act of 1978, with House amendments thereto, insist on disagreement, and request a conference with the Senate thereon.

The Clerk read the title of the Senate bill.

THE SPEAKER:<sup>(15)</sup> The question is on the motion offered by the gentleman from Massachusetts (Mr. Boland).

The motion was agreed to.

14. 124 CONG. REC. 31623, 95th Cong. 2d Sess.

15. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: The Chair appoints the following conferees: Messrs. Boland, Murphy of Illinois, Mazzoli, Rodino, Kastenmeier, Bob Wilson, McClory and, as an additional conferee, Mr. Ertel, but only for the purpose of considering differences with the Senate which relate to elimination of language providing for special courts and providing that U.S. district courts shall have jurisdiction over orders for surveillance.

*Parliamentarian's Note:* This was a case of first impression regarding the authorization required to send a multiply-referred bill to conference. The motion to disagree or insist and request or agree to a conference was added to Rule XX clause 1, in 1965. The Speaker's authority to refer a bill to each committee having jurisdiction was added to Rule X clause 5, in 1974.

### *Committee Member*

**§ 4.7 A subcommittee chairman of the Committee on Appropriations, acting by the direction of that committee and pursuant to Rule XX clause 1, moved to take a House bill, reported by the subcommittee which he chaired, with the Senate amendments thereto, from the Speaker's table, disagree to the amendments, and**

**agree to the conference requested by the Senate.**

On Mar. 3, 1970,<sup>(16)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Daniel J. Flood, of Pennsylvania, to offer the following motion:

Mr. Speaker, pursuant to Rule XX clause 1 of the Rules of the House, and by the direction of the Committee on Appropriations, I move to take from the Speaker's table the bill—H.R. 15931—making appropriations for the Departments of Labor and Health, Education, and Welfare and related agencies, for the fiscal year ending June 30, 1970, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.<sup>(17)</sup>

16. 116 CONG. REC. 5722, 5723, 91st Cong. 2d Sess.

17. See also 117 CONG. REC. 27305-07, 92d Cong. 1st Sess., July 27, 1971.

## B. CONFERENCE MANAGERS OR CONFEREES

### § 5. In General

Managers are appointed by the Speaker<sup>(1)</sup> and he has discretion as to their identity and number,<sup>(2)</sup> although he usually consults with the chairman of the committee which considered the matter being sent to conference before exercising this discretion.<sup>(3)</sup> The Speaker may appoint a manager to fill a vacancy at a conference<sup>(4)</sup> and, since a change in House rules in 1993, he has the authority to add or remove conferees after his initial appointment.<sup>(5)</sup> Under the earlier practice, the consent of the House was required to appoint or change conferees after the original appointment.<sup>(6)</sup> A Speaker Pro Tempore may appoint managers only pursuant to the consent of the

1. Rule X clause 6(f), *House Rules and Manual* § 701e (1997). The reader is urged to refer to future supplements to this volume as they are published for changes in the procedures applicable to managers.
2. §§ 6.3, 6.4, *infra*.
3. §§ 6.1, 6.2, *infra*.
4. §§ 8.2–8.6, *infra*.
5. See 139 CONG. REC. 49, 103d Cong. 1st Sess., Jan. 5, 1993 (H. Res. 5); Rule XI clause 6(f), *House Rules and Manual* (1997).
6. §§ 6.12, 8.1, *infra*.

House.<sup>(7)</sup> The election of a Speaker Pro Tempore bestows the appointment power as well as certain other prerogatives that attach to the Speaker.<sup>(8)</sup>

Managers on the part of each House constitute in effect two separate committees, each of which acts by majority vote.<sup>(9)</sup>

Managers may be excused from service on a conference committee only by the consent of the House.<sup>(10)</sup>

When either House makes a change in the identity or number of its managers it so notifies the other House by message.<sup>(11)</sup>

### *Informal Meetings Prior to Appointment*

**§ 5.1 Where a conference report before the House contained the signature of all the managers, the Speaker held that the report was**

7. §§ 6.15, 6.16, 8.11, *infra*.
8. See *House Rules and Manual* § 634a (1997).
9. See 5 Hinds' Precedents § 6334; and *House Rules and Manual* § 536 (1973).
10. §§ 8.1, 8.5, *infra*.
11. §§ 8.16, 8.17, *infra*.



**properly before the House notwithstanding a point of order that the managers had met informally prior to their appointment.**

On Aug. 9, 1954,<sup>(12)</sup> Mr. John M. Vorys, of Ohio, called up the conference report on H.R. 9678, a foreign aid measure. Mr. H. R. Gross, of Iowa, made a point of order against the conference report, stating that certain Members of the House had entered into a conference before the Chair had appointed conferees on the part of the House. Mr. Gross explained:

... Mr. Speaker, I make the point of order that even before the papers were received from the other body, requesting a conference on the part of the House, before authority was given by the House for a conference, and well before the formal appointment of conferees on the part of the House, certain Members of the House of Representatives had apparently designated themselves as conferees and entered into agreement on one or more substantial issues in disagreement in connection with the bill H.R. 9678; that such agreement or agreements were entered into even before the House of Representatives formally and officially convened at 12 o'clock noon on August 4, 1954, and gave assent to a conference. . . .

12. 100 CONG. REC. 13787, 13802, 83d Cong. 2d Sess.

Mr. Speaker, I can find no precedent which permits Members of the House to enter into a conference without first obtaining authority from the House for so doing. The weight of all precedents governs from the initial authority for a conference, the appointment of conferees and their conduct flow therefrom.

Speaker Joseph W. Martin, Jr., of Massachusetts, made the following ruling:

The Chair wishes to state on the gentleman's point of order that he has no cognizance of informal meetings that may have been held. As a matter of fact, he would not know what Members were doing if they met informally in a group to discuss any specific subject. All the Chair can do is to take the report that is here. All 10 signatures are on the conference report. The conference report is here in a legal manner.

### *Closing a Conference, Vote Required*

**§ 5.2 In the 94th Congress, the House adopted a new rule requiring managers to vote, by a roll call, to close a conference. In the 95th Congress, the rule was modified to require a roll call vote in the full House to close a conference.**

Conferences on matters in disagreement between the House and Senate were, until relatively recently, held behind closed doors.

Occasionally, Members of the House were admitted to comment on the matters before the managers.<sup>(13)</sup>

In the 94th Congress, the House adopted a new rule providing that conferences should be held in open session unless the managers of either the House or the Senate determined by a roll call vote to close the meeting.<sup>(14)</sup>

The Senate, later in the same year,<sup>(15)</sup> adopted a rule similar to that adopted by the House, but normally follows the lead of the House managers and of the House when meeting in conference.

13. See 5 Cannon's Precedents § 6254 for the traditional method of holding a conference meeting.

14. 121 CONG. REC. 20-32, 94th Cong. 1st Sess., Jan. 14, 1975 (H. Res. 5).

15. The Senate rule was incorporated into its Rule XXVIII clause 3, on Nov. 5, 1975. 121 CONG. REC. 35203-209, 94th Cong. 1st Sess. The rule remains part of current Senate Rule XXVIII clause 6 and reads as follows:

"6. Each conference committee between the Senate and the House of Representatives shall be open to the public except when managers of either the Senate or the House of Representatives in open session determine by a rollcall vote of a majority of those managers present, that all or part of the remainder of the meeting on the day of the vote shall be closed to the public."

Rule XXVIII clause 6, was again amended in the 95th Congress to require the vote to close a conference meeting to occur in the full House of Representatives by roll call.<sup>(16)</sup>

In the 94th Congress, Majority Leader Thomas P. O'Neill, Jr., of Massachusetts, called up the resolution establishing rules for the House.

MR. O'NEILL: Mr. Speaker, I offer a resolution (H. Res. 5) and ask for its immediate consideration.

The Clerk read the resolution as follows:

#### H. RES. 5

*Resolved*, That the Rules of the House of Representatives of the Ninety-third Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, the Legislative Reorganization Act of 1970, as amended, and the Congressional Budget and Impoundment Control Act of 1974, be, and they are hereby adopted as the Rules of the House of Representatives of the Ninety-fourth Congress, with the following amendments as part thereof, to wit: . . .

(26) In Rule XXVIII, add the following new clause:

#### "6. Open Conference Meetings

"Each conference committee meeting between the House and Senate shall be open to the public except when the managers of either the House or Senate, in open session, determine by a rollcall vote of a majority of those managers present, that

16. 123 CONG. REC. 53-70, 95th Cong. 1st Sess., Jan. 4, 1977 (H. Res. 5).

all or part of the remainder of the meeting on the day of the vote shall be closed to the public: Provided that this provision shall not become effective until a similar rule is adopted by the Senate." . . .

THE SPEAKER:<sup>(17)</sup> The question is on the resolution.

MR. [BILL] FRENZEL [of Minnesota]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 259, nays 150, not voting 22. . . .

In the 95th Congress, on Jan. 4, 1977,<sup>(18)</sup> Rule XXVIII was modified as a result of the following proceedings:

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I offer a privileged resolution (H. Res. 5) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 5

*Resolved*, That the Rules of the House of Representatives of the Ninety-fourth Congress, including all applicable provisions of law which constituted the Rules of the House at the end of the Ninety-fourth Congress, be, and they are hereby, adopted as the Rules of the House of Representatives of the Ninety-fifth Congress, with the following amendments included therein as part thereof, to wit: . . .

17. Carl Albert (Okla.).

18. 123 CONG. REC. 53, 55, 70, 95th Cong. 1st Sess.

(37) In Rule XXVIII, clause 6 is amended to read as follows:

"6. (a) Each conference committee meeting between the House and Senate shall be open to the public except when the House, in open session, has determined by a rollcall vote of a majority of those Members voting that all or part of the meeting shall be closed to the public.

"(b)(1) After the reading of the report and before the reading of the joint statement, a point of order may be made that the committee of conference making the report to the House has failed to comply with paragraph (a) of this clause.

"(2) If such point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted upon its amendment(s) or upon disagreement to the amendment(s) of the Senate, as the case may be, and to have requested a further conference with the Senate, and the Speaker shall be authorized to appoint new conferees without intervening motion." . . .

THE SPEAKER:<sup>(19)</sup> The question is on the resolution.

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 256, nays 142, not voting 35. . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

19. Carl Albert (Okla.).

***Closing a Conference Meeting***

**§ 5.3 A motion to close a conference meeting to the public, but permitting Members of Congress to attend, is privileged and has been adopted under Rule XXVIII clause 6(a).**

On May 23, 1977,<sup>(20)</sup> the newly adopted rule governing the procedure for closing a conference was applied for the first time in the House.

After the Speaker had appointed the conferees on the Department of Defense authorization bill, fiscal 1978, Mr. Charles E. Bennett, of Florida, offered a motion to close the conference to the public. A series of inquiries followed, the motion was eventually withdrawn and a new motion offered to permit Members to attend sessions of the conference.

APPOINTMENT OF CONFEREES ON H.R. 5970, DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1978

MR. BENNETT: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5970) to authorize appropriations during the fiscal year 1978, for procurement of

aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, and to authorize the military training student loads, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(1)</sup> Is there objection to the request of the gentleman from Florida? The Chair hears none, and appoints the following conferees: Messrs. Price, Bennett, Stratton, Ichord, Nedzi, Charles H. Wilson of California, Leggett, White, Nichols, Bob Wilson, Dickinson, Whitehurst, and Spence.

MOTION OFFERED BY MR. BENNETT

MR. BENNETT: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bennett moves, pursuant to rule XXVIII 6(a) of the House rules that the conference committee meetings between the House and the Senate on H.R. 5970 the fiscal year 1978 military authorization bill be closed to the public at such times as classified national security information is under consideration.

THE SPEAKER: The gentleman from Florida (Mr. Bennett) is recognized for 1 hour.

20. 123 CONG. REC. 15880-84, 95th Cong. 1st Sess.

1. Thomas P. O'Neill, Jr. (Mass.).

MR. BENNETT: Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. Bob Wilson), the ranking minority member on the committee, pending which I yield myself such time as I may consume; at the conclusion of which I will be happy to yield to any Member who wishes to be heard.

Mr. Speaker, in discussing the military authorization bill in conference, there are times when it is impossible to consider many of the individual items without closing the session because of the security classification which understandably must be attached to many of the items under consideration. . . .

MR. [THOMAS J.] DOWNEY [of New York]: Mr. Speaker, what I would like to know is whether or not the conferees and the acting chairman of the conference would have any objection to sitting Members of Congress sitting in on the session. It seems to me that is the crux of the matter. . . .

Mr. Speaker, if I might address the Chair, is it possible for the gentleman from Florida to amend his own motion to incorporate that? . . .

THE SPEAKER: The answer is that the motion may be modified by unanimous consent.

MR. DOWNEY: Mr. Speaker, a further parliamentary inquiry. Must that unanimous-consent request come from the gentleman from Florida or can that come from any Member?

THE SPEAKER: If the gentleman yields for that purpose, it can come from any Member. The gentleman from Florida is in control of the time.

MR. DOWNEY: Mr. Speaker, if the gentleman from Florida would yield further, the language that "any sitting Member of Congress shall have the

right to attend any meeting, open or closed, of the conference"—would that be suitable?

MR. BENNETT: The gentleman wants me to amend the motion to provide that during meetings of the conference committee any sitting Member may have the right to sit in on any open or closed meeting of the conference.

May I address the Chair and ask the Chair if I so amend my motion, is that a proper motion? I had understood that it was not.

THE SPEAKER: By unanimous consent the gentleman may so modify his motion.

MR. BENNETT: Mr. Speaker, then by unanimous consent I ask that the motion I have offered be modified to allow any sitting Member of Congress to have the right to attend any closed or open meeting of the conference.

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

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, I object. . . .

THE SPEAKER: The Chair will respond to an earlier parliamentary inquiry. In view of the fact that the gentleman has a motion pending, in order to modify this motion the gentleman must obtain unanimous consent. The gentleman does have the right in the House, as the gentleman is aware, of withdrawing his motion and offering a completely new motion. . . .

MR. STRATTON: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. STRATTON: Mr. Speaker, if the House approves the Bennett motion, as originally moved, does that mean that

on those occasions when the conference goes into executive session that a Member of the House under the existing rules would have the opportunity to join that executive session?

THE SPEAKER: Under the precedents, all Members of the House, other than the conferees of the House, would be considered to be part of the public under the language of the motion and not entitled to go into the conferees' closed session.

The changing of clause 6 of rule XXVIII this year does not on its face alter the situation with respect to attendance by Members who are not named as conferees.

MR. STRATTON: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. STRATTON: If the conferees, having gone into executive session, were to agree that certain Members could be admitted to that conference for certain purposes, would that be permitted?

THE SPEAKER: The will of the House would bind House conferees. If the House has decided by rollcall that the conference will be a session closed to all persons, then the will of the House would prevail as indicated in rule XXVIII, clause 6. Or a motion could be made to clarify the term "public" so as not to include Members. It could well be that it would be a stalemate and that the Senate would not agree, but as far as House conferees are concerned, they could be instructed, on a motion made by the chairman of the committee that the Members of the House are not considered to be part of the public, but

as Members of this body with the right of nonparticipating attendance.

MR. STRATTON: I thank the Speaker.

MR. BENNETT: Mr. Speaker, I understand that it is proper for me to offer a substitute motion?

THE SPEAKER: Does the gentleman withdraw his previous motion?

MR. BENNETT: I do, Mr. Speaker.

MOTION OFFERED BY MR. BENNETT

MR. BENNETT: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bennett moves that, pursuant to Rule XXVIII 6(a) of the House Rules, the conference committee meetings between the House and the Senate on H.R. 5970, the fiscal year 1978 military authorization bill, be closed to the public at such times as classified national security information is under consideration, provided however, that any sitting Member of Congress shall have the right to attend any closed or open meeting.

THE SPEAKER: The gentleman from Florida is recognized for 1 hour. . . .

MR. BOB WILSON [of California]: . . . Mr. Speaker, if I may, I wish to pose my parliamentary inquiry now.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. BOB WILSON: Mr. Speaker, do I understand that the ruling that the Chair has just made on the previous motion offered by the gentleman from Florida (Mr. Bennett) is to the effect that passage of this motion by the House would bind our conferees or at least would represent the views of the House, but then we would, of course, have to take into consideration the views of the Senate at such time as we

have a conference with the Senate? Is my understanding correct?

THE SPEAKER: The gentleman is correct. Each House would have one vote at the conference. . . .

MR. BENNETT: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: Under the provisions of rule XXVIII, clause 6(a), the yeas and nays are considered as ordered on this motion.

The vote was taken by electronic device, and there were—yeas 273, nays 114, not voting 46.

### *Closing Conference, Select Committee on Intelligence*

**§ 5.4 The House has on occasion given a committee the authority to close its conference meetings without coming to the floor for the vote normally required under Rule XXVIII clause 6(a).**

On July 14, 1977,<sup>(2)</sup> the House adopted House Resolution 658, establishing a Permanent Select Committee on Intelligence. Among the powers and mandate given that committee was a specific grant of authority to close its conference meetings.

The portion of the resolution specifically amending the rules of

2. 123 CONG. REC. 22949, 95th Cong. 1st Sess.

the House was carried in section 2, paragraph 11, which provides as follows:

“11. Clause 6(a) of rule XXVIII does not apply to conference committee meetings respecting legislation (or any part thereof) reported from the Permanent Select Committee on Intelligence.”

This authority survives in Rule XLVIII clause 11 of the current House rules.<sup>(3)</sup>

### *Closing a Conference Meeting by Motion*

**§ 5.5 The motion to close a conference meeting under Rule XXVIII clause 6(a): (1) is properly made after the request to go to conference has been agreed to and the Speaker has appointed the conferees; (2) must be agreed to by a yeas and nays vote; (3) may be limited in its terms to allow sitting Members to attend; and (4) may be modified to close the meetings to the public only when national security information (classified material) is under consideration.**

3. *House Rules and Manual* § 944a (1997).

The rule requiring a yea and nay vote in the full House to close a conference meeting was added to Rule XXVIII in the 95th Congress.<sup>(4)</sup> The modified form of the motion to close used in this example from the proceedings of July 21, 1977,<sup>(5)</sup> has been used frequently by the Committee on Appropriations when sending a defense appropriation bill to conference.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7933) making appropriations for the Department of Defense for the fiscal year ending September 30, 1978, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. Mahon, Sikes, Flood, Addabbo, McFall, Flynt, Giaimo, Chappell, Burlison of Missouri, Edwards of Alabama, Robinson, Kemp, and Cederberg.

4. See H. Res. 5, 123 CONG. REC. 53-77, 95th Cong. 1st Sess., Jan. 4, 1977. See Rule XXVIII clause 6(a), *House Rules and Manual* § 913d (1997).
5. 123 CONG. REC. 24365, 24366, 95th Cong. 1st Sess.
6. Thomas P. O'Neill, Jr. (Mass.).

MOTION OFFERED BY MR. MAHON

MR. MAHON: Mr. Chairman, I offer a motion.

The Clerk read as follows:

Mr. Mahon moves, pursuant to rule XXVIII 6(a) of the House rules that the conference committee meetings between the House and the Senate on H.R. 7933, the fiscal year 1978 Department of Defense appropriation bill, be closed to the public at such times as classified national security information is under consideration, provided however, that any sitting Member of Congress shall have the right to attend any closed or open meeting.

THE SPEAKER: The Chair recognizes the gentleman from Texas (Mr. Mahon) for 1 hour.

MR. MAHON: Mr. Speaker, the object here is to comply with the rules and procedures of the House. The conference will be open if the motion is agreed to, except for the consideration of classified material. Classified material may arise from time to time in the conference. It will be possible to arrange for the classified material to be discussed under circumstances which will permit most of the conference to be an open conference. . . .

Mr. Speaker, it would be my purpose, as the head of the House conferees, to work out an arrangement in the conference whereby it will be agreed that wherever there are classified materials we can try to discuss them at one particular time and not have classified material intermingled constantly with the discussion otherwise on the bill. I think that can be done and should be done. In the past, I know of nothing improper that has ever taken place in



the conference with the Senate on a defense bill, and I have had considerable experience in that area. But as a matter of convenience, we have moved to close the conferences because there is so much classified material, and we cannot always tell when the material may arise for discussion. . . .

Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Mahon).

MR. [JOHN J.] FLYNT [of Georgia]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Under the provisions of rule XXVIII, clause 6(a), the yeas and nays are considered as ordered on this motion.

The vote was taken by electronic device, and there were—yeas 376, nays 0, not voting 57.

### *Closing Conference Meetings*

**§ 5.6 Following the adoption of a motion to instruct conferees, and pending the Speaker's appointment of the managers on the part of the House, the Chair has entertained a motion to authorize the conferees to close the conference meetings, a motion which requires a roll call vote.**

Rule XXVIII clause 6(a)<sup>(7)</sup> does not specify a time period within which a motion to close a conference must be entertained. These proceedings, excerpted from the Record of June 10, 1988,<sup>(8)</sup> show the exercise of the Chair's discretion about when to recognize for a motion to close a conference.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> The question is on the motion to instruct offered by the gentleman from Alabama [Mr. Dickinson].

The motion to instruct was agreed to.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

THE SPEAKER PRO TEMPORE: The Chair will delay the appointment of conferees until the Speaker returns to the Chair.

MOTION OFFERED BY MR. ASPIN

MR. [LES] ASPIN [of Wisconsin]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Aspin moves that pursuant to rule XXVIII 6(a) of the House rules, the conference committee meetings between the House and the Senate on H.R. 4264, the fiscal year 1989 Department of Defense authorization bill, be closed to the public at such times as classified national security information is under consideration:

7. *House Rules and Manual* § 913d (1997).
8. 134 CONG. REC. 14068, 100th Cong. 2d Sess.
9. William J. Hughes (N.J.).

*Provided, however,* That any sitting Member of Congress shall have the right to attend any closed or open meeting.

THE SPEAKER PRO TEMPORE: The gentleman from Wisconsin [Mr. Aspin] is recognized for 1 hour.

MR. ASPIN: Mr. Speaker, I yield myself such time as I may consume.

### ***Requirement for Open Conference Meetings***

#### **§ 5.7 A point of order against a conference report was overruled where Member making challenge failed to establish that the report differed from that agreed upon in open conference meeting.**

Where a Member pressed a point of order that a conference report was reported in violation of Rule XXVIII clause 6, which requires that conference meetings be open, he has the burden of showing that an actual meeting of the conferees took place in violation of the "open conference" rule.

On Sept. 28, 1976,<sup>(10)</sup> when the conference report on S. 521, the Outer Continental Shelf Lands Act Amendments of 1976, was taken up in the House as unfinished business, a point of order was

pressed as shown in the Record excerpts set out below.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report on grounds that it has been reported in violation of Rule XXVIII, clause 6, which requires that conference meetings be open to the public except when ordered closed by rollcall vote in open session.

Mr. Speaker, on the first day of this Congress, as one of its first moves toward reform, the House voted to amend its rules and open up conferences to public scrutiny. The Senate soon passed a similar measure, and the rule took effect.

At the first open meeting of the conference committee, one of the managers on the part of the Senate moved that the Senate recede from its disagreement to the House amendment with several amendments which he had caused to be printed as part of a conference document. Additional linear amendments were proposed by other Senate managers in the form of amendments to the motion, and in due course a majority of the Senators voted for the motion as amended.

The chairman of the conference committee, the gentleman from New York (Mr. Murphy) then moved that the House agree to the amendments of the Senate. This motion was presumably amendable, although the chairman refused to allow any amendments to be offered. If he had, they would have been restricted to germane modifications of the various Senate amendments which would have been the only items in disagreement at that time.

10. 122 CONG. REC. 33019, 33020, 94th Cong. 2d Sess.

The motion was rushed to a vote and agreed to by the House managers, and the conference meeting was adjourned.

Mr. Speaker, the conference committee must have met again. It must have met without any notice to the minority and far from public view. It must have met in closed session without first having voted to do so in open session. I must assume that there was a closed session of the conference committee, because instead of reporting linear Senate amendments, as had been agreed to in open session, the committee reported a Senate amendment in the nature of a substitute. . . .

There must have been one more meeting—a closed meeting—in which a majority of the Senate conferees and a majority of the House conferees agreed to switch from linear amendments to an amendment in the nature of a substitute without giving minority House managers a chance to offer amendments and without being open to the public. . . .

Clause 6 has never before been tested to my knowledge. If this point of order is overruled, it will mean that a majority of the managers can, in open session, agree to things they think the public will like, and then change those things around in private to suit themselves. Whether this is done by the managers at a face-to-face meeting, or by telephone or by mail or by staff without even informing the managers, it is being done in secret, in violation of the rules. Defeat of this point of order will make clause 6 meaningless and destroy the concept of open conferences.

THE SPEAKER:<sup>(11)</sup> Does the gentleman from New York (Mr. Murphy) desire to be heard on the point of order?

MR. [JOHN M.] MURPHY of New York: I do, Mr. Speaker.

Mr. Speaker, on the point of order, I would refer to the recorded minutes of the conference on page 2 of the opening day of the conference. Senator Jackson moved that the conference be open to the public. The motion was seconded by Senator Jackson and adopted by the conference without objection. If my colleague, the gentleman from New York, had been present at all sessions of the conference, I doubt if he would make this point of order. The motion made by Senator Jackson at the conference and on page 8 of the first day's minutes of the conference is as follows:

Mr. Chairman, I therefore move the Senate recede from its disagreement with the House and accept the House amendment with the amendment set forth in the September 13 conference print, except the technical amendments that occur on page 123 of the print.

Mr. Speaker, if I understand the gentleman's argument, he is asserting that the Chair is to find an implied or "constructive" secret meeting of the majority of the conferees because the conference report is not consistent with the gentleman's interpretation of the procedures of the conference committee. . . .

In addition, I would point out that the conference report is consistent with the actions of the conference. Senator Jackson moved that the Senate recede from its disagreement and agree to the

11. Carl Albert (Okla.).

amendment of the House with an amendment. During the course of the deliberations, the Senate conferees agreed to modify Senator Jackson's proposed amendments. The Senate conferees then approved the Jackson motion.

The House conferees then agreed to adopt the language agreed to by the Senate conferees, to be inserted in lieu of the House amendment.

The conference report properly reflects these actions.

Moreover, rules of the House make it clear that once a conference report is filed by the required number of conferees there is a conclusive presumption as to the validity of the conference.

The Speaker will not look behind the signatures as to the procedures in conference. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from New York has made a point of order directed against conference procedure alleging a violation of clause 6, rule XXVIII.

The gentleman's point of order is that the form of the conference report does not conform to his understanding as to which motion was agreed to by the House conferees. The gentleman contends that there was a further constructive meeting of the conferees which was closed and unannounced.

The chief manager of the conference report has reported that in a meeting of the conferees which was open to the public, pursuant to the provisions of clause 6, rule XXVIII, a proper motion was made to agree to an amendment in the nature of a substitute for the House amendment to the Senate bill, and the signatures of a majority of the confer-

ees of both Houses reflecting this agreement appear on the conference report.

The Chair does not feel that a violation of conference rules has been shown, and the Chair overrules the point of order.

### *Quorum Requirements in a Conference Meeting*

**§ 5.8 In response to a series of parliamentary inquiries, the Speaker commented on essential features of a valid conference under House rules: (1) while there is no rule specifying what constitutes a quorum for a meeting of House managers at a conference, a quorum is required on the signature sheets of the conference report and joint statement; (2) a conference report is valid only if there has been a public meeting of the conferees under Rule XXVIII clause 6; and (3) no rule of the House precludes conferees meeting during a period when the House is conducting five-minute votes.**

In the following instance, Mr. Lewis' parliamentary inquiry was directed to the Speaker while the House was conducting a series of votes. In that sense, the inquiry

was directed at "pending business" and not to some hypothetical situation to which the Chair normally would not respond.<sup>(12)</sup>

MR. [JERRY] LEWIS of California: Mr. Speaker, is it appropriate to have a parliamentary inquiry at this moment?

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The gentleman will state his parliamentary inquiry.

MR. LEWIS of California: Mr. Speaker, I presume it is appropriate to make an inquiry about our procedure as it relates to conference reports.

THE SPEAKER PRO TEMPORE: The Chair is not able to hear the gentleman.

MR. LEWIS of California: Mr. Speaker, I presume it is appropriate to ask information of the Chair as to the procedure as it relates to conference meetings, conferences of the House.

THE SPEAKER PRO TEMPORE: The gentleman must state a parliamentary inquiry, and it should relate to the pending business.

MR. LEWIS of California: My parliamentary inquiry, Mr. Speaker, is do Members of the House in majority forum have to be present for a conference to take place?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman from California [Mr. Lewis] that there is no quorum requirement for meeting of the conference beyond the requirement for a majority of signatures.

MR. LEWIS of California: They do have to meet; is that correct?

THE SPEAKER PRO TEMPORE: There needs to be a public meeting of the conference.

MR. LEWIS of California: A public meeting of the conference, and I presume that the conferees at least should have an opportunity to be there. Is that correct?

THE SPEAKER PRO TEMPORE: The Chair has responded to the gentleman's inquiry.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WALKER: MR. Speaker, is it appropriate to hold conference committee meetings during 5-minute votes of the House?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman from Pennsylvania [Mr. Walker] that there is no rule prohibiting a meeting of a conference during 5-minute votes of the House.

MR. LEWIS of California: I have a parliamentary inquiry, Mr. Speaker.

Is it appropriate to hope to begin a conference where Members are in the middle of votes and there are no Republican Members present?

THE SPEAKER PRO TEMPORE: The Chair does not believe the gentleman has stated a parliamentary inquiry.

### *Authority To Sit During Recesses and Adjournments*

12. See 140 CONG. REC. 27662, 27663, 103d Cong. 2d Sess., Oct. 4, 1994.

13. David E. Skaggs (Colo.).

**§ 5.9 The House may authorize its conferees to sit during recesses or during adjournments between sessions of a Congress.**

On Dec. 21, 1937,<sup>(14)</sup> Mr. Sam Rayburn, of Texas, made the following request:

Mr. Speaker, I ask unanimous consent that, notwithstanding the adjournment of the House, the House conferees in charge of the bill H.R. 8730, the National Housing Act, may be allowed to sit during the adjournment.

THE SPEAKER:<sup>(15)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.<sup>(16)</sup>

***Proxy Voting***

**§ 5.10 Proxy voting by Senate conferees is a matter to be determined among the conferees themselves.**

On Aug. 24, 1950,<sup>(17)</sup> Senator Burnet R. Maybank, of South Carolina, made the following parliamentary inquiry:

14. 82 CONG. REC. 2045, 2046, 75th Cong. 2d Sess.

15. William B. Bankhead (Ala.).

16. See also 82 CONG. REC. 1905, 75th Cong. 2d Sess., Dec. 18, 1937.

17. 96 CONG. REC. 13266, 81st Cong. 2d Sess.

If a conferee is absent from a meeting of the conference, and should leave his proxy, could his proxy be voted if the other conferees agreed?

I desire to have the judgment of the President of the Senate on that question.

THE VICE PRESIDENT:<sup>(18)</sup> In the opinion of the Chair that is a matter for the conferees themselves. If they agree that the absent member of the conference may have his vote recorded, the Chair knows no rule against it.

***Requirements for Filing Conference Report***

**§ 5.11 A conference report cannot be filed before the conferees have been formally appointed in both Houses and had a meeting.**

On Sept. 28, 1976, the conferees representing the House met with the not-yet-appointed Senate conferees to reconcile the differences on S. 3131, amending the Rail Passenger Service Act. A consensus was reached, the conferees signed the report which was subsequently filed in the House on Sept. 29, 1976.<sup>(19)</sup>

When it was then determined that the Senate had never, in fact,

18. Alben W. Barkley (Ky.).

19. H. Rept. No. 94-1734, 122 CONG. REC. 33761, 94th Cong. 2d Sess., Sept. 29, 1976.

formally appointed its conferees, the report was again filed in the House following the official notification, by message, that the conferees had been named.<sup>(20)</sup> Note the sequence of Senate action and the single message to the House in which the Senate announces not only its agreement to the House request for a conference and the appointment of conferees, but also its agreement to the conference report.<sup>(1)</sup>

The proceedings in the Senate were as follows:

MR. [JOHN O.] PASTORE [of Rhode Island]: Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3131.

The Presiding Officer laid before the Senate a message from the House of Representatives insisting upon its amendments to the bill (S. 3131) to amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

MR. PASTORE: I move that the Senate disagree to the amendments of the House and agree to the request of the

House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to: and the Presiding Officer appointed Mr. Magnuson, Mr. Pastore, Mr. Hartke, Mr. Stevenson, Mr. Ford, Mr. Weicker, and Mr. Beall conferees on the part of the Senate. . . .

MR. PASTORE: Mr. President, I submit a report of the committee of conference on S. 3131, and ask for its immediate consideration.

THE PRESIDING OFFICER:<sup>(2)</sup> The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3131) to amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

THE PRESIDING OFFICER: Without objection, the Senate will proceed to the consideration of the conference report.

The proceedings in the House<sup>(3)</sup> when it received a message from the Senate regarding S. 3131 are set out below:

The message . . . announced that the Senate disagrees to the amendments of

20. H. Rept. No. 94-1743, 122 CONG. REC. 34322, 94th Cong. 2d Sess., Sept. 30, 1976.

1. 122 CONG. REC. 33829, 33831, 94th Cong. 2d Sess. Sept. 30, 1976.

2. John C. Culver (Iowa).

3. 122 CONG. REC. 34100, 34101, 34202, 94th Cong. 2d Sess., Sept. 30, 1976.

the House to the bill (S. 3131) entitled "An act to amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Magnuson, Mr. Pastore, and Mr. Hartke, Mr. Stevenson, Mr. Ford, Mr. Weicker, and Mr. Beall to be the conferees on the part of the Senate. . . .

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3131) entitled "An Act to amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, and for other purposes." . . .

Mr. [Harley O.] Staggers [of West Virginia] submitted the following conference report and statement on the Senate bill (S. 3131) to amend the Rail Passenger Service Act and to provide financing for the National Railroad Passenger Corporation, and for other purposes.

CONFERENCE REPORT (H. REPT. NO.  
94-1743)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3131) to amend the Rail Passenger Service Act to provide financing for the National Railroad Passenger Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of

the House to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following . . . .

### *What Constitutes a Conference Meeting*

**§ 5.12 Instance where a privileged motion to close a conference was offered, debated, and ultimately rejected by the House after a discussion of what actions and gatherings of conferees, under the rules, constitute a "meeting" of a conference committee.**

On Apr. 13, 1978,<sup>(4)</sup> although the Speaker was not called upon to interpret when informal discussions and gatherings of conferees cross the threshold of the requirement in Rule XXVIII clause 6(a) that conference meetings be open except when closed in accordance with that clause, the debate on a motion to close a conference is informative.

PRIVILEGED MOTION RELATING TO  
CLOSING TO THE PUBLIC CONFERENCE  
COMMITTEE MEETINGS ON H.R.  
5289, RELATING TO NATURAL GAS  
REGULATION

4. 124 CONG. REC. 10128, 10133, 10134, 10136, 95th Cong. 2d Sess.



MR. [TONY] MOFFETT [of Connecticut]: Mr. Speaker, I offer a privileged motion.

The Clerk read the motion as follows:

Mr. Moffett moves, pursuant to rule XXVIII 6(a) of the House rules that the conference committee meetings between the House and the Senate on H.R. 5289, relating to natural gas regulation, be closed to the public, provided however, that any sitting Member of Congress shall have the right to attend any closed or open meeting.

THE SPEAKER:<sup>(5)</sup> The gentleman from Connecticut (Mr. Moffett) has presented a privileged motion, and has control of the time.

The gentleman from Connecticut is recognized for 1 hour.

MR. MOFFETT: Mr. Speaker, I yield myself such time as I may consume. . . .

This is not a motion that in any way intends to inhibit or prohibit any informal discussions in which no substantive conclusions are reached. But, this has clearly become a closed conference in violation of the House rules.

Rule XXVIII 6(a) reads:

Each conference committee meeting between the House and Senate shall be open to the public except when the House, in open session, has determined by a rollcall vote of a majority of those Members voting that all or part of the meeting shall be closed to the public.

Mr. Speaker, the conference on energy has met for many, many hours this year, members of the conference from both parties. There has been ap-

proximately 1 hour of discussion that has been open to the public and the press. Some Members have been excluded from the meetings. I am not one of those Members. I have taken part in some of those closed discussions.

Before Easter I told the distinguished chairman of the conference and the distinguished and able chairman of the Committee on Interstate and Foreign Commerce, on which I am proud to serve, that I felt I had to continue to raise objections to closed meetings, and that I was going to take my objections before my colleagues in the House. I think the issue here is, are we in violation of the House rules? I think the answer is clearly yes. Are we setting a dangerous precedent? The answer is clearly yes. . . .

MR. [THOMAS L.] ASHLEY [of Ohio]: What the gentleman does not seem to understand is that this conference has broken down and the conference on the national energy plan has not met in some several weeks, nor is it meeting these days. What is going on is that there are informal discussions among some of the Senate conferees and some of the House conferees. Those that represent the House are not a majority of the House conferees.

So what I think we are trying to get at or I am trying to get at is the distinction between a conference committee meeting and the informal discussions that are going on in an effort to reach the kind of preliminary possible areas of agreement that could lead us back into the sunshine of an open conference session.

MR. [THOMAS J.] DOWNEY [of New York]: Well, the gentleman strikes a curious position. How is this to prevent

5. Thomas P. O'Neill, Jr. (Mass.).

every conference from meeting informally and then at some final date adopting at a pro forma session of the conference what the agreements have been? To do what the gentleman is doing today and has been doing for several weeks leads us down a very dangerous road where the precedents are that there shall be no more open formal conferences.

MR. ASHLEY: If I can respond to that, I think the process that is being followed is consistent with the rules of the House . . . .

Mr. Speaker, let me say that I fully appreciate what the gentleman from Michigan (Mr. Carr) has just said. There is a basic and fundamental difference as to the interpretation of the rule, namely what constitutes a meeting of the conference. It is my absolute conviction that the meetings that have been transpiring are not meetings of the conference but are informal expressions between Members on both sides in an effort to advance—I will concede—in an effort to advance the business of the conference, but as I read the rule, as we meet in the sessions we have had, we are not meeting in a conference meeting. The conference broke down—if the gentleman is interested—the conference broke down because one member of the conference, who did not want an energy bill, insisted that he have the opportunity to ask 75 questions and he proceeded to ask those questions. . . .

THE SPEAKER: All time has expired.

Without objection, the previous question is ordered on the motion.

There was no objection.

THE SPEAKER: The question is on the motion offered by the gentleman from Connecticut (Mr. Moffett).

Under the rules of the House, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 6, nays 371, not voting 57.

*Parliamentarian's Note:* There are few precedents directly on the point of "what is a conference meeting." Jefferson's *Manual, House Rules and Manual* § 539, 105th Congress, suggests that a conference essentially occurs when a majority of managers from each House, assemble to negotiate in a parliamentary manner the differences before them. See also 6 Cannon's *Precedents* § 578, where an allegation that members of a committee were conducting closed deliberations and excluding a committee member were discussed in the context of the rules governing House committee deliberations.

***Recommittal of Conference Report To Avoid Point of Order***

**§ 5.13 Where managers on the part of the House had signed a conference agreement before their formal appointment by the Speaker, the re-**

**port was, by unanimous consent, recommitted (to the same conference) so that a formal, open meeting of the conferees could take place and a new report filed.**

The adoption of Rule XXVIII clause 6,<sup>(6)</sup> which requires meetings of a conference committee to be open unless formally closed by a vote of the House, has narrowed the reach of older precedents which stood for the proposition that where a report was signed by a majority of managers, the Chair would not look behind the signatures for irregularities in the conduct of a conference meeting.<sup>(7)</sup> In a situation like the one discussed here, taken from the proceedings of Mar. 25, 1980,<sup>(8)</sup> where conferees had inadvertently signed the report before their formal appointment, a point of order would lie against the report under the cited rule.

RECOMMITTAL TO CONFERENCE OF S.  
662, INTERNATIONAL DEVELOPMENT  
BANKS AUTHORIZATION

6. See *House Rules and Manual* § 913d (1997).
7. See *Conferences Between the Houses*, House Practice, § 11, p. 319 (1996).
8. 126 CONG. REC. 6429, 6430, 96th Cong. 2d Sess.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to recommit the Senate bill, S. 662, to conference.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is there objection to the request of the gentleman from Wisconsin?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, could the gentleman tell me the title of the bill?

MR. REUSS: Yes; this is the bill containing authorization for the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

MR. BAUMAN: Could the gentleman from Wisconsin explain to me why the chairman is asking to recommit this bill?

MR. REUSS: Yes, though not without some embarrassment. Technically, it turned out that the conferees had conferred and done their business a few minutes before the House conferees were, in fact, appointed. That was one of those slips betwixt the cup and the lip which occur because of the length of our corridors. So, the report as it comes back to us is technically imperfect, and it is to correct that imperfection that I ask this unanimous-consent request.

MR. BAUMAN: Further reserving the right to object, I assume what the gentleman is saying is that the consideration of the report in conference did not comply with rule XXVIII, which requires an open conference meeting unless the House votes otherwise?

MR. REUSS: I believe that is the relevant section. In any event, whether it is

9. John P. Murtha (Pa.).

rule XXVIII or not, and I do not have it in front of me, it obviously was unintentionally improper, and we seek to correct that by doing it right.

### ***Waiving Points of Order Where Conferees Never Met***

**§ 5.14 Where a conference report was filed showing signatures by a majority of the conferees, but where they had never met, a special order was reported from the Committee on Rules and adopted by the House waiving points of order against the report and against its consideration.**

Rule XXVIII clause 6(a),<sup>(10)</sup> adopted in the 94th Congress, requires conference meetings to be open to the public. That requirement was not met by the conferees on H.R. 4021, the Rehabilitation Act Amendments of 1986, and House Resolution 569 was reported to protect a point of order under that rule. The resolution was adopted without incident.<sup>(11)</sup>

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call

10. *House Rules and Manual* § 913d (1997).

11. See 132 CONG. REC. 28077, 28078, 99th Cong. 2d Sess., Oct. 2, 1986.

up House Resolution 569 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 569

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The gentleman from Massachusetts [Mr. Moakley] is recognized for 1 hour. . . .

MR. [JAMES H.] QUILLEN [of Tennessee]: . . . The Rehabilitation Act Amendments of 1986 are most important. This measure should be enacted into law despite the discrepancy in the procedure involved before it came to the Rules Committee. I understand that there was no conference meeting of Members held on this measure.

Mr. Speaker, this is most unusual. I do not recall another instance where the conferees of the House and the Senate have not gotten together and reached an agreement and reported the measure out for our consideration. However, the urgency of the adoption of the Rehabilitation Act amendments is so urgent that I feel the Rules Committee took the right step in reporting it out.

### ***Where Conferees Did Not Meet***

12. Richard J. Durbin (Ill.).

**§ 5.15 Where conferees had been unable to meet in a formal session but reconciled their differences by telephone and then signed the report, the House adopted a special order “deeming” the report to have been recommitted, waiving all points of order against the consideration of any subsequent conference report filed after a valid meeting.**

The resolution<sup>(13)</sup> reported from the Committee on Rules and the explanation thereof by Mr. Martin Frost, of Texas, show how adoption of the special order could actually expedite the adoption of a conference report on the bill. Failure of the conferees to meet would have made the initial report subject to a point of order;<sup>(14)</sup> by recommitting the report and then waiving the three-day layover requirement in Rule XXVIII clause

13. See H. Res. 293 at 135 CONG. REC. 29897, 101st Cong. 1st Sess., Nov. 17, 1989.

14. See 5 Cannon's Precedents § 6458. Rule XXVIII clause 6, *House Rules and Manual* § 913d (1997), adopted by the House in 1975, also requires an open conference meeting and would subject a report to a point of order where this requirement was ignored.

2(a),<sup>(15)</sup> and the requirement of printing the report in the *Congressional Record*, the report could actually be considered (and was so considered) in the House later that same day after a valid conference meeting was held and a new report filed.

MR. FROST: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 293 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 293

*Resolved*, That upon the adoption of this resolution the conference report on the bill (H.R. 2712) to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the two-year foreign residence requirement for “J” nonimmigrants shall be considered as having been recommitted to conference. All points of order against consideration of any subsequent conference report on the bill for failure to comply with the provisions of clause 2 of rule XXVIII are hereby waived.

THE SPEAKER:<sup>(16)</sup> The gentleman from Texas [Mr. Frost] is recognized for 1 hour.

MR. FROST: Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from New York, Mr. Solomon, pending which

15. *House Rules and Manual* § 912a (1997).

16. Thomas S. Foley (Wash.).

I yield myself such time as I may consume.

Mr. Speaker, House Resolution 293 provides for the recommittal to conference of the conference report on H.R. 2712, the Chinese Adjustment of Status Facilitation Act of 1989. The resolution also waives clause 2 of rule XXVIII against consideration of any subsequent conference report on the bill. Clause 2 of rule XXVIII prohibits consideration of any conference report until the third calendar day after such report and the accompanying statement has been filed in the House and the report and statement have been available to Members for at least 2 hours prior to such consideration.

Mr. Speaker, the recommittal of the bill to conference is necessary due to the inability of the conference committee to formally meet in the absence of its chairman, Mr. Brooks. However, informal meetings have taken place and the conferees have reached agreement. Due to the urgency for action on this measure, Mr. Kastenmeier was named as a conferee on Tuesday.

In an attempt to file this conference report during the last days of this session, the members of the conference concluded that it would not be practical to meet formally. However, under the rules of the House a point of order could be raised against the conference report, resulting in its rejection. Rather than establish a new conference, the conferees have informed the Rules Committee of their intention to meet today and formally report the conference report on this bill.

As stated earlier, the rule would allow consideration of the subsequent

conference report by waiving the 3-day layover and availability requirement.

The conference report on H.R. 2712 was adopted on Nov. 19, 1989.<sup>(17)</sup>

### ***“Rules” for Conducting Complex Conference***

**§ 5.16 A member of the conference committee on an omnibus budget reconciliation act inserted in the *Congressional Record* a tentative list of procedures and “understandings” to be followed by House conferees in their deliberations during “subconferences” with the Senate.**

The complexity of appointing conferees which can touch all the jurisdictional bases in a text within the jurisdiction of 17 House committees is obvious from the statement of Mr. Leon E. Panetta, of California, the chairman of the House Committee on the Budget, and by the rules established by the “general conferees” to govern the conference deliberations. The *Congressional Record* extract carried here is self-explanatory:<sup>(18)</sup>

17. See 135 CONG. REC. 30101, 30102, 101st Cong. 1st Sess.

18. 127 CONG. REC. 16002, 97th Cong. 1st Sess., July 16, 1981.

MR. PANETTA: Mr. Speaker, I would like to provide an update on the reconciliation conference. The conferees were appointed yesterday. Some 17 House Committee jurisdictions are involved. One hundred and eighty-four Members of the House were appointed, some 72 Members for the other body, a total of 256 Members will be participating in this conference which is the largest in the history of the Congress.

Leadership understandings have been developed as well as rules on reconciliation and those have been sent out to all conferees. A copy of those agreements are included at the conclusion of my remarks. . . .

At this point I am encouraged that the various committees are moving expeditiously toward resolution on reconciliation.

#### RULES FOR RECONCILIATION CONFERENCE

1. Budget Committee conferees are general conferees. They may attend and vote in any of the sub-conferences.
2. Proxies are permissible.
3. Sub-conference members may vote on only those issues within the sub-conference for which they were appointed.
4. Sub-conferences will be convened by the responsible House committee chairmen.
5. The conference agreement should be limited to matters in either the Senate or House bills or related thereto.
6. Each sub-conference will prepare its portion of the joint statement of the managers and the legislative language to be included in the conference report.
7. All provisions agreed upon by the conferees will be priced by the

Congressional Budget Office. Sub-conferences are therefore urged to work closely with CBO from the outset. Scoring will follow the same conventions that were used by CBO in the scoring of the House and Senate reconciliation bills.

8. Signature sheets and language for the conference substitute and the joint statement of managers will be collected by the House and Senate Budget Committees' staffs and assembled by those staffs in conjunction with the House and Senate Legislative Counsel.

9. The conference will not be concluded until a majority of the general conferees from the House and the Senate sign the conference report in their capacity as general conferees.

10. All sub-conferences are requested to notify the appropriate House or Senate Budget Committee in advance as to the time and place of sub-conference meetings. If possible, notice should be 24 hours prior to sub-conference meetings. House and Senate Budget Committees will post sub-conference schedules in a prominent place. Information regarding subconference meetings should be directed to the House Budget Committee staff at 225-7234 or 225-7241 and to the Senate Budget Committee staff at 224-1458 or 224-0846.

#### LEADERSHIP UNDERSTANDINGS

1. The Senate will amend the House bill with an amendment in the nature of a substitute.
2. A majority of the conferees appointed for each subconference will be members who supported the reconciliation bill on final passage.
3. Sub-conferees will not reopen provisions which are the same in both bills and are urged to agree on substantially identical provisions.
4. The leadership of both Houses will make every effort to get conference agreements on all issues, as quickly as possible.

5. Assuming that the conference reaches full agreement on a conference substitute, the House leadership will support a rule which makes the conference report in order and waives all necessary points of order.

***Portions of a Conference Transcript Were Published in the Record***

**§ 5.17 A member of the Senate inserted into the Record a portion of the transcript of a conference session, held in the previous Congress.**

On June 20, 1983,<sup>(19)</sup> Senator Gary Hart, of Colorado, inserted in the *Congressional Record* the transcript of a conference committee session held in the previous Congress. He stated that the proceedings would “shed additional light” on the congressional “intent” in formulating the provisions of a law enacted in the prior year. The Senator’s request and his explanation, as well as a portion of the transcript, are included here.

URANIUM MILL TAILINGS STANDARDS

MR. HART: Mr. President, there has been quite some discussion recently about the final standards issued by the Environmental Protection Agency for inactive uranium mill tailings sites and the proposed standards for active sites.

19. 129 CONG. REC. 16356, 98th Cong. 1st Sess.

Some of this discussion centers on modifications to the Uranium Mill Tailings Regulation and Control Act of 1978 that were contained in the Nuclear Regulatory Commission Authorization Act for fiscal years 1982 and 1983. In particular, there are questions about the extent to which the Congress intended for the EPA, in setting its standards, to consider the cost of compliance.

To shed additional light on this question, I ask that the transcript of the August 19, 1982, conference on the NRC authorization bill be inserted in the Record at this point, along with an April 28, 1982, letter from the EPA, referred to in the transcript.

The material follows:

JOINT HOUSE-SENATE CONFERENCE,  
NRC AUTHORIZATION CONFERENCE,  
AUGUST 19, 1982

The joint conference met at 3:10 p.m. room EF-100, the Capitol, Hon. Morris K. Udall (chairman of the joint conference) presiding.

Present: Senators Simpson, Domenici and Hart

Representatives Udall, Ottinger, Lujan, Bingham, Seiberling, Marriott and Markey.

Representative Udall. The conference will resume its session.

I had hoped that we could have one last session today and wind this thing up, but I’m not sure that is in the cards. But it seems to me we ought not lose our momentum, to keep going and make some modest progress today. And then I hope we can set a date in September for a final meeting, what will be a final meeting and then wrap it up.

I think we ought to go first today to the Uranium Imports issue.

At our previous session Senator Simpson circulated to all members a



proposal for handling this, and then I circulated a proposal for which differed in some considerable degree.

Those proposals are before the members of the conference, we can discuss them today if there is any inclination to do so.

### ***Vote on Motion To Close Conference, Reducing Time***

**§ 5.18 A motion to close a conference meeting must be taken by the yeas and nays; and, by unanimous consent, the House has "clustered" this vote with others and reduced the time to five minutes.**

The Speaker's postponement authority for votes, in Rule I clause 5(b), does not include the vote on closing a conference meeting, which must be taken by the yeas and nays under Rule XXVIII clause 6. But where circumstances and schedule permit, a unanimous-consent request such as that carried here, as excerpted from the *Congressional Record* of Aug. 1, 1983,<sup>(20)</sup> can be used to expedite proceedings.

REDUCING TO 5 MINUTES TIME FOR  
VOTE ON MOTION TO CLOSE PORTIONS  
OF CONFERENCE ON S. 675

<sup>20</sup>. 129 CONG. REC. 22029, 98th Cong. 1st Sess.

MR. [BILL] ALEXANDER [of Arkansas]: Mr. Speaker, I ask unanimous consent that the yeas and nays vote required by clause 6, rule XXVIII, on the motion to be offered by the chairman of the Armed Services Committee to close portions of the conference on the bill, S. 675, be a 5-minute vote. That motion will immediately follow the yeas and nays vote on the motion to postpone House Resolution 256 indefinitely.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Arkansas?

There was no objection.

### ***Motion To Dispose of Senate Amendments, En Bloc, Before Stage of Disagreement***

**§ 5.19 Example of the use of a special order to permit the House to consider one privileged motion to dispose of Senate amendments to a House bill, waiving all points of order against the motion and specifying that the motion is not subject to a demand for division of the question unless demanded by the Majority Leader or his designee.**

Before the stage of disagreement is reached on amendments of one House to a bill of the other, a special order is often used to dispose of such amendments. The formulation of such a rule may be taken

before the amendments are actually before the House, as in the example carried here.<sup>(1)</sup> The Committee on Rules reported the special order on Nov. 9, 1995; the Senate did not message its amendments to the House until Nov. 10, 1995, following the filing of the anticipatory rule.

The Chairman of the Committee on Appropriations<sup>(2)</sup> offered the motion permitted by the special order later on that same day.<sup>(3)</sup> The Senate amendment numbered 3 proposed to strike a portion of the House bill and insert a new provision. This motion to strike out and insert not being subject to a division, Mr. Livingston's amendment proposed to delete the Senate's insertion and then to strike the portions of the House text—thus removing from the bill all provisions dealing with the use of federal subsidies or grants to lobby government officials or agencies.

The rule, the motion, and a portion of the debate on both are carried here.

1. See 141 CONG. REC. 32112, 32113, 104th Cong. 1st Sess., Nov. 10, 1995.

2. Robert Livingston (La.).

3. 141 CONG. REC. 32135-37, 104th Cong. 1st Sess.

MR. [DAVID] DREIER [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 261 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 261

*Resolved*, That upon adoption of this resolution it shall be in order without intervention of any point of order to take from the Speaker's table the joint resolution (H.J. Res. 115) making further continuing appropriations for the fiscal year 1996, and for other purposes, with any Senate amendment thereto, and to consider in the House a motion offered by the majority leader or his designee to dispose of all Senate amendments. Any Senate amendments and motions shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the majority leader and the minority leader or their designees. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question except any such demand made by the majority leader or his designee.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The gentleman from California [Mr. Dreier] is recognized for 1 hour.

MR. DREIER: . . . Mr. Speaker, this rule provides for consideration in the House, without intervening point of order, of a motion if offered by the majority leader or his designee to dispose of Senate amendments to House Joint Resolution 115, a continuing resolution

4. John D. Hayworth, Jr. (Ariz.).

making appropriations for fiscal year 1996 through December 1, 1995.

This rule provides for 1 hour of debate equally divided between the majority leader and the minority leader or their designees, and further provides that the previous question is ordered to adoption of the motion without intervening motion or demand for a division of the question unless the demand is made by the majority leader or his designee. . . .

MR. LIVINGSTON: Mr. Speaker, pursuant to House Resolution 261, I call up the joint resolution (H.J. Res. 115), making further continuing appropriations for the fiscal year 1996, and for other purposes, with Senate amendments thereto, and I offer a motion.

The Clerk read the title of the joint resolution.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> Pursuant to House Resolution 261, the Senate amendments are considered as read.

The text of the Senate amendments is as follows:

Senate amendments:

Page 2, line 20, after "1948," insert: *section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236),*

Page 10, line 19, after "resolution." Insert: *Included in the apportionment for the Federal Payment to the District of Columbia shall be an additional \$15,000,000 above the amount otherwise made available by this joint resolution, for purposes of certain capital construction loan repayments pursuant to Public Law 85-451, as amended.*

Page 15, strike out line 1 and all that follows over to and including line 7 on page 36, and insert:

### TITLE III

#### PROHIBITION ON SUBSIDIZING POLITICAL ORGANIZATIONS WITH TAXPAYER FUNDS

SEC. 301. (a) LIMITATIONS.—(1) *Notwithstanding any other provision of law, any organization receiving Federal grants in an amount that, in the aggregate, is greater than \$125,000 in the most recent Federal fiscal year, shall be subject to the limitations on lobbying activity expenditures under section 4911(c)(2)(B) of the Internal Revenue Code of 1986, except that, if exempt purpose expenditures are over \$17,000,000 then the organization shall also be subject to a limitation on lobbying of 1 percent of the excess of the exempt purpose expenditures over \$17,000,000 unless otherwise subject to section 4911(c)(2)(A) based on an election made under section 501(h) of the Internal Revenue Code of 1986. . . .*

THE SPEAKER PRO TEMPORE: The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Livingston moves:

- (1) That the House concur in the amendment of the Senate numbered 1,
- (2) That the House concur in the amendment of the Senate numbered 2,
- (3) That the House concur in the amendment of the Senate numbered 3 with an amendment as follows:

Delete the matter proposed by said amendment, and beginning on page 15, line 1 of the House engrossed joint resolution, H.J. Res. 115, strike all down to and including line 7, on page 36, and redesignate Title IV as Title III, and renumber sections accordingly.

5. David Dreier (Calif.).

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 261, the gentleman from Louisiana [Mr. Livingston] will be recognized for 30 minutes, and the gentleman from Wisconsin [Mr. Obey] will be recognized for 30 minutes. . . .

MR. LIVINGSTON: . . . Mr. Speaker, I am offering a motion to dispose of these amendments. The first two are not controversial and make improvements to the CR and my motion is to concur with these amendments, for they are fine. The modification to the Simpson-Istook-McIntosh language unfortunately is technically insufficient and therefore, is not acceptable. There is agreement that we can not get an acceptable version on this matter agreed to on this CR. Therefore, my motion is to delete the Senate proposed modification and to delete the underlying Simpson-Istook-McIntosh language, so that it hopefully will be addressed at another time.

## § 6. Appointment by the Speaker

The rule giving the Speaker the authority to appoint all select and conference committees<sup>(6)</sup> leaves the number to his discretion. Since the 93d Congress, the same rule has specified that no less than a majority of those named generally

6. See Rule X clause 6(f), *House Rules and Manual* § 701e (1997).

support the House position during House proceedings on the bill. In 1977, the rule again was amended to direct the Speaker to name “Members who are primarily responsible for the legislation” and “to the fullest extent feasible” include those Members who are the principal proponents of major provisions.<sup>(7)</sup>

### *Discretion of Speaker*

**§ 6.1 The designation of conferees is within the discretion of the Speaker; but in making his appointments, he normally consults with the chairman of the committee having jurisdiction of the bill.**

On Oct. 14, 1966,<sup>(8)</sup> Mr. Adam C. Powell, of New York, asked unanimous consent that the minority conferees on H.R. 13161, a bill to strengthen programs of assistance to elementary and secondary schools, be excused and that the Speaker be empowered to appoint new minority conferees. Mr. Gerald R. Ford, of Michigan, reserving the right to object asked

7. See § 6.3, *infra*.

8. 112 CONG. REC. 26996, 89th Cong. 2d Sess.

whether Mr. Powell was going to submit the names of the new conferees. Speaker John W. McCormack, of Massachusetts, stated:

As the gentleman from Michigan knows, the Chair makes the appointment. The Chair always seeks the counsel and advice of the chairman, assuming that the chairman has in turn conferred with the members of his own committee on both sides. The Chair will state that he has four names.

### *Influence of Committee Chairman*

**§ 6.2 The Speaker stated that in appointing conferees he would be willing to accept the suggestions of the chairman of the committee in charge of the bill being sent to conference.**

On July 17, 1935,<sup>(9)</sup> John J. McSwain, of South Carolina, the Chairman of the Committee on Military Affairs, which reported H.R. 8632 (the Tennessee Valley Authority bill), asked unanimous consent to take the bill from the Speaker's desk and to agree to a conference requested by the Senate. The following discussion then

<sup>9</sup>. 79 CONG. REC. 11319, 74th Cong. 1st Sess.

took place concerning the selection of conferees:

MR. [MAURY] MAVERICK [of Texas]: Mr. Speaker, reserving the right to object, an agreement was made by certain Members of the Military Affairs Committee to have five conferees, with unfriendly people on this committee. As one of the friends of the T.V.A., I was not invited, and as far as I know Mr. Thomason, of Texas, and Mr. Wilcox, of Florida, and Mr. Hill of Alabama, also friends of the T.V.A., were not there. I think it is wrong. I think this is a bad precedent to put unfriendly men on the conference committee; it may hold things up, and it does not appear to me as fair—I will not be a party to any agreement unfriendly to the purposes of the great T.V.A. program. . . .

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, I reserve the right to object, to ask this question: I would like to see the personnel of the conference committee appointed according to the way the majority of the House voted, and the personnel should be so appointed so that a majority of the committee will favor the majority position of the House.

After this discussion, Speaker Joseph W. Byrns, of Tennessee, stated:

After all, the Chair appoints the conferees. The Chair is always willing to accept the suggestions made by the chairman of the committee which has charge of the bill, assuming that the members who are appointed will stand for the House measure because they represent the House in the conference.

*Speaker's Discretion in Appointing Conferees*

§ 6.3 In determining whether at least a majority of the managers which the Speaker has appointed to represent the House at a conference have “generally supported the House position”—the guideline established by Rule X clause 6(f)—the Speaker is not required to consider the conferees’ positions on certain items in dispute during the consideration of the bill in the House.

The provision in Rule X dealing with the Speaker’s authority to appoint Members to select committees was modified at the beginning of the 95th Congress with respect to the guidelines for appointing Members to conference committees. In the 95th Congress, the pertinent part of the rule provided: “In appointing members to conference committees the Speaker shall appoint no less than a majority of members who generally supported the House position as determined by the Speaker. The Speaker shall name Members who are primarily responsible for the legislation and shall, to the fullest extent feasible, include the princi-

pal proponents of the major provisions of the bill as it passed the House.”<sup>(10)</sup>

The Speaker adhered to the guideline in the second sentence quoted above by naming Mr. J. J. (Jake) Pickle, of Texas, as a conferee since he had been the proponent of the provision described in the appointment. The point of order was not directed to the naming of this additional conferee—not a member of the reporting committee—but to the question of whether the named managers were generally in support of the House position. The conferees, the point of order, and the debate and response thereto, are carried here.<sup>(11)</sup>

THE SPEAKER:<sup>(12)</sup> The Chair appoints the following conferees: Messrs. Perkins, Dent, Phillip Burton, Gaydos, Clay, Biaggi, Zeferetti, Quie, Erlernborn, and Ashbrook; and an additional Member, Mr. Pickle, solely for the consideration of section 12 of the House bill and modifications thereof committed to conference.

POINT OF ORDER

MR. [JOHN N.] ERLERNBORN [of Illinois]: Mr. Speaker, I make a point of

10. Rule X clause 6(f), *House Rules and Manual* § 701e (1997).

11. See 123 CONG. REC. 33434, 33435, 95th Cong. 1st Sess., Oct. 12, 1977.

12. Thomas P. O’Neill, Jr. (Mass.).

order against the naming of the conferees as not being in compliance with the provisions of section 701(e), rule X of the Rules of the House.

THE SPEAKER: Does the gentleman from Illinois (Mr. Erlenborn) wish to be heard on his point of order?

MR. ERLENBORN: Yes, Mr. Speaker.

Mr. Speaker, rule X, section 701(e) provides in part:

In appointing members to conference committees the Speaker shall appoint no less than a majority of members who generally supported the House position as determined by the Speaker.

Mr. Speaker, as I pointed out in debate earlier today, the three items in contention between this body and the other body are the rate structure, the tip credit, and the small business amendment. Every one of the majority Members, with the exception of the gentleman from Pennsylvania (Mr. Gaydos), did not support the House position during the consideration of the bill on the floor.

I will admit, Mr. Speaker, that all of the Members who were present did vote for the passage of the bill. The passage of the bill is not in contention. Those items that are in contention between this body and the other body are the three items that I have mentioned, and the majority of the conferees named by the Speaker are not among those Members who supported the majority position in the House.

THE SPEAKER: Does the gentleman from Kentucky (Mr. Perkins) wish to be heard on the point of order?

MR. [CARL D.] PERKINS [of Kentucky]: I do, Mr. Speaker.

Mr. Speaker, there were numerous amendments offered to the minimum wage bill. Perhaps the major amendment that was adopted was the one increasing the exceptions from \$250,000 to \$500,000 for small businesses. The Speaker has taken care of that situation by appointing the gentleman from Texas (Mr. Pickle).

If we were to follow the argument of the gentleman from Illinois (Mr. Erlenborn), as it might apply to a situation in which some 30 or 40 Members outside the committee had offered amendments, I would think that it would set a precedent that this House could not live with.

But notwithstanding that, the Members who have been suggested to the Speaker by myself as chairman of the Committee on Education and Labor, the seven ranking members of the Subcommittee on Labor Standards, headed by the gentleman from Pennsylvania (Mr. Dent), voted for the majority of the amendments that were offered to the bill on the floor of the House. By and large, all the conferees suggested to the Speaker generally supported the legislation, and that is the rule.

We must look at this picture as a whole and not pick out one or two select amendments that the gentleman from Illinois (Mr. Erlenborn) is primarily interested in and overlook all the other amendments that the other members supported and that the suggested conferees supported.

Therefore, Mr. Speaker, it is my contention that the point of order raised by the gentleman from Illinois (Mr. Erlenborn) is without merit and should be overruled.

THE SPEAKER: The Chair is ready to rule.

This is the judgment of the Chair concerning the following language: "The Speaker shall appoint no less than a majority of Members who generally supported the House position as determined by the Speaker, and the Speaker shall name Members who are primarily responsible for the legislation and shall, to the fullest extent feasible, include the principal proponents of the major provisions of the bill as it passed the House."

That language is found in clause 6(e) of rule X of the Rules of the House.

In the opinion of the Chair, after looking over the list of conferees, and in view of the fact that the Chair has only had one additional request to name a conferee—and that is the gentleman from Texas (Mr. Pickle), whom the Chair has named as a limited conferee—the Members that the Chair has named as conferees meet the qualification of being "primarily responsible for the legislation."

The Chair's appointment under the remaining provisions of the rule is ultimately a matter within his discretion, which the Chair feels he has properly exercised, and there is nothing in the rule requiring the Chair to consider the conferees' positions solely on the matter in dispute.

The Chair overrules the point of order.

**§ 6.4 Instance where the Speaker declined to name as a conferee a Member not of the reporting committee who had successfully sponsored a**

**major amendment and offered a successful motion to instruct to preserve that amendment in conference.**

The Speaker's designation of conferees under the guidelines set forth in Rule X clause 6(f)<sup>(13)</sup> is within his discretion. When H.R. 5840, the Export Administration Amendments of 1977, was considered in the House on Apr. 20, 1977, the amendment offered by Mr. Stewart B. McKinney, of Connecticut, was adopted by a voice vote.<sup>(14)</sup> Two other amendments were adopted, one also sponsored by a noncommittee Member, by voice votes. There is no documentation of whether or not Mr. McKinney explicitly requested to be named as a conferee.<sup>(15)</sup>

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5840) to amend the Export Administration Act of 1969 in order to extend the authorities of that act and improve the administration of export controls under that act, and to strengthen the antiboycott provisions of

13. *House Rules and Manual* § 701e (1997).

14. 123 CONG. REC. 11441, 11449, 95th Cong. 1st Sess.

15. See 123 CONG. REC. 14087, 14088, 14091, 95th Cong. 1st Sess., May 10, 1977.



that act, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

MOTION OFFERED BY MR. MCKINNEY

MR. MCKINNEY: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. McKinney moves that the Managers on the part of the House, at the Conference on the disagreeing votes of the two Houses on the bill H.R. 5840, be instructed to insist upon section 110 of the House-passed bill.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Connecticut (Mr. McKinney) for 1 hour in support of his motion. . . .

So the motion was agreed to. . . .

THE SPEAKER PRO TEMPORE: The Chair appoints the following conferees: Messrs. Zablocki, Fascell, Rosenthal, Hamilton, Bingham, Ryan, Solarz, Broomfield, Buchanan, and Whalen.

### *Discretion of the Chair (Senate)*

§ 6.5 The Vice President stated that in the future, he would exercise some discretion in the appointment of conferees.

On Apr. 9, 1935, the Vice President, John Nance Garner, of Texas, after appointing Senate conferees on the District of Columbia appropriations bill, stated:<sup>(17)</sup>

The Chair would like to make a statement concerning the future policy of the present occupant of the chair in the matter of appointing conferees.

It has been the custom for a long time for the Senator having charge of an important House bill which passes the Senate with amendments, to ask for a conference with the House of Representatives and that the Chair appoint the conferees on the part of the Senate. He sends to the Chair the names of the conferees. So far as the Record shows, the occupant of the chair appoints the conferees, whereas, as a matter of fact, he exercises no discretion and does not even see the names of the conferees until they are sent to the Chair.

Hereafter the present occupant of the chair expects to exercise some discretion in the matter of selecting conferees when the Senate authorizes him to make the appointments.

The Chair mentions this now so that no Senator in the future may think he is slighted or otherwise discriminated against if he asks unanimous consent that the Chair appoint conferees and sends up his list, and those named on the list are not appointed. The Chair merely desires to give notice of his course in the future.

16. B. F. Sisk (Calif.).

17. See 79 CONG. REC. 5296, 5297, 74th Cong. 1st Sess.

After the Vice President's statement, there was some discussion of the method of appointing Senate conferees. During the discussion, Senator Joseph T. Robinson, of Arkansas, observed:

... Without doubt, the Senate has the right to elect all its committees; but the practice has arisen, by unanimous consent, of the Chair appointing conferees, and those appointments are made on the recommendation of the Senator in charge of the bill.

### *Appointments by Speaker Pro Tempore*

**§ 6.6 *Parliamentarian's Note:* An appointed or designated Speaker Pro Tempore may, by unanimous consent, appoint conferees.**

On Dec. 22, 1970,<sup>(18)</sup> after Mr. Otto E. Passman, of Louisiana, asked unanimous consent to agree to the further conference requested by the Senate on H.R. 17867, a foreign assistance appropriation bill, Speaker Pro Tempore Carl Albert, of Oklahoma, stated:

Is there objection to the request of the gentleman from Louisiana? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Passman, Natcher, Mrs. Han-

18. 116 CONG. REC. 43398, 91st Cong. 2d Sess.

sen of Washington, and Messrs. Co-helan, Long of Maryland, McFall, Mahon, Shriver, Conte, Reid of Illinois, Riegle, and Bow.<sup>(19)</sup>

There was no objection.

### *Reappointment of Same Conferees for Further Conference*

**§ 6.7 The Speaker may appoint the same conferees who have reported back from a previous conference in disagreement.**

On July 30, 1963,<sup>(20)</sup> Representatives Wright Patman, of Texas, Albert Rains, of Alabama, Abraham J. Multer, of New York, William A. Barrett, of Pennsylvania, Clarence E. Kilburn, of New York, William B. Widnall, of New Jersey, and James Harvey, of Michigan—the managers on the part of the House at the conference on H.R. 3872 (extending the Export-Import Bank Act)—reported that they had been unable to reach an agreement with their Senate counterparts. After the House agreed to a motion offered by Mr. Patman

19. See also 113 CONG. REC. 34135, 34136, 90th Cong. 1st Sess., Nov. 29, 1967; 108 CONG. REC. 23032, 87th Cong. 2d Sess., Oct. 10, 1962; and 95 CONG. REC. 11583, 11584, 81st Cong. 1st Sess., Aug. 16, 1949.

20. 109 CONG. REC. 13631, 13636, 88th Cong. 1st Sess.

that the House insist on its disagreement to the amendment of the Senate and ask for a further conference, Speaker John W. McCormack, of Massachusetts, appointed the same conferees who had reported back in disagreement.

THE SPEAKER: The Chair appoints the following conferees: Messrs. Patman, Rains, Multer, Barrett, Kilburn, Widnall, and Harvey of Michigan.

### *Number of Conferees*

**§ 6.8 The number of Members appointed to act as managers on the part of the House at a conference is within the discretion of the Speaker, and a large number have been appointed where it is necessary to reflect divergent views on the legislation.**

On Dec. 12, 1969,<sup>(1)</sup> Mr. Carl D. Perkins, of Kentucky, asked unanimous consent that the House insist on its amendment to S. 3016, the Economic Opportunity Act Amendments of 1969, and request a conference thereon with the Senate. After the Clerk read the title of the bill, Speaker John W. McCormack, of Massachusetts, stated:

1. 115 CONG. REC. 38877, 38878, 91st Cong. 1st Sess.

Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Mr. Perkins, Mrs. Green of Oregon, Messrs. Pucinski, Brademas, O'Hara, Carey, Hawkins, William D. Ford, Hathaway, Meeds, Mrs. Mink, Messrs. Clay, Ayres, Quie, Reid of New York, Erlenborn, Scherle, Dellenback, Esch, and Steiger of Wisconsin.

*Parliamentarian's Note:* While only 20 conferees are listed, four additional conferees were appointed, by unanimous consent, on subsequent days, making a total of 24.

**§ 6.9 The Speaker may appoint an equal number of majority and minority conferees.**

On Feb. 16, 1966,<sup>(2)</sup> the following proceedings occurred:

MR. [JOHN L.] McMILLAN [of South Carolina]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3314) to require premarital examinations in the District of Columbia, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate.

THE SPEAKER:<sup>(3)</sup> Is there objection to the request of the gentleman from South Carolina?

2. 112 CONG. REC. 3176, 89th Cong. 2d Sess.

3. John W. McCormack (Mass.).

The Chair hears none, and appoints the following conferees: Messrs. Whitener, Williams, Horton, and Roudebush.<sup>(4)</sup>

### *Alternate Conferees*

**§ 6.10 The Speaker may be authorized to appoint alternate managers on a conference committee to serve in lieu of managers unavoidably absent.**

On Aug. 16, 1950,<sup>(5)</sup> the following proceedings occurred regarding H.R. 7786, a general appropriation bill:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I ask unanimous consent that the Speaker appoint four alternate managers on the part of the House at the conference with the Senate on House bill 7786 to serve in lieu of managers unavoidably absent.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Missouri? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. Bates of Kentucky, Passman, McGrath, and Furcolo.

4. Representatives Whitener and Williams were members of the majority party; Representatives Horton and Roudebush were members of the minority party.

5. 96 CONG. REC. 12607, 81st Cong. 2d Sess.

6. Sam Rayburn (Tex.).

### *Appointment of Replacement Conferees*

**§ 6.11 Upon the death of a Member who has been appointed to a conference committee, the Speaker appoints a replacement.**

The Speaker's statement, placed in the *Congressional Record* on Sept. 11, 1984,<sup>(7)</sup> is self-explanatory.

APPOINTMENT OF CONFEREE ON S. 38, H.R. 1904, H.R. 5167 AND S. 2496

THE SPEAKER:<sup>(8)</sup> The Chair appoints the gentleman from California, Mr. Hawkins, as a conferee to fill the vacancies caused by the death of Representative Perkins of Kentucky on the following conferences:

S. 38, Longshoremen's and Harbor Workers' Compensation Act amendments;

H.R. 1904, Child Abuse Amendments of 1984;

H.R. 5167, Department of Defense Authorization Act; and

S. 2496, Adult Education Act Amendments of 1984.

**§ 6.12 Under the earlier practice (before 1993), the Speaker could appoint additional conferees, after the original appointment, only**

7. 130 CONG. REC. 24790, 98th Cong. 2d Sess.

8. Thomas P. O'Neill, Jr. (Mass.).

**with the permission of the House.**

Conferees had been named to represent the House at the conference with the Senate on the bill H.R. 5383, the Age Discrimination in Employment Act Amendments of 1977, earlier in the day on Oct. 25, 1977.<sup>(9)</sup> One majority conferee had inadvertently been omitted from the list read by the Chair. The request carried here illustrates two points: first, the Speaker Pro Tempore can appoint a conferee only by unanimous consent; and second, the consent of the House was at that time required for the Chair to add (or remove) conferees after the original appointment.

In adding the name of the additional conferee, the Chair also fixed his rank on the conference committee, reflecting the practice of recognizing committee seniority in the appointment of managers.

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Speaker, I ask unanimous consent that the Speaker be authorized to ap-

9. 123 CONG. REC. 35029, 95th Cong. 1st Sess. Both the request of Mr. Brademas and the insert in the *Congressional Record* carry an incorrect number and year for the bill. The correct number and year are shown in the text above.

point one additional conferee on the bill H.R. 5283, to amend the Age Discrimination in Employment Act of 1967 to extend the age group of employees who are protected by the provisions of such act, and for other purposes.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Is there objection to the request of the gentleman from Indiana?

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, reserving the right to object, could the gentleman from Indiana tell us why this is necessary?

MR. BRADEMAS: Mr. Speaker, will the gentleman yield?

MR. ROUSSELOT: Mr. Speaker, I am happy to yield to the distinguished gentleman.

MR. BRADEMAS: Mr. Speaker, I will respond to the gentleman that I am advised by the chairman of the Committee on Education and Labor that inadvertently the name of one of the persons who was to have been named a House conferee was omitted. It is for that reason that I make the unanimous-consent request.

MR. ROUSSELOT: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Indiana? The Chair hears none and, without objection, appoints the gentleman from California (Mr. Hawkins) as an additional conferee, to rank immediately after the gentleman from Kentucky (Mr. Perkins).

There was no objection.

***Senate Notification***

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

**§ 6.13 The Speaker directs the Clerk to notify the Senate of the appointment of additional House conferees.**

On Sept. 20, 1972,<sup>(11)</sup> the following proceedings occurred:

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint two additional conferees on the part of the House at the conference with the Senate on the bill S. 976 to promote competition among motor vehicle manufacturers in the design and production of safe motor vehicles having greater resistance to damage, and for other purposes.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. Eckhardt and Ware.

The Clerk will notify the Senate of the action of the House.

***Authority of Speaker Pro Tempore To Appoint Conferees***

**§ 6.14 While a Member designated by the Speaker as Speaker Pro Tempore may exercise the authority to appoint conferees, only with the unanimous consent of the House, an elected Speaker Pro Tempore can make such**

**appointments by virtue of his office.**

**Where an objection was raised to the appointment of conferees by a designated Speaker Pro Tempore, the House proceeded to elect a Speaker Pro Tempore so the managers on the part of the House could be named.**

On June 21, 1984,<sup>(13)</sup> the Majority Leader, James C. Wright, Jr., of Texas, was administered the oath as Speaker Pro Tempore to facilitate the appointment of conferees on the Department of Defense Authorization Act, 1985. The proceedings were as follows:

APPOINTMENT OF CONFEREES ON H.R. 5167, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

MR. [MELVIN] PRICE [of Illinois]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the military functions of the Department of Defense, to prescribe military personnel levels for that fiscal year for the Department of Defense, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

There was no objection.

11. 118 CONG. REC. 31418, 92d Cong. 2d Sess.

12. Carl Albert (Okla.).

13. 130 CONG. REC. 17707, 17708, 98th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees—

MR. [DICK] CHENEY [of Wyoming]: Mr. Speaker, I reserve the right to object.

THE SPEAKER PRO TEMPORE: The gentleman reserves a right to object to the Chair's appointment of conferees?

MR. CHENEY: That is correct, Mr. Speaker.

Mr. Speaker, it is my understanding that one of the individuals to be appointed to serve on the conference from the House on the Defense authorization bill is not a member of the appropriate committee. I wonder if the Chair could clarify that for me.

THE SPEAKER PRO TEMPORE: The Chair will tell the gentleman that the Members to be appointed are those who were designated by Speaker O'Neill, and they are Members designated under the rule, members of the committee, and for purposes of specific amendments, as the rules of the House provide, when requested by the author of a specific amendment, the author of that specific amendment may be appointed to the conference expressly and solely for purposes of consideration of that amendment.

MR. CHENEY: Further reserving the right to object, it is my understanding, to be specific, that the gentleman from Oregon [Mr. AuCoin], who is not a member of the Armed Services Committee, is being appointed as a member of the conference specifically with respect to the MX.

I wonder if the Chair could confirm that for me.

THE SPEAKER PRO TEMPORE: The Chair would simply declare that the

Speaker's designation of conferees is not for that reason subject to challenge, and whomever the Speaker has asked this presiding officer to appoint, will be appointed.

MR. CHENEY: Further reserving the right to object, Mr. Speaker, it is indeed my understanding under rule 10, clause 6, section F, that the Speaker does indeed have that authority, but the gentleman in the chair, obviously, is currently serving in that capacity but has asked for unanimous consent that we proceed with the appointment of the conferees.

I am deeply concerned about the precedent of appointing someone to serve on a conference committee who is not a member of the authorizing committee, and on that basis, I would be constrained to object to the appointment of conferees.

ELECTION OF HON. JIM WRIGHT AS  
SPEAKER PRO TEMPORE DURING THE  
ABSENCE OF THE SPEAKER

MR. [GILLIS W.] LONG of Louisiana: Mr. Speaker, I offer a privileged resolution (H. Res. 531) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 531

*Resolved*, That the Honorable Jim Wright, a Representative from the State of Texas, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

*Resolved*, That the President and the Senate be notified by the Clerk of the election of the Honorable Jim Wright as Speaker pro tempore during the absence of the Speaker.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

MR. CHENEY: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 148, not voting 55, as follows: . . .

SWEARING IN OF HON. JIM WRIGHT AS SPEAKER PRO TEMPORE DURING ABSENCE OF THE SPEAKER

THE SPEAKER PRO TEMPORE (MR. WRIGHT): Will the dean of the House please come forward and administer the oath of office?

Mr. Wright assumed the chair and took the oath of office administered to him by the gentleman from Mississippi [Mr. Whitten].

#### ORDER OF BUSINESS

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The Chair will recognize the gentleman from California [Mr. Dannemeyer] later. At this moment the Chair is appointing conferees.

APPOINTMENT OF CONFEREES ON H.R. 5167

THE SPEAKER PRO TEMPORE: The Chair appoints the following conferees on H.R. 5167:

From the Committee on Armed Services: Messrs. Price, Bennett, Stratton, Nichols, Daniel, Montgomery, Aspin, Dellums, Dickinson, Whitehurst, Spence, Mrs. Holt, Mr. Hillis, and Mr. Badham.

Although not on the Committee on Armed Services, Mr. Les AuCoin, of Oregon, was appointed as one of the conferees “solely for consideration” of certain designated provisions in the House bill and the Senate amendment.<sup>(14)</sup>

**§ 6.15 Under a standing rule adopted in the 103d Congress, the Speaker may appoint additional conferees or remove conferees after his initial appointment; but when this action is taken by a Speaker Pro Tempore, it requires unanimous consent.**

Following the rather intricate appointment of conferees on the Budget Reconciliation Act of 1994, certain corrections and additions were called to the attention of the Speaker before the House met on the next day. The additions and corrections were initially announced by a designated Speaker Pro Tempore, but when a Member reserved the right to object to the unanimous-consent request put by the Chair, and indicated a desire for a prolonged discussion, the Speaker resumed the Chair which changed the parliamentary situation from one requiring consent to

14. 130 CONG. REC. 17709, 98th Cong. 2d Sess., June 21, 1984.



one which could be exercised under the provision of Rule X clause 6(f).<sup>(15)</sup>

The pertinent proceedings of July 15, 1993,<sup>(16)</sup> are set out below.

APPOINTMENT OF ADDITIONAL CONFEREES ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Without objection, the Chair appoints the following additional conferees on H.R. 2264, the Omnibus Budget Reconciliation Act of 1993:

As additional conferees from the Committee on Agriculture, for consideration of title I and section 9005 (a)–(c) and (f) of the House bill, and title I and section 5001, 5002 (a), (b) and (d), and 5003 of the Senate amendment, and modifications committed to conference: Messrs. de la Garza, Rose, Glickman, Volkmer, Penny, Roberts, Emerson, and Gunderson. . . .

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I reserve the right to object.

THE SPEAKER:<sup>(18)</sup> The Chair advises the gentleman from Pennsylvania [Mr. Walker] that these are the Speaker's additional appointments to the conference committee under rule X. Unanimous consent is not required under the rule, and consequently reservations of objection are not in order.

15. See *House Rules and Manual* § 701e (1997).

16. 139 CONG. REC. 15831, 15832, 103d Cong. 1st Sess.

17. John W. Olver (Mass.).

18. Thomas S. Foley (Wash.).

PARLIAMENTARY INQUIRY

MR. WALKER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. WALKER: Just before the Speaker took the chair, the action before the House then was without objection that these appointments would be made. I understand rule X, but are we going to now revise the procedure on the floor, and is the Speaker announcing such?

THE SPEAKER: The gentleman is correct.

**§ 6.16 A Speaker Pro Tempore was by unanimous consent authorized to appoint additional conferees on a bill.**

On Apr. 29, 1948,<sup>(19)</sup> the following proceedings occurred in the House:

MR. [PAUL W.] SHAFER [of Michigan]: Mr. Speaker, I ask unanimous consent that the Speaker pro tempore be authorized to appoint two additional conferees on the bill (S. 1641) to establish the Women's Army Corps in the Regular Army, to authorize the enlistment and appointment of women in the Regular Navy and Marine Corps and the Naval and Marine Corps Reserve, and for other purposes.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> Is there objection to the request of the gentleman from Michigan? [After a

19. 94 CONG. REC. 5066, 80th Cong. 2d Sess.

20. Charles A. Halleck (Ind.).

pause.] The Chair hears none and, without objection, appoints the gentleman from New York [Mr. Andrews] and the gentleman from Texas [Mr. Johnson].

There was no objection.

*Example of a Delayed Appointment of Conferees*

**§ 6.17 Instance where the Speaker did not announce his appointment of conferees until the second session of the Congress, where a conference had been requested in the first session, but where the number and variety of conferees was in dispute.**

The appointment of conferees was delayed due to controversy over the composition of the conference on H.R. 2005, the Social Security Minor and Technical Changes Act of 1985. The House had requested a conference on Dec. 10, 1985, but achieving jurisdictional "balance" and reconciling opposing claims by several House committees delayed a decision. The list of conferees carried here<sup>(1)</sup> illustrates the diversity of jurisdictions which were involved in the superfund legislation.

1. 132 CONG. REC. 1943, 99th Cong. 2d Sess., Feb. 6, 1986.

THE SPEAKER:<sup>(2)</sup> Pursuant to the action of the House on December 10, 1985, the Chair appoints the following Superfund conferees on H.R. 2005:

From the Committee on Energy and Commerce, for consideration of titles I-III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

Messrs. Dingell, Florio, Eckart of Ohio, Ralph M. Hall, Tauzin; and

Mr. Swift (solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment); and

Mr. Wyden (solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference); and

Messrs. Broyhill, Lent, Ritter, and Fields.

From the Committee on Public Works and Transportation, for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

Messrs. Howard, Anderson, Roe, Breaux, Mineta, Edgar, Snyder, Hamerschmidt, Stangeland, and Gingrich.

From the Committee on Public Works and Transportation, for consideration of title III of the House

2. Thomas P. O'Neill, Jr. (Mass.).

amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

Messrs. Anderson, Roe, Edgar, Snyder, and Hammerschmidt.

From the Committee on Ways and Means, for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

Messrs. Rostenkowski, Pickle, Rangel, Stark, Downey of New York, Russo, Pease, Duncan, Archer, Vander Jagt, and Frenzel.

From the Committee on Merchant Marine and Fisheries, for consideration of sections 104, 107, 108, 111, 113, 116, 121, and 122 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

Messrs. Jones of North Carolina, Biggi, Studds, Young of Alaska, and Davis.

From the Committee on Merchant Marine and Fisheries, for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

Messrs. Jones of North Carolina, Biggi, and Studds, Ms. Mikulski, and Messrs. Lowry of Washington, Tauzin, Young of Alaska, Davis, Lent, and Fields.

From the Committee on the Judiciary, for consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

Messrs. Rodino, Glickman, Frank, Fish, and Kindness.

From the Committee on Armed Services, for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

Mr. McCurdy and Mr. Martin of New York.

***Specific Conferees From Another Committee Appointed on Portion of Senate Amendment in Nature of Substitute***

**§ 6.18 Instance where the Speaker appointed as sole conferees for consideration of a portion of a Senate amendment only members from the committee having jurisdiction over that non-germane part, reserving until a later day the appointment of managers to cover the remainder of the Senate amendment.**

H.R. 1197, the Vessel Tonnage Measurement Simplification Act, had been reported by the House Committee on Merchant Marine and Fisheries. The Senate amendment added two sections dealing with strip mining regulations, a matter within the jurisdiction of the Committee on Interior and Insular Affairs. Mr. Ashley's request (made in his capacity as Chairman of the Merchant Marine and Fisheries Committee) was

that the House would disagree to the total Senate amendment, so a valid conference could not be commenced until managers were appointed with authority to confer on the entirety of the amendment. The conferees from the membership of the Merchant Marine Committee were in fact appointed by the Speaker on the following day and given sole authority to negotiate on the other sections of the Senate amendment.<sup>(3)</sup>

APPOINTMENT OF CONFEREES ON H.R. 1197, TONNAGE MEASUREMENT SIMPLIFICATION ACT

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1197) to simplify the tonnage measurement of certain vessels, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon. . . .

THE SPEAKER:<sup>(4)</sup> Is there objection to the request of the gentleman from Ohio?

MR. [NICK J.] RAHALL [II, of West Virginia]: Mr. Speaker, reserving the right to object, I would ask the distinguished gentleman from Ohio the parliamentary situation. As I understand it, the merchant marine jurisdiction will be separated entirely from the Surface Mining Act that has amendments

that have been tacked on by the other body?

MR. ASHLEY: Mr. Speaker, will the gentleman yield?

MR. RAHALL: I yield to the gentleman.

MR. ASHLEY: I would say to my friend from West Virginia he described the situation with his customary accuracy. That is precisely what is going to happen. The conferees from the Merchant Marine and Fisheries Committee, being inexpert in the matter relating to the nongermane Senate amendment, will not be charged with responsibility of making decisions in that matter. Rather, the appropriate committee of jurisdiction conferees from the appropriate committee of jurisdiction will have that responsibility.

MR. RAHALL: All conferees on the surface mining amendments which were passed a second time by the Senate in order to attach it to this merchant marine bill, all of the conferees on that part of the legislation will be appointed by the House Interior and Insular Affairs Committee chairman?

MR. ASHLEY: The gentleman is right. . . .

THE SPEAKER: Is there objection to the request of the gentleman from Ohio (Mr. Ashley)? The Chair hears none, and appoints the following conferees: Messrs. Udall, Bingham, Seiberling, Eckhardt, Carr, Kostmayer, Murphy of Pennsylvania, Rahall, Vento, Howard, Lujan, Young of Alaska, Symms, Marriott, and Cheney, with respect to disagreement with matters contained in sections 4 and 5 of the Senate amendment and modifications committed to conference.

3. 126 CONG. REC. 23548, 23549, 96th Cong. 2d Sess., Aug. 27, 1980.

4. Thomas P. O'Neill, Jr. (Mass.).

The Chair states further the Chair will appoint additional conferees on sections 1, 2, and 3 on tomorrow.

*Parliamentarian's Note:* The Speaker's appointment of the remaining conferees on the next day did not require unanimous consent, since the original appointment did not cover all the provisions of the Senate amendment committed to conference and the partial appointment left the conference committee incomplete. A motion to instruct the conferees remained a viable option until the final managers were named.

### *Additional Conferees*

**§ 6.19 By unanimous consent, additional conferees may be appointed subsequent to the original appointment.<sup>(5)</sup>**

On July 24, 1972,<sup>(6)</sup> the following occurred in the House:

MR. [GEORGE P.] MILLER of California: Mr. Speaker, I ask unanimous consent that the Speaker be authorized to

5. Pursuant to a change in Rule X clause 6(f) in the 93d Congress, the Speaker was given the authority to add or remove House managers after his original appointment. H. Res. 5, 139 CONG. REC. 49, 103d Cong. 1st Sess., Jan. 5, 1993.
6. 118 CONG. REC. 24863, 92d Cong. 2d Sess.

appoint two additional managers on the part of the House to the conference on the disagreeing votes of the two Houses on the bill (H.R. 14108) to authorize appropriations for activities of the National Science Foundation, and for other purposes.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

THE SPEAKER: The Chair appoints additional managers on the part of the House at the conference on the bill H.R. 14108 the following Members: Mr. Symington of Missouri, and Mr. Mosher of Ohio.<sup>(8)</sup>

### *Speaker Sometimes Reserves Right To Appoint Additional Conferees*

**§ 6.20 While ordinarily the Speaker adds new conferees to a list of those previously appointed by unanimous consent at the time of the subsequent appointment, he can reserve the right to make additional appointments and**

7. Carl Albert (Okla.).
8. See, for example, 118 CONG. REC. 19909, 92d Cong. 2d Sess., June 7, 1972; 117 CONG. REC. 26442, 92d Cong. 1st Sess., July 21, 1971; 113 CONG. REC. 16199, 90th Cong. 1st Sess., June 19, 1967; 95 CONG. REC. 7733, 81st Cong. 1st Sess., June 15, 1949; and 94 CONG. REC. 222, 80th Cong. 2d Sess., Jan. 15, 1948.

**delineate portions of the bill for specific conferees at the time of the original appointment.**

It is often necessary to allow a conference to begin organizing before the final appointment of conferees and specific assignment of conference responsibilities. When the request was made on Aug. 7, 1987,<sup>(9)</sup> to go to conference on H.R. 3, the Trade and National Economic Policy Reform Act of 1987, a core group of conferees from 12 committees was appointed, along with the Majority Leader, as an additional conferee.

THE SPEAKER:<sup>(10)</sup> The Chair appoints the following conferees from the committees designated and, without objection, reserves the authority to make additional appointments of conferees and to specify particular portions of the House bill and Senate amendment as the subjects of the various appointments.

From the Committee on Ways and Means: Messrs. Rostenkowski, Gibbons, and Duncan;

From the Committee on Agriculture: Messrs. de la Garza, Brown of California, and Roberts; . . .

From the Committee on Science, Space, and Technology: Messrs. Roe, Walgren, and Lujan; and

9. 133 CONG. REC. 23028, 100th Cong. 1st Sess.

10. James C. Wright, Jr. (Tex.).

As an additional conferee: Mr. Gephardt.

There was no objection.

On Sept. 16, 1987,<sup>(11)</sup> the Speaker supplemented his original appointment, using the authority reserved when he made the initial appointment, by naming 156 conferees.

THE SPEAKER: On August 7, 1987, the Chair appointed conferees on H.R. 3, the omnibus trade bill. Pursuant to the order of the House of that day, the Chair will now supplement that initial appointment.

Accordingly, the Chair appoints the following Members from the committees designated, including both the Members initially appointed and Members newly appointed, as conferees and specifies particular portions of the House bill and Senate amendment as the subjects of the various appointments.

Without objection, the appointment will appear at this point in the Record.

There was no objection.

The list of conferees is as follows:

CONFEREES ON THE OMNIBUS TRADE BILL (H.R. 3)

From the Committee on Ways and Means, for consideration of titles I, II, VIII, and XV and sections 704 and 906 of the House bill, and titles I, II, III (except sections 308 and 310), IV (except sections 412 through 415), V through VIII, IX (except sections 963, 967 through 972, 974, 975, and 977)

11. 133 CONG. REC. 24071, 100th Cong. 1st Sess.

of the Senate amendment, and modifications committed to conference:

Messrs. Rostenkowski, Gibbons, Jenkins, Downey of New York, Pease, Russo, Gephardt, Guarini, Matsui, Duncan, Archer, Vander Jagt, Crane, and Frenzel.<sup>(12)</sup>

### ***Appointment During Adjournment***

**§ 6.21 The House may grant unanimous consent that, notwithstanding adjournment of the House, the Clerk be authorized to receive a message from the Senate on a House bill, that the House disagree to the amendments of the Senate and agree to a conference, and that the Speaker appoint managers on the part of the House.**

On Sept. 19, 1940,<sup>(13)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Robert L. Doughton, of North Carolina, who made the following unanimous-consent request:

Mr. Speaker, I ask unanimous consent that, notwithstanding the ad-

12. *Parliamentarian's Note:* The Speaker named a total of 156 conferees on this bill, representing 13 committees of the House. This was the largest number of managers ever named to a conference up to that time.

13. 86 CONG. REC. 12360, 76th Cong. 3d Sess.

jourment of the House, the Clerk of the House be authorized to receive any message on the bill (H.R. 10413) to provide revenue, and for other purposes, that the House disagree to the amendments of the Senate to such bill and agree to the conference thereon, and that the Speaker appoint managers on the part of the House to attend said conference.

No objection to the request was heard.<sup>(14)</sup>

**§ 6.22 Where the Speaker appoints conferees for the House during an adjournment pursuant to authority granted him, he so informs the House of that fact on the next legislative day so the Record and Journal may record that action.**

On Sept. 23, 1940,<sup>(15)</sup> Speaker Sam Rayburn, of Texas, made the following announcement:

Pursuant to the authority granted on Thursday, September 19, 1940,<sup>(16)</sup> the Chair did on Friday, September 20, 1940, appoint as managers on the part of the House to attend the conference on H.R. 10413, the excess-profits-tax bill, the following Members of the House: Mr. Doughton, Mr. Cullen, Mr.

14. See also 84 CONG. REC. 11105, 76th Cong. 1st Sess., Aug. 4, 1939.

15. 86 CONG. REC. 12461, 76th Cong. 3d Sess.

16. See § 6.21, supra.

McCormack, Mr. Cooper, Mr. Treadway, Mr. Crowther, Mr. Knutson.

*Conferees From Several Committees*

§ 6.23 A conference committee, composed of three members from the Committee on Interstate and Foreign Commerce and two members from the Committee on the Judiciary, was appointed to consider the House amendments to a Senate bill providing for punishment for willful damage to aircraft.

On May 17, 1956,<sup>(17)</sup> the following proceedings occurred:

MR. [J. PERCY] PRIEST [of Tennessee]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 2972) to punish the willful damaging or destroying of aircraft and attempts to damage or destroy aircraft, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(18)</sup> Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. Harris, Williams of

Mississippi, Willis, Wolverton, and Crumpacker.<sup>(19)</sup>

§ 6.24 Where a bill which had been reported from the one standing committee, but was called up with a substitute text which was the joint product of two committees, the Speaker appointed members from both committees as conferees.

H.R. 13565, the Federal Non-nuclear Energy Research and Development Act of 1974, was reported from the House Committee on Interior and Insular Affairs. Bills of a similar import had been referred to the Committee on Science and Astronautics but not formally reported therefrom. When a special order (H. Res. 1325) was reported from the Committee on Rules providing for the consideration of H.R. 13565, that committee made in order an amendment in the nature of a

19. Representatives Harris, Williams, and Wolverton were members of the Committee on Interstate and Foreign Commerce, which reported S. 2972. Representatives Willis and Crumpacker were members of the Committee on the Judiciary which reported H.R. 319, the provisions of which were inserted as a substitute for S. 2972.

17. 102 CONG. REC. 8435, 84th Cong. 2d Sess.

18. Sam Rayburn (Tex.).



substitute for the Interior text, a substitute which was acceptable to both committees. It was this mutually agreed upon substitute which was in conference with the Senate version of the bill (S. 1283) when the Speaker appointed conferees.<sup>(20)</sup> The conferee ratio was five majority, three minority; three of the majority were from the Committee on Interior and Insular Affairs, and two were from the Science Committee.

MR. [JAMES A.] HALEY [of Florida]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1283) to establish a national program for research, development, and demonstration in fuels and energy and for the coordination and financial supplementation of Federal energy research and development, and for other purposes, with a House amendment thereto, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(1)</sup> Is there objection to the request of the gentleman from Florida?

The Chair hears none, and appoints the following conferees: Messrs. Udall, Bingham, Seiberling, Teague, McCormack, Ruppe, Dellenback, and Mosher.

**§ 6.25 Where a House bill had been referred to one committee, sequentially referred to a**

**second, but had passed the House with the text recommended by the first, the Speaker appointed conferees from both committees, weighted in favor of the committee whose text had prevailed on the House floor.**

Both the Committee on Armed Services and the Committee on Interior and Insular Affairs has considered bills dealing with the national petroleum reserves. H.R. 49 had been reported first from the Interior Committee on Mar. 18, 1975. It was referred sequentially to the Committee on Armed Services, which on Apr. 18, 1975, reported to the House two bills: H.R. 49 and H.R. 5919. When H.R. 49 was considered in the House, pursuant to House Resolution 416, a special order which permitted both of the texts recommended by the two committees to receive consideration, the version advocated by the Committee on Armed Services prevailed. Of the 10 managers named by the Speaker,<sup>(2)</sup> seven were from Interior and Insular Affairs and three were from Armed Services—seven rep-

<sup>20</sup>. See 120 CONG. REC. 31745, 93d Cong. 2d Sess., Sept. 19, 1974.

1. Carl Albert (Okla.).

<sup>2</sup>. See 121 CONG. REC. 28902, 94th Cong. 1st Sess., Sept. 17, 1975.

resented the majority party and three represented the minority.

MR. [JOHN] MELCHER [of Montana]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 49) to authorize the Secretary of the Interior to establish on certain public lands of the United States national petroleum reserves the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate.

THE SPEAKER:<sup>(3)</sup> Is there objection to the request of the gentleman from Montana? The Chair hears none and appoints the following conferees: Messrs. Melcher, Johnson of California, Phillip Burton, Runnels, Miller of California, Price, Bennett, Skubitz, Steiger of Arizona, and Dickinson.

Another appointment of conferees on Oct. 25, 1977,<sup>(4)</sup> where a bill was sequentially referred but where the sequential committee was successful in having a major amendment reflecting its jurisdictional interest adopted in the House, is carried here to illustrate the significance of a sequential referral in the Chair's choice of managers at a conference.

3. Carl Albert (Okla.).

4. 123 CONG. REC. 34987, 95th Cong. 1st Sess.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5383) to amend the Age Discrimination in Employment Act of [1977] to extend the age group of employees who are protected by the provisions of such act, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.

THE SPEAKER:<sup>(5)</sup> Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Messrs. Perkins, Dent, Beard of Rhode Island, Michael O. Myers, Le Fante, Weiss, Clay, Corrada, Pepper, Quie, Sarasin, Jeffords, Pursell, Findley, and as additional conferees solely for the consideration of sections 4(c) and 5 of the House bill and modification thereof committed to conference: Mrs. Spellman, and Messrs. Heftel and Derwinski.

§ 6.26 **The Speaker appointed a conference committee consisting of members of two standing committees of the House to consider, respectively, provisions in a Senate-amended House bill relating to airport facilities expansion, and the revenue provisions therein.**

5. Thomas P. O'Neill, Jr. (Mass.).

On Mar. 3, 1970,<sup>(6)</sup> the following proceedings occurred:

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 14465) to provide for the expansion and improvement of the Nation's airport and airway system, for the imposition of airport and airway user charges, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments and request a conference with the Senate thereon.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. Staggers, Friedel, Dingell, Pickle, Springer, Devine and Watson.<sup>(8)</sup>

As to the tax provision of the Senate amendments, the Chair appoints Messrs. Mills, Boggs, Watts, Byrnes of Wisconsin, and Betts.<sup>(9)</sup>

**§ 6.27 When appointing the conferees on a federal-aid highway bill (which contained both authorizations and revenue features), the Speaker selected members from both committees which had jurisdiction of the sub-**

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- 6. 116 CONG. REC. 5713, 91st Cong. 2d Sess.
  - 7. John W. McCormack (Mass.).
  - 8. Members of the Committee on Interstate and Foreign Commerce.
  - 9. Members of the Committee on Ways and Means.

**ject matter—the Committee on Public Works and the Committee on Ways and Means.**

On June 20, 1961,<sup>(10)</sup> the following proceedings occurred:

MR. [GEORGE W.] FALLON [of Maryland]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6713) to amend certain laws relating to Federal-aid highways, to make certain adjustments in the Federal-aid highway program, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(11)</sup> Is there objection to the request of the gentleman from Maryland? The Chair hears none and appoints the following conferees: On title I, Messrs. Fallon, Davis of Tennessee, Blatnik, Scherer, and Cramer;<sup>(12)</sup> on title II, Messrs. Mills, King of California, O'Brien of Illinois, Mason, and Byrnes of Wisconsin.<sup>(13)</sup>

***Conferees From Four Committees, With General Negotiating Authority***

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- 10. 107 CONG. REC. 10832, 87th Cong. 1st Sess.  
See also 102 CONG. REC. 9559, 84th Cong. 2d Sess., June 5, 1956.
  - 11. Sam Rayburn (Tex.).
  - 12. Members of the Committee on Public Works.
  - 13. Members of the Committee on Ways and Means.

**§ 6.28 Pending a unanimous-consent request to send to conference a bill reported by four House committees, the Speaker indicated that he would exercise his discretion to appoint managers from all four committees and permit them to negotiate on all aspects of the bill.**

On July 27, 1979,<sup>(14)</sup> the chairman of the Committee on Merchant Marine and Fisheries, John M. Murphy, of New York, which had plenary jurisdiction under the then-applicable provisions of Rule X<sup>(15)</sup> over the Panama Canal, asked unanimous consent to send the bill H.R. 111, the Panama Canal Act of 1979, with the Senate amendments thereto, to conference. After the Speaker's response to the parliamentary inquiry, there was an objection to the request. On July 30, 1979,<sup>(16)</sup> a special order was called up by a member of the Committee on Rules which on its adoption sent the bill to conference. The dispute over the authority of the conferees was

14. 125 CONG. REC. 20993, 20994, 96th Cong. 1st Sess.

15. Clause 1(n)(8), *House Rules and Manual* § 683 (1979).

16. 125 CONG. REC. 21298, 21302, 21309, 96th Cong. 1st Sess.

restated during the debate on that resolution. After adoption of the motion to instruct conferees, the Speaker appointed 18 conferees, representing the Committees on Merchant Marine and Fisheries, Foreign Affairs, Post Office and Civil Service, and the Judiciary. The list of those appointed was not arranged according to seniority, nor by committee affiliation, although senior members of the Committee on Merchant Marine and Fisheries were named first. The proceedings on the two dates are carried here, with a portion of the debate which is relevant to the mandate of the conferees.

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 111) to enable the United States to maintain American security and interests respecting the Panama Canal, for the duration of the Panama Canal Treaty of 1977, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from New York (Mr. Murphy)?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, I do so to propound an inquiry to the Chair.

17. Thomas P. O'Neill, Jr. (Mass.).

Under the rule which allows wide discretion to the Speaker to appoint conferees on any bill, the Speaker may designate certain conferees to deal with only limited portions of the bill.

The bill that is the subject of the request of the gentleman from New York, H.R. 111, had a joint referral to four different committees, the Committee on Foreign Affairs, the Committee on Post Office and Civil Service, and the Committee on the Judiciary and the Committee on Merchant Marine and Fisheries. Those first three committees had very limited jurisdiction over parts of the bill. If this request is granted, is it the intention of the Chair to designate conferees limited to the jurisdiction of the committees which they represent, rather than to permit all conferees to vote on the entire bill?

THE SPEAKER: The Chair will appoint the conferees from all committees and they will have authority to negotiate on the entire bill.

MR. BAUMAN: Mr. Speaker, I object to the request.

THE SPEAKER: Objection is heard. . . .

PROVIDING FOR SENDING H.R. 111 TO  
CONFERENCE

MR. [LEO C.] ZEFERETTI [of New York]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 390 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

*Resolved*, That upon the adoption of this resolution the bill (H.R. 111) to enable the United States to maintain American security and interests

respecting the Panama Canal, for the duration of the Panama Canal Treaty of 1977, with the Senate amendments thereto, is taken from the Speaker's table to the end that the House disagrees to the Senate amendments and requests a conference with the Senate thereof.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman from New York (Mr. Zeferetti) is recognized for 1 hour.

MR. ZEFERETTI: Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Maryland (Mr. Bauman), and, pending that, I yield myself such time as I may consume.

Mr. Speaker, generally after passage of a House bill which is in disagreement with the companion passed bill in the Senate the chairman or chairmen of the committee or committees involved will ask the House to request a conference. This is usually done by unanimous consent so as not to take up the valuable time of the House.

However, last week on a motion to send House Resolution 111 to conference an objection was raised by an opponent of the measure. In this instance it would require the four committees who have jurisdiction over this bill to meet and vote on whether to direct the chairmen of these respective committees to offer a motion on the floor to request a conference. Unfortunately, such a procedure would require a significant amount of time and would have delayed further consideration of this bill.

The Rules Committee has been informed by the chairman of the Mer-

18. George E. Brown, Jr. (Calif.).

chant Marine and Fisheries Committee that it is imperative for the House and Senate conferees to begin deliberation immediately so as to effectively come to agreement at the earliest possible date.

To remedy this situation the Rules Committee has reported out House Resolution 390 to effectively allow the legislative process on House Resolution 111 to progress without any further delays. . . .

MR. BAUMAN: Mr. Speaker, the gentleman from Maryland did indeed object to sending this bill to conference when the request was made to do so on last Friday. . . .

Under rule 701(d) of the Rules of the House, the Speaker of the House has almost unlimited discretion to name conferees on any matter, and that discretion cannot be challenged in the House. But he also has the discretion to limit the jurisdiction of individual conferees to those parts of the bill that deal directly with the jurisdiction of their committees.

It is proposed that when later today we finally reach the point of naming conferees, at least 18 conferees will be named from four different committees of jurisdiction. I can tell the House, and I think I have some proper judgment, having dealt with this issue in some detail for many months, that the majority of those conferees are not necessarily in favor of the House's position. . . .

Now I certainly do not criticize the Speaker of the House in any way for using the powers at his command. That is the way the House is run. . . .

When this bill was first brought before the House, H.R. 111 was the product in the most part of the Committee

on Merchant Marine and Fisheries, of which the gentleman from New York (Mr. Murphy), is the distinguished chairman.

The other three committees had limited jurisdiction over parts of the bill and dealt mainly with those parts dealing with Foreign Affairs, Post Office and Civil Service, and Judiciary. And when the rule that was granted by the Rules Committee was brought before the House, it even limited their committee amendments to the areas of their jurisdiction.

Now, what is proposed by the Speaker, and, as I say, it is within his rights that all of the conferees, is that all 18 conferees vote on all parts of the bill. I have no doubt that the other body will name conferees opposed to the House bill; and what may well happen is the House's position will not be upheld. . . .

MR. ZEFERETTI: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bauman moves that the conferees on the part of the House on the disagreeing votes of the two Houses on the bill H.R. 111, be instructed to adhere to the language of sections 101, 102, 103, 104, 105, 110 of chapter 1; sections 231, 232, 233, 234, 235, 236, and 250 of chapter 5; sections 371, 372, 373, and 374 of chapter 9 of H.R. 111 as passed by the

House with respect to the matters considered therein. . . .

So the motion was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Murphy of New York, Dingell, Bowen, Hubbard, Bonior, Wyatt, Zablocki, Fascell, Hanley, Ms. Holtzman, Mrs. Schroeder, Messrs. Harris, McCloskey, Bauman, Carney, Broomfield, Derwinski, and Fish.

There was no objection.

### ***Appointing Proponents of Major Amendments***

**§ 6.29 The proponent of a major amendment adopted by the House may be named as an additional conferee solely for consideration of that provision and modifications thereof committed to conference.**

During consideration in the House of H.R. 6161, the Clean Air Act Amendments of 1977,<sup>(19)</sup> Mr. John B. Breaux, of Louisiana, a Member not of the committee which had brought the bill to the House, offered an amendment

<sup>19</sup> H.R. 6161, the Clean Air Act Amendments of 1977, was reported from the Committee on Interstate and Foreign Commerce. Mr. Breaux was not a member of that committee.

which was amended by a substitute which was subsequently adopted by the House with the support of the author of the original amendment. As shown by the appointment below,<sup>(20)</sup> he was named as a conferee on that provision.

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 6161) to amend the Clean Air Act, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(1)</sup> Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. Staggers, Moss, Dingell, Rogers, Satterfield, Waxman, Maguire, Devine, Broyhill, and Carter, and an additional Member, Mr. Breaux, solely for the consideration of section 108(a) of the House bill and modifications thereof committed to conference.

Another instance where the Speaker named as an additional conferee the sponsor of an amendment which was amended by a substitute and then adopted, is found in the proceedings of Oct.

<sup>20</sup> See 123 CONG. REC. 20132, 95th Cong. 1st Sess., June 21, 1977.

1. Thomas P. O'Neill, Jr. (Mass.).

4, 1978,<sup>(2)</sup> when the Chair appointed managers on the part of the House at the conference on the disagreeing votes on H.R. 8309, the Navigation Development Act.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The Clerk will report the title of H.R. 8309.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 1325, H.R. 8309 is considered as having been taken from the Speaker's table with the Senate amendments thereto, Senate amendments numbered 1, 4, 5, 6, and 7 shall be considered as having been disagreed to; Senate amendments numbered 2 and 3 shall be considered as having been agreed to; Senate amendment No. 8 shall be considered as having been concurred in with an amendment inserting in lieu of said Senate amendment the text of H.R. 13059, as passed by the House, and the House shall be considered as having insisted upon disagreement to Senate amendments numbered 1, 4, 5, 6, and 7, and having insisted upon its amendment to Senate amendment No. 8 and having requested a conference with the Senate thereon.

Without objection the Chair appoints the following conferees:

Messrs. Johnson of California, Roberts, Breaux, Ginn, Mineta, Harsha, Don H. Clausen, Ullman, Rostenkowski, Burluson of Texas, Waggonner, Jones of Oklahoma, Conable, and Frenzel.

2. 124 CONG. REC. 33568, 95th Cong. 2d Sess.

3. John Brademas (Ind.).

As an additional conferee, Mr. Blouin, solely for consideration of those portions of section 102 and 103 of the House bill and modifications thereof committed to conference.

There was no objection.

A similar House bill (H.R. 13059) was laid on the table.

### *Appointing Sponsors of Specific Amendments or Provisions*

**§ 6.30** Where a series of amendments offered during House consideration of a bill were "accepted" by the manager and agreed to by a voice vote, the Speaker still acceded to the request of the Member to be named as an additional conferee on those specific amendments and modifications committed to conference.

During consideration in the Committee of the Whole of S. 9, the Outer Continental Shelf Lands Act Amendments of 1977, Mr. John D. Dingell, Jr., of Michigan, offered a series of amendments which went to the authority of the Secretary of Energy to administer the Act. The Speaker's appointment of conferees is carried here.<sup>(4)</sup>

4. 124 CONG. REC. 7880, 95th Cong. 2d Sess., Mar. 21, 1978.



MR. [JOHN M.] MURPHY of New York: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 9) to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes, with House amendments thereto, insist on the House amendments, and agree to the conference asked for by the Senate.

THE SPEAKER:<sup>(5)</sup> Is there objection to the request of the gentleman from New York? The Chair hears none, and appoints the following conferees: Messrs. Murphy of New York, Udall, Eilberg, Breaux, Studds, Hughes, Miller of California, Dodd, Seiberling, Fish, Forsythe, Young of Alaska, and Treen.

And as an additional conferee, Mr. Dingell, of Michigan, solely for consideration of the provisions contained on page 8, lines 1-8; page 20, lines 12-14; page 30, lines 5-11; page 156, line 24 through page 158, line 18; and on page 167, lines 10-17 of the House engrossed amendment to the bill S. 9 and modifications thereof committed to conference.

**§ 6.31 Where an amendment was offered "at the direction of the committee of jurisdiction" and was adopted on the floor of the House, the Speaker named the sponsor of the amendments, who was not a member of the report-**

**ing committee, as a manager on those parts of the text incorporating the amendment.**

S. 914, the National Public Works and Economic Development Act of 1979 (considered in the House as H.R. 2063) was reported and managed on the floor of the House by the Committee on Public Works and Transportation. The amendment offered and successfully advocated by Mr. William S. Moorhead, of Pennsylvania, was brought to the floor by direction of the Committee on Banking, Finance and Urban Affairs, pursuant to a motion adopted in that committee, which did not have a referral of the bill. The appointment of the managers, including the specific designations by section and subject matter assigned to the additional conferee, are shown here.<sup>(6)</sup>

MR. [BRIAN J.] DONNELLY [of Massachusetts]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 914) to extend the Appalachian Regional Development Act and title V of the Public Works and Economic Development Act of 1965 and to provide for multistate regional development commissions to promote balanced development in the regions of the Nation, with

5. Thomas P. O'Neill, Jr. (Mass.).

6. See 125 CONG. REC. 34873, 96th Cong. 1st Sess., Dec. 6, 1979.

the House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Is there objection to the request of the gentleman from Massachusetts? The Chair hears none and, without objection, appoints the following conferees: Messrs. Johnson of California, Roe, Oberstar, and Nowak, Mrs. Bouquard, Messrs. Evans of Georgia, Harsha, Hammerschmidt, and Clinger.

As an additional conferee for consideration only of the following provisions of the House amendment and Senate modifications relating thereto committed to conference: In section 103 of the House amendment, the following provisions added to title II of the Public Works and Economic Act of 1965: Section 202(f); in section 203(a), the 10-year limitation on partial payment of interest by the Secretary; in section 203(c), the 4 per centum minimum rate payable by the Secretary; in section 205(4), the provision following the comma in the second sentence, exempting the extension of maturity of a loan or guarantee from the restrictions on maturities; and section 205(7), paragraphs A through E: Mr. Moorhead of Pennsylvania.

There was no objection.

***Appointing Conferee From  
Second Committee To Reflect  
Senate's Unrelated Amend-  
ment***

**§ 6.32 Where a bill reported by  
one House committee had**

7. James C. Wright, Jr. (Tex.).

**been amended in the Senate by the addition of an unrelated subject, the Speaker appointed as a manager at the conference a member of the House committee which had reported a bill similar to that which was the subject of the Senate amendment.**

H.R. 2440, the Airport and Airway Development Act of 1970, was the product of the Committee on Public Works and Transportation. Aircraft noise reduction was a legislative topic which had been sequentially referred to the Committee on Interstate and Foreign Commerce, which had reported a bill (H.R. 3995, dealing with noise reduction) to the House. Mr. James J. Florio, of New Jersey, Chairman of the Subcommittee on Transportation and Commerce, was named by the Speaker to act as a manager along with the members of the Committee on Public Works and Transportation, without a specific limitation on his authority as a general conferee.<sup>(8)</sup>

MR. [HAROLD T.] JOHNSON of California: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 2440) to repeal the prohibition against the

8. See 125 CONG. REC. 32827, 32828, 32831, 96th Cong. 1st Sess., Nov. 16, 1979.

expenditure of certain discretionary funds under the Airport and Airway Development Act of 1970, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

MOTION OFFERED BY MR. JOHNSON  
OF CALIFORNIA

THE SPEAKER:<sup>(9)</sup> The Clerk will report the motion.

The Clerk read as follows:

Pursuant to rule I of the Rules of the House, Mr. Johnson of California moves to take from the Speaker's table the bill (H.R. 2440) to repeal the prohibition against the expenditure of certain discretionary funds under the Airport and Airway Development Act of 1970, with Senate amendments thereto, disagree with the amendments of the Senate thereon, and agree to the request for a conference.

THE SPEAKER: The gentleman from California (Mr. Johnson) is recognized for 1 hour. . . .

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Without objection, the Chair appoints the following conferees: Messrs. Johnson of California, Roberts, Anderson of California, Levitas, Florio, Young of Missouri, Harsha, and Snyder.

There was no objection.

**§ 6.33 Conferees are sometimes named to represent the House committee having jurisdiction over the subject matter of a Senate amend-**

**ment not within the purview of the committee which reported the bill in the House.**

In the 95th Congress, the Committee on Education and Labor reported, and the House passed, H.R. 4544, the Black Lung Benefits Reform Act of 1977. The Senate added an amendment placing an excise tax on coal, a matter within the jurisdiction of the House Committee on Ways and Means. The Speaker appointed Members from that committee on the revenue provisions added by the Senate.<sup>(11)</sup>

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4544) to amend the Federal Coal Mine Health and Safety Act to improve the black lung benefits program established under such act, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees:

Messrs. Perkins, Dent, Phillip Burton, Gaydos, Clay, Biaggi, Zeferetti, Michael O. Myers, Murphy of Pennsylvania, Corrada, Simon, Miller of Cali-

9. Thomas P. O'Neill, Jr. (Mass.).

10. Herbert E. Harris II (Va.).

11. See 123 CONG. REC. 31032, 95th Cong. 1st Sess., Sept. 27, 1977.

12. Thomas P. O'Neill, Jr. (Mass.).

fornia, Thompson, Andrews of North Carolina, Ullman, Rostenkowski, Vanik, Quie, Erlenborn, Ashbrook, Sarasin, Edwards of Oklahoma, Jeffords, and Duncan of Tennessee.

**§ 6.34 Where the Senate amended a House-passed bill on one subject by including the provisions of a second House-passed bill on another topic, the House then further amended by adding both propositions as separate titles, the Speaker then appointed separate groups of conferees to consider issues within their respective jurisdictions.**

When H.R. 12467, the Comprehensive Rehabilitation Services Amendments of 1978, passed the House on May 16, 1978, it was solely the product of the Committee on Education and Labor. The Senate then added the provisions of the Developmental Disabilities Services and Facilities Construction Act, a matter within the jurisdiction, in the House, of the Committee on Interstate and Foreign Commerce, which had passed the House as H.R. 12326 on Sept. 18, 1978. By adding both House-passed texts as an amendment to the Senate amendment, the House was able to put both matters in

conference as reflected in the Speaker Pro Tempore's appointment of conferees. Managers representing the two committees were exclusive conferees on the provisions within their respective jurisdictions.<sup>(13)</sup>

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12467) to amend the Rehabilitation Act of 1973 to extend certain programs established in such act, to establish a community service employment program for handicapped individuals, to provide for independent living rehabilitation services for the severely handicapped, and for other purposes, with House amendments to the Senate amendments thereto, insist on the House amendments to the Senate amendments, and to agree to the conference requested by the Senate.

Mr. Speaker, I might say, this is where we participate jointly with the Committee on Interstate and Foreign Commerce in the conference and we only have jurisdiction of titles I, II, III, and V of the House amendments to the Senate amendments, and that titles I, II, and IV of the Senate amendments.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> Is there objection to the request of the gentleman from Kentucky?

The Chair hears none and, without objection appoints the following confer-

13. See 124 CONG. REC. 32899, 95th Cong. 2d Sess., Oct. 2, 1978.

14. John Brademas (Ind.).

ees only for considering titles I through IV of the House amendments to the Senate amendments and on modifications thereto committed to conference: Messrs. Perkins, Brademas, Beard of Rhode Island, Miller of California, Kildee, Heftel, Hawkins, Biaggi, Quie, Jeffords, and Erlenborn.

Without objection, the Chair appoints the following conferees only for consideration of title V of the House amendments to the Senate amendments and modifications thereto committed to conference: Messrs. Staggers, Rogers, Satterfield, Preyer, Scheuer, Waxman, Florio, Carter, Broyhill, and Madigan.

There was no objection.

***Delineating Conferees' Authority; Specific Conferees Named on "Matters Which May Come Within That Committee's Jurisdiction"***

**§ 6.35 Where there are no textual references in a bill being sent to conference to a subject matter over which a committee has jurisdiction, the Speaker may nevertheless appoint managers from that committee to participate "where matters within its jurisdiction" are under discussion in conference.**

In the 96th Congress,<sup>(15)</sup> H.R. 4040, the Defense Department

15. 125 CONG. REC. 24554, 96th Cong. 1st Sess., Sept. 14, 1979.

authorization bill, had not been given a sequential referral to the Permanent Select Committee on Intelligence when it was reported by the Committee on Armed Services. There were no discernible textual references to intelligence activities, although some were undoubtedly inherent in programs authorized in the bill. The Speaker's appointment of six members of the permanent select committee, to confer "only when differences regarding intelligence-related activities are under consideration" was not opposed by the Committee on Armed Services and was not unique to this particular measure.

MR. [MELVIN] PRICE [of Illinois]: Mr. Speaker, I ask unanimous consent that the House insist on its amendments to the Senate bill (S. 428) to authorize appropriations for fiscal year 1980 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and for research, development, test, and evaluation for the Armed Forces, to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and for civilian personnel of the Department of Defense, to authorize the military training student loads, to authorize appropriations for fiscal year 1980 for civil defense, and for other purposes,

and request a conference with the Senate thereon.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Illinois? The Chair hears none, and appoints the following conferees: Messrs. Price, Bennett, Stratton, Ichord, Nedzi, Charles H. Wilson of California, White, Nichols, Bob Wilson, Dickinson, Whitehurst, Spence, and Beard of Tennessee, and, as additional conferees, Messrs. Burlison, Zablocki, Mineta, Boland, Robinson, and Whitehurst from the Permanent Select Committee on Intelligence only when differences regarding intelligence-related activities are under consideration.

*Assignment of Specified Chapters of Bill Among Several Conferees*

§ 6.36 The Speaker appointed a set of conferees for each chapter of a general appropriation bill and appointed four Members to sit on all chapters.

On Aug. 7, 1950,<sup>(17)</sup> after Mr. Clarence Cannon, of Missouri, asked unanimous consent to take H.R. 7786, the 1951 general appropriation bill, with Senate amendments thereto, from the Speaker's desk, disagree to the Senate amendments, and ask for

16. Thomas P. O'Neill, Jr. (Mass.).

17. 96 CONG. REC. 11894, 11895, 81st Cong. 2d Sess.

a conference with the Senate, Speaker Sam Rayburn, of Texas, stated:

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

Managers on the part of the House:

Messrs. Cannon, Rabaut, Norrell, Taber, and on Chap. I, Messrs. Bates of Kentucky, Yates, Furcolo, Stockman, and Wilson of Indiana; on Chap. II, Messrs. McGrath, Kirwan, Andrews, Canfield, and Scrivner; on Chap. III, Messrs. Rooney, Flood, Preston, Stefan, and Clevenger; on Chap. IV, Messrs. Gary, Fernandez, Passman, Canfield, and Coudert; on Chap. V, Messrs. Fogarty, Hedrick, McGrath, Scrivner, and Andersen; on Chap. VI, Messrs. Whitten, Stigler, Kruse, Andersen, and Horan; on Chap. VII, Messrs. Kirwan, Jackson of Washington, Gore, Jensen, and Fenton; on Chap. VIII, Messrs. Thomas, Gore, Andrews, Case of South Dakota, and Phillips of California; on Chap. IX, Messrs. Kerr, Gore, Hedrick, Wigglesworth, and Stefan; on Chap. X, Messrs. Mahon, Sheppard, Sikes, Plumley, and Wigglesworth; on Chap. X-A, Messrs. Gore, Hedrick, Passman, Wigglesworth, and Stefan; on Chap. X-B, Messrs. Gary, Rooney, Bates of Kentucky, Wigglesworth, and Stefan; on Chap. XI, Messrs. Gore, Hedrick, Passman, Wigglesworth, and Stefan.

After the appointment of the conferees, Mr. Cannon and Mr. Francis H. Case, of South Dakota, discussed how the conferees would

operate under the above arrangement:

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

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

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

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

MR. CANNON: When a chapter is taken up, the conferees on the next succeeding chapter will be notified. We hope to proceed with as little delay as possible, subject always to the approval of the managers on the part of the Senate.<sup>(18)</sup>

### ***Speaker May Qualify Authority of Conferees***

18. See also 101 CONG. REC. 11686, 84th Cong. 1st Sess., July 27, 1955.

**§ 6.37 When appointing conferees on a multijurisdictional bill, where some managers are named to consider very specific provisions, and where there will be many subconferences on specific issues, the Speaker sometimes appoints a core group of general conferees with the authority to report in total disagreement.**

On June 10, 1988,<sup>(19)</sup> in appointing the managers on the part of the House to the conference on H.R. 4264, the Department of Defense Authorization Act for 1988, the Speaker named conferees from six committees. In the event one of the issues not within the jurisdiction of Armed Services were to block a total agreement, the Speaker deemed it advisable to have a small group of conferees (less than a majority of the total named) with specific authority to report in disagreement.

APPOINTMENT OF CONFEREES ON H.R. 4264, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1989

THE SPEAKER:<sup>(20)</sup> The Chair appoints the following conferees on the bill (H.R.

19. 134 CONG. REC. 14077, 14078, 100th Cong. 2d Sess.

20. James C. Wright, Jr. (Tex.).

4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces and for other purposes:

From the Committee on Armed Services, for consideration of the entire House bill (except sections 4101 through 4110), and the entire Senate amendment (except sections 938 and 949), and as exclusive conferees with respect to any proposal to report in total disagreement: Messrs. Aspin, Bennett [and 32 more Members were appointed and listed].

As exclusive conferees from the Committee on Armed Services, solely for consideration of sections 209, 212, 935, and 936 of the House bill, and section 223 of the Senate amendment, and modifications committed to conference: Messrs. Aspin, Bennett [and 14 more Members were appointed and listed].

As additional conferees from the Committee on Education and Labor, solely for consideration of sections 4101 through 4110 of the House bill, and modifications committed to conference: Messrs. Hawkins, Ford of Michigan [and 7 more Members were appointed and listed].

As additional conferees from the Committee on Armed Services, solely for consideration of sections 4101 through 4110 of the House bill, and modifications committed to conference: Messrs. Aspin, McCloskey, and Dickinson.

As additional conferees from the Committee on Post Office and Civil Service, for consideration of section 917

of the Senate amendment, and modifications committed to conference: Messrs. Ford of Michigan, Clay, Ackerman, Taylor, and Gilman.

As additional conferees from the Committee on Rules, for consideration of section 921 of the Senate amendment, and modifications committed to conference: Messrs. Pepper, Moakley [and 5 more Members were appointed and listed]. . . .

As additional conferees from the Committee on Ways and Means, for consideration of sections 938 and 949 of the Senate amendment, and modifications committed to conference: Messrs. Rostenkowski, Gibbons [and 4 more Members were appointed and listed].

### *Assignment of Portions of Amendment to Members From Different Subcommittees*

**§ 6.38 When appointing conferees on a continuing appropriation bill, the Speaker named Members from different subcommittees of the full committee.**

H.R. 3019 was a "long-term" continuing appropriation bill. As of March 21, 1996, the government was being funded under a "short-term" continuing resolution, which carried funding through Apr. 3, 1996.<sup>(1)</sup> The motion to instruct

1. H.J. Res. 165, passed by both the House and the Senate on Mar. 21, 1996, carried the funding for those



carried here was offered by the ranking minority member of the Committee on Appropriations but was defeated on a roll call vote of 194-207.

One of the major impediments to wrapping up the general appropriation bill for the Departments of Labor and Health, Education and Welfare was an amendment offered by Mr. Ernest J. Istook, Jr., of Oklahoma, relating to family planning. Because of the special interest surrounding this bill, the Speaker appointed the subcommittee chairs and ranking members on all parts of the bill except for the Istook amendment, where only managers from the Labor, HHS subcommittee were named. The pertinent proceedings of Mar. 21, 1996,<sup>(2)</sup> are carried below.

APPOINTMENT OF CONFEREES ON H.R. 3019, BALANCED BUDGET DOWNPAYMENT ACT, II

MR. [ROBERT] LIVINGSTON [of Louisiana]: Mr. Speaker, I ask unanimous consent to take from the Speaker's ta-

appropriation accounts not yet enacted into law until Apr. 3, 1996. This was the seventh in a series of nine joint resolutions passed by the House continuing appropriations for fiscal 1996.

2. 142 CONG. REC. 6028, 6030, 104th Cong. 2d Sess.

ble the bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from Louisiana?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion to instruct.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Obey moves that the managers on the part of the House at the conference of the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 3019, be instructed to:

(a) agree to the position in the Senate amendment increasing funding above the levels in the House bill for programs of the Department of Education;

(b) agree to the position in the Senate amendment increasing funding above the levels in the House bill for programs of the Environmental Protection Agency;

(c) agree to the position in the Senate amendment that provides a minimum of \$975,000,000 from within the \$1,903,000,000 provided for Local Law Enforcement Block Grants within the Department of Justice for the Public Safety and Community Policing grants pursuant

3. Joel Hefley (Colo.).

to title I of the Violent Crime Control and Law Enforcement Act of 1994 (COPS on the beat program);

(d) agree to the position in the Senate amendment increasing funding above the levels in the House bill for job training and worker protection programs of the Department of Labor;

(e) agree to the position in the Senate amendment deleting Title V of the House bill placing onerous new red tape requirements on Federal grantees; and

(f) agree to the position in the Senate amendment specifying a maximum grant award of \$2500 under the Pell Grant Program; and

(g) agree to the position in the Senate amendment providing fiscal year 1997 funding of \$1,000,000,000 for the Low-Income Energy Assistance Program of the Department of Health and Human Services. . . .

**THE SPEAKER PRO TEMPORE:** Without objection, the Chair appoints the following conferees:

For consideration of the House bill (except for section 101(c)) and the Senate amendment (except for section 101(d)), and modifications committed to conference:

Messrs. Livingston, Myers of Indiana, Young of Florida, Regula, Lewis of California, Porter, Rogers, Skeen, and Wolf, Mrs. Vucanovich, and Messrs. Lightfoot, Callahan, Walsh, Obey, Yates, Stokes, Beville, Murtha, Wilson, Dixon, Hefner, and Mollohan.

For consideration of section 101(c) of the House bill, and section 101(d) of the Senate amendment, and modifications committed to conference:

Messrs. Porter, Young of Florida, Bonilla, Istook, Miller of Florida, Dickey, Riggs, Wicker, Livingston,

Obey, Stokes, and Hoyer, Ms. Pelosi, and Mrs. Lowey.

There was no objection.

### *Delineation of Subconferences*

#### § 6.39 **The Chairman of the Committee on Ways and Means inserted in the *Congressional Record* his interpretation of issue clusters (subconferences) resulting from the Speaker's appointment of conferees on the Omnibus Trade Act of 1987.**

This rather unusual insertion<sup>(4)</sup> by Chairman Dan Rostenkowski, of Illinois, demonstrates one of several ways of illustrating the responsibilities of conferees where various provisions of a House bill and corresponding portions of a Senate amendment must be considered and reconciled by a nucleus of conferees. There were 17 subconferences which resulted from the manner in which conferees were appointed on this bill. The method of describing the subject matter for one of these subconferences is carried below:

(Mr. Rostenkowski asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

4. See 133 CONG. REC. 26027, 26028, 100th Cong. 1st Sess., Oct. 1, 1987.

MR. ROSTENKOWSKI: Mr. Speaker, we all know that the conference on H.R. 3, the Omnibus Trade Act of 1987, is one of the largest in history. In an effort to provide some guidelines to both the members of the conference and to the public, the following summaries of the subject matter within the purview of the various subconferences have been prepared.

The documents list those committees which are the lead committees for each subconference and the additional conferees within each subconference. In using these documents, it can be easily determined which set of conferees have been appointed to consider each provision of both the House bill and the Senate amendment.

I hope that the information provided here is of use in expediting the work of the conference.

SUBCONFERENCE SECTION  
RESPONSIBILITY . . .

H.R. 3 TRADE SUBCONFERENCES

SUBCONFERENCE NO. 1—TRADE AND  
TARIFF LAWS; TRADE AGREEMENTS

*House Conferees*

*Lead House Committee: Committee  
on Ways and Means*

House bill:

Title I (Secs. 101-199)—Trade Law  
Amendments, *except*: Sec. 186

Title II (Secs. 201-212)—Inter-  
national Trade in Telecommunications  
Products and Services

Title VI, Subtitle G (Secs. 691, 692)—  
Trade Policy Formulation and Imple-  
mentation

Sec. 704—Entry processing for tex-  
tiles and apparel

Title VIII (Secs. 800-894)—Tariff  
and Customs Provisions

Sec. 906—Unreasonable practices

Sec. 908—Investigations of certain  
barriers pertaining to trade and serv-  
ices

Sec. 909—Effect imports on crude oil  
production and refining capacity in the  
United States

Title XV (Sec. 1501)—Most-Favored-  
Nation Treatment to Products of Ro-  
mania

Senate amendment:

Title I (Secs. 101-111)—Authority to  
Negotiate Trade Agreements

Title II (Secs. 201-221)—Enhancing  
Competitiveness

Title III (Secs. 301-341)—Unfair In-  
ternational Trade Practices

Sec. 401—Remedies under the Tariff  
Act of 1930

***Methods of Delineating Confer-  
ees' Authority***

**§ 6.40 Conference committee  
composition and representa-  
tion on a budget reconcilia-  
tion bill is often complex and  
requires section by section  
assignments to satisfy com-  
mittee and subcommittee  
concerns.**

On July 14, 1993,<sup>(5)</sup> in naming  
conferees on the Omnibus Recon-

5. 139 CONG. REC. 15670-72, 103d  
Cong. 1st Sess.

ciliation Act of 1994, the Speaker included representation from 13 House committees, and delineated many subgroups from the various standing committees, including 14 different permutations of members of the Committee on the Budget.

THE SPEAKER:<sup>(6)</sup> The Chair appoints the following conferees:

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Messrs. Sabo, Gephardt, and Kasich.

As additional conferees from the Committee on the Budget, for consideration of title I of the House bill, and title I of the Senate amendment, and modifications committed to conference: Messrs. Stenholm, Pomeroy, Kildee, Smith of Texas, and Allard.

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference: Ms. Slaughter, Messrs. Mollohan, Gordon, and Shays, and Ms. Snowe.

After listing 13 more additional assignments for Budget Committee members, the Speaker named 19 other panels representing the 12 other committees involved jurisdictionally in the conference. Several committees had more than

6. Thomas S. Foley (Wash.).

one panel—Ways and Means, *e.g.*, had four.

**§ 6.41 Where an amendment in disagreement in conference fell within the jurisdiction of two committees of the House, the Speaker named members from both those committees as managers and specified the respective areas on which they were to confer.**

On Nov. 30, 1971,<sup>(7)</sup> the following proceedings occurred:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, and request a conference with the Senate thereon.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Ohio? The Chair hears none and appoints the following conferees on all titles of the foregoing amendment except for titles I and II:

Messrs. Hays, Abbitt, Gray, Harvey and Dickinson.<sup>(9)</sup>

And appointed the following Members as managers on the part of the House on titles I and II:

7. 117 CONG. REC. 43422, 92d Cong. 1st Sess.

8. Carl Albert (Okla.).

9. Members of the Committee on House Administration.

Messrs. Staggers, MacDonald of Massachusetts, Van Deerlin, Springer and Devine.<sup>(10)</sup>

**§ 6.42 Where a House bill consisting of two distinct jurisdictional titles was sent to conference with a Senate amendment in the nature of a substitute which involved only one of the two committee jurisdictions, the Speaker appointed members from the two House committees involved as managers for their respective portions of the House text and "modifications thereof committed to conference."**

In many instances where the Speaker appoints conferees from two or more committees, the disagreeing votes of the two Houses may be clearly distinguishable along jurisdictional lines. The managers can be appointed to confer with Senate counterparts on specific text, delineated in the appointment by title or section numbers. Where the House and Senate versions are textually dissimilar (as in this case where the House bill had two distinct titles and the Senate one, not two,

10. Members of the Committee on Interstate and Foreign Commerce.

subjects), the Speaker's appointment<sup>(11)</sup> may describe the area in which the managers are to confer by subject matter, not by specific page and line assignments.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2) to provide for pension reform, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and the Chair appoints as managers on the part of the House the following Members: On title I of the House bill, and modifications thereof which have been committed to conference: Messrs. Perkins, Thompson of New Jersey, Dent, Burton, Quie, Erlenborn, and Sarasin; and on title II of the House bill, and modifications thereof which have been committed to conference: Messrs. Ullman, Burke of Massachusetts, Mrs. Griffiths, Messrs. Rostenkowski, Schneebeli, Collier, and Broyhill of Virginia.

**§ 6.43 Where a bill was considered and reported by only one committee of the House, but where the text reflected the views of a second committee with which there had**

11. See 120 CONG. REC. 9286, 93d Cong. 2d Sess., Apr. 2, 1974.

12. Carl Albert (Okla.).

been consultations (but from which there had been no request for a sequential), the Speaker named conferees from the secondary committee only for those matters concurrently within its jurisdiction.

H.R. 7171, the Agricultural Act of 1977, had been reported from the Committee on Agriculture on May 16, 1977. During markup in the committee, there had been consultations with the Committee on International Relations concerning those aspects of the bill impinging on foreign agricultural aid, international research and international food reserves, matters not explicitly within its jurisdiction under Rule X but which the committee had addressed in legislation and through exercise of its oversight responsibilities.

When the Senate messaged to the House a similar bill, S. 275, the House, on July 28, 1977, amended the Senate bill with the text of the House-passed measure, H.R. 7171, and requested a conference. The Speaker Pro Tempore appointed 16 managers from the Committee on Agriculture and

three from the Committee on International Relations.<sup>(13)</sup>

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 275) to provide price and income protection for farmers and assure consumers of an abundance of food and fiber at reasonable prices, and for other purposes, and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> Is there objection to the request of the gentleman from Washington? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Foley, Poage, de la Garza, Jones of North Carolina, Jones of Tennessee, Mathis, Bowen, Rose, Richmond, Nolan, Weaver, Wampler, Sebelius, Findley, Thone and Symms; and, in addition, on issues involving Public Law 480—Title XI, International Research—Title XIII, and provisions of S. 275 on international reserves: Messrs. Zablocki, Pease, and Broomfield.

There was no objection.

***Specific Conferees on Portions of Senate Bill Not Contained in House Amendment***

**§ 6.44 Where a Senate bill, much more comprehensive in subject matter than a House substitute amendment there-**

13. See 123 CONG. REC. 25561, 95th Cong. 1st Sess.

14. James C. Wright, Jr. (Tex.).

**for, is sent to conference, the Speaker has appointed House managers from appropriate House committees which would have jurisdiction over the Senate provisions, even though the House amendment has no text corresponding to those portions of the Senate bill text.**

The Intelligence Authorization Act, 1981, S. 2597, had not been referred to committees in the House. A companion measure, H.R. 7152, the Intelligence authorization for fiscal year 1981, had been reported in the House first from the Permanent Select Committee on Intelligence, then referred to and reported by the Committee on Armed Services. The Senate text amended the Hughes-Ryan Act, a part of the Foreign Assistance Act dealing with funding of overseas intelligence activities. There was no comparable House provision dealing with this subject matter.

The proceedings of July 28, 1980,<sup>(15)</sup> wherein a conference on S. 2597 was requested and conferees appointed, are set out below.

15. 126 CONG. REC. 19875, 96th Cong. 2d Sess.

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, I ask unanimous consent that the House insist on its amendments to the Senate bill, S. 2597, and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> Is there objection to the request of the gentleman from Massachusetts? The Chair hears none and, without objection, appoints the following conferees: Messrs. Boland, Burlison, Zablocki, Mineta, Robinson, and Whitehurst; and as additional conferees for such matters as fall within the jurisdiction of the Committee on Armed Services under clause 1(c) of rule X of the rules of the House, Messrs. Price, Ichord, and Bob Wilson of California; and as additional conferees solely for consideration of such provisions of sections 408 and 409 of S. 2597, and modifications thereof committed to conference as fall within the jurisdiction of the Committee on Foreign Affairs under clause 1(h) of rule X of the rules of the House, Messrs. Hamilton, Fascell, Broomfield, and Derwinski.

There was no objection.

*Parliamentarian's Note:* Where conferees are named by the Speaker to confer on a portion of Senate text, there being no comparable provision in the House version of the matter placed in conference, the appointment is made in the form shown here—*e.g.*, as “solely for consideration of sections \_\_\_\_ of the Senate text and modifi-

16. Joseph G. Minish (N.J.).

cations thereof committed to conference" which fall within the jurisdiction of a particular House committee. The House position in conference, in simplistic terms, may be considered as the "existing law" which is changed by the Senate provision.

*Speaker's Appointment of "Exclusive" Conferees on Specific Provisions*

§ 6.45 Where a House-passed bill was amended in the Senate by two numbered amendments, the Speaker appointed separate groups of conferees from two committees for exclusive consideration of each of the numbered amendments that fell within their respective jurisdictions.

The bill sent to conference, H.R. 3167, extending the emergency unemployment compensation program, was within the exclusive jurisdiction of the Committee on Ways and Means in the House. One of the two Senate amendments involved a reduction in levels of full-time positions in the civil service, a matter within the competence of the Committee on Post Office and Civil Service.

The appointment of conferees on Nov. 4, 1993,<sup>(17)</sup> are carried below.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> Without objection, the Chair appoints the following Members to the conference committee:

From the Committee on Ways and Means, for consideration of the House bill, and Senate amendment No. 2, and modifications committed to conference: Messrs. Rostenkowski, Ford of Tennessee, and Archer.

From the Committee on Post Office and Civil Service, for consideration of Senate amendment No. 1, and modifications committed to conference: Messrs. Clay, McCloskey, and Myers of Indiana.

There was no objection.

*Parliamentarian's Note:* The Senate amendments did not strike out the House text; both were "add-ons," adding new provisions not contained in the House bill. Therefore, the House text was not in conference, since not in disagreement. The managers appointed by the Speaker Pro Tempore from the membership of the Committee on Ways and Means were not in this instance authorized to confer on the House bill; their appointment was overly broad, and had the House text been changed, the conference

17. 139 CONG. REC. 27367, 103d Cong. 1st Sess.

18. Cleo Fields (La.).



report would have been subject to a point of order.

***Conferees From Different Subcommittees and Full Committees***

**§ 6.46 In exercising his authority to appoint conferees, under Rule X clause 6(f),<sup>(19)</sup> the Speaker may name different "panels" from the primary committee to confer on portions of the bill where they have a particular expertise or subcommittee experience.**

In his appointment of the conferees on the bill H.R. 3474, the Regulatory Reform Act of 1993, the Speaker appointed three panels and in one instance substituted one Member for another on a panel, to reflect the desires of the chairman of the Committee on Banking, Finance and Urban Affairs to allow those Members most knowledgeable of the subject matter to be involved in the conference. The same authority was used in naming two panels to the conference from the Committee on Energy and Commerce.

The form used in the appointment of the conferees on Apr. 21,

<sup>19</sup>. *House Rules and Manual* § 701e (1997).

1994,<sup>(20)</sup> is illustrative of the manner in which the Speaker can use his appointment authority.

APPOINTMENT OF CONFEREES ON H.R. 3474, REGULATORY REFORM ACT OF 1993

MR. [HENRY B.] GONZALEZ [of Texas]: Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3474) to reduce administrative requirements for insured depository institutions to the extent consistent with safe and sound banking practices, to facilitate the establishment of community development financial institutions, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> Is there objection to the request of the gentleman from Texas? The Chair hears none, and without objection, appoints the following conferees:

From the Committee on Banking, Finance and Urban Affairs, consideration of the House bill, and the Senate amendment (except titles II and V), and modifications committed to conference:

Messrs. Gonzalez, Neal of North Carolina, LaFalce, Vento, Schumer, Frank of Massachusetts, Kanjorski, Kennedy, Flake, and Mfume, Ms. Waters, Messrs. LaRocco, Orton, Bacchus of Florida, Leach, and McCollum, Mrs. Roukema, and Messrs. Bereuter, Ridge,

<sup>20</sup>. 140 CONG. REC. 8202, 8203, 103d Cong. 2d Sess.

1. Jolene Unsoeld (Wash.).

Roth, McCandless, Baker of Louisiana, and Nussle.

Provided, that for consideration of section 348(b) of the Senate amendment, Mr. Klein is appointed in lieu of Mr. LaFalce.

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the Senate amendment, and modifications committed to conference:

Messrs. Gonzalez, Neal of North Carolina, LaFalce, Vento, Schumer, Frank of Massachusetts, Kanjorski, Kennedy, Flake, and Mfume, Ms. Waters, Mr. Orton, Mr. Klein, Ms. Velázquez, Mr. Leach, Mr. McCollum, Mrs. Roukema, and Messrs. Bereuter, Ridge, Roth, McCandless, Baker of Louisiana, and Nussle.

From the Committee on Banking, Finance and Urban Affairs, for consideration of title V of the Senate amendment, and modifications committed to conference:

Messrs. Gonzalez, Neal of North Carolina, LaFalce, Schumer, Frank of Massachusetts, Leach, Bereuter and McCollum.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 201-05, 207, 320 and 347 of the Senate amendment, and modifications committed to conference:

Messrs. Dingell, Markey, Sharp, and Swift, Mrs. Collins of Illinois, Messrs. Boucher, Manton, and Lehman, Ms. Schenk, Ms. Margolies-Mezvinsky, and Messrs. Synar, Wyden, Richardson, Bryant, Moorhead, Fields of Texas, Bliley, Oxley, Schaefer, Barton of Texas, McMillan, Hastert, and Gillmor.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 503-05, 507 and 706 of the Senate amendment, and modifications committed to conference:

Mr. Dingell, Mr. Markey, Mrs. Collins of Illinois, and Messrs. Towns, Lehman, Moorhead, Stearns, and McMillan, . . .

As additional conferees from the Committee on Ways and Means, for consideration of sections 210 and 502-04 of the Senate amendment, and modifications committed to conference:

Messrs. Rostenkowski, Gibbons, Pickle, Rangel, Stark, Archer, Crane, and Thomas of California.

There was no objection.

***Describing Specific Text on Which Conferees May Confer***

**§ 6.47 In appointing conferees, the Speaker may designate the subject matter on which they are authorized to confer by section numbers in the text of the bill or the amendment committed to conference, or by descriptive text where their appointment is to confer only on a portion of a section.**

In the House, the Committees on Government Operations, Armed Services, Education and Labor, the Judiciary, Public Works and Transportation, and Small Business are among those which

have had some jurisdictional claim over the broad subject matter of government procurement and contracting for services. The appointment of conferees as excerpted from the Record of Aug. 4, 1994,<sup>(2)</sup> and carried here shows how the text of the matters in disagreement may have to be explicitly described to reflect jurisdictional concerns.

APPOINTMENT OF CONFEREES ON S. 1587, FEDERAL ACQUISITION STREAMLINING ACT OF 1994

MR. [JOHN] CONYERS [Jr., of Michigan]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1587) to revise and streamline the acquisition laws of the Federal Government, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from Michigan?

The Chair hears none and, without objection, appoints the following conferees:

Conferees from the Committee on Government Operations, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Messrs. Conyers, Synar, Neal of North Carolina, Lantos, Owens, Towns, Spratt, and Rush, Mrs. Maloney, Ms. Margolies-Mezvinsky, and Messrs. Clinger, McCandless, Hastert, Kyl, Shays, and Schiff.

As additional conferees from the Committee on Armed Services, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Messrs. Dellums, Sisisky, Evans, Bilbray, and Edwards of Texas, Ms. Furse, and Messrs. Spence, Kasich, Bateman, and Weldon.

As additional conferees from the Committee on Education and Labor, for consideration of sections 4024(d), 4101(b), 4101(c), 6101-02, 8005(c)(2), and 11001-04 of the Senate bill, and section 4105 of the House amendment and modifications committed to conference.

Messrs. Ford of Michigan, Murphy, and Fawell.

As additional conferees from the Committee on the Judiciary, for consideration of sections 1421-22, 1437, 2451, 2551-53, 2555, that portion of section 4011 that adds a new section 29(b)(2) to the Federal Procurement Policy Act, sections 4024 (a), (b), (c), and (f), 4101 (b) and (c), 6001-04, 6053, and 6005 (c)(3) and (c)(4) of the Senate bill; and that portion of section 4011 that adds a new section 4B(c) to the Federal Procurement Policy Act, that portion of section 4031 that adds a new subsection (c)(9) to section 23012a of title 10, United States Code, that portion of section 4041 that adds a new subsection (c)(2) to section 302A of the Federal Property and Administrative Services Act of 1949, sections 4051,

2. 140 CONG. REC. 19605, 103d Cong. 2d Sess.

3. Esteban Edward Torres (Calif.).

5003, that portion of section 7106 that adds a new section 2285(a)(12) to title 10, United States Code, that portion of section 7205 that adds a new section 314D(a)(4) to the Federal Property and Administrative Services Act of 1949, and section 7301(b) of the House amendment, and modifications committed to conference:

Messrs. Brooks, Bryant, and Fish.

As additional conferees from the Committee on Public Works and Transportation, for consideration of sections 1056 and 1067 of the Senate bill and modifications committed to conference:

Messrs. Mineta, Traficant, and Shuster.

As additional conferees from the Committee on Small Business, for consideration of sections 1055(b)(2), 2554, 4102-05, that portion of section 4011 that adds a new section 29(b)(1) to the Office of Federal Procurement Policy Act, sections 4012, 4014(d), 4015(d), and 4074 of the Senate bill, and sections 4104 and 8002 of the House amendment, and modifications committed to conference:

Mr. LaFalce, Mr. Smith of Iowa, and Mrs. Meyers of Kansas.

There was no objection.

### ***“General” and “Limited” Conferees***

§ 6.48 Where a jointly referred bill had been reported by only one of the two committees, the Speaker appointed general conferees to confer on the entire bill from the

### **committee which had reported and limited conferees from the other.**

In the 96th Congress,<sup>(4)</sup> the House considered and passed H.R. 4011, the Small Business Act and Small Business Investment Act authorizations. After passage, a similar Senate bill, S. 918, was passed in lieu of the House measure and the House bill laid on the table. The House version had been referred to both the Small Business and the Agriculture Committees. Only the first of the committees reported the bill to the House; the second (Agriculture) chose not to mark up and report the bill with the understanding that they would have conference representation.

Similar House bills, H.R. 4011 and H.R. 90, were laid on the table.

#### APPOINTMENT OF CONFEREES ON S. 918

MR. [NEAL] SMITH of Iowa: I ask unanimous consent to take from the Speaker's table the Senate bill (S. 918) to amend the Small Business Act and Small Business Investment Act of 1958 and for other purposes, with a House amendment thereto, insist on the House amendment, and request a conference with the Senate thereon.

4. 125 CONG. REC. 12097, 96th Cong. 1st Sess., May 22, 1979.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> Is there objection to the request of the gentleman from Iowa? The Chair hears none and, without objection, appoints the following conferees: Messrs. Smith of Iowa, St Germain, Nolan, Ichord, Evans of Georgia, Barnard, Leach of Louisiana, Hall of Ohio, McDade, Carter, Quayle, and Conte.

Also, additional conferees solely for consideration of subsections (c), (d), and (e) of section 113 of the House amendment and modifications thereof committed to conference: Messrs. Foley, Jones of Tennessee, Harkin, Huckaby, Glickman, Hance, Brown of California, Richmond, Wampler, Madigan, Kelly, and Coleman.

There was no objection.

***“Leadership” Conferees Not From Committee of Jurisdiction***

**§ 6.49 On rare occasions, the Speaker has named a “leadership” representative to a conference committee, where the party has taken a policy position on the measure.**

In the 101st Congress, the House version of the Americans with Disabilities Act, H.R. 2273, had been referred to and reported by four House committees. An equal number of conferees were named from each of the four, all as

5. John Brademas (Ind.).

general conferees with authority to negotiate on the entire Senate bill (S. 933) and House amendment in conference. The majority caucus Chairman, Steny H. Hoyer, of Maryland, was appointed as an additional conferee on the entire bill and another Member, Jim Chapman, of Texas, was named on a particular section since he had been the proponent of a successful floor amendment relating thereto. The pertinent proceedings from the Record of May 24, 1990,<sup>(6)</sup> are carried below.

APPOINTMENT OF CONFEREES ON S. 933,  
AMERICANS WITH DISABILITIES ACT  
OF 1990

MR. HOYER: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, with a House amendment thereto, insist on the House amendment, and request a conference with the Senate thereon.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection. . . .

THE SPEAKER: The Chair appoints the following conferees:

From the Committee on Education and Labor, for consideration of the

6. 136 CONG. REC. 12226, 12227, 101st Cong. 2d Sess.

7. Thomas S. Foley (Wash.).

Senate bill, and the House amendment, and modifications committed to conference: Messrs. Hawkins, Owens of New York, Martinez, Bartlett, and Fawell.

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference: Messrs. Dingell, Markey, Thomas A. Luken, Lent, and Whittaker.

Except that: For consideration of title IV of the Senate bill, and title IV of the House amendment, Mr. Rinaldo is appointed in lieu of Mr. Whittaker.

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference: Messrs. Anderson, Roe, Mineta, Hammerschmidt, and Shuster.

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference: Messrs. Brooks, Edwards of California, Kastenmeier, Fish, and Sensenbrenner.

As an additional conferee, on the Senate bill, and the House amendment, and modifications committed to conference: Mr. Hoyer.

As an additional conferee, on consideration of section 103(d) of the House amendment, and modifications committed to conference: Mr. Chapman.

Without objection, the Chair reserves the right to appoint additional conferees.

There was no objection.

***Conferee Appointments and Future Committee Jurisdictional Claims***

**§ 6.50 Conference committees are in fact “select committees” and dissolve when their report is acted on, and the Speaker reminded Members that the appointment of conferees from more than one standing committee should not be considered a permanent jurisdictional precedent that binds him with respect to all future referrals of introduced bills or the appointment of conferees.**

On June 3, 1992,<sup>(8)</sup> Speaker Thomas S. Foley, of Washington, amplified a statement he had made on opening day of the 102d Congress, in which he expressed a desire to simplify the process of appointing conferees. The statement reflected his concern that naming a conferee from other than the lead or dominant committee was being interpreted by some committees as a precedent for the referral of bills on introduction.

APPOINTMENT OF CONFEREES ON H.R. 3489, OMNIBUS EXPORT AMENDMENTS ACT OF 1991

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3489) to reauthorize

8. 138 CONG. REC. 13288, 13289, 102d Cong. 2d Sess.

the Export Administration Act of 1979, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER: Is there objection to the request of the gentleman from Connecticut? The Chair hears none, and appoints the following conferees and, without objection, reserves the authority to make additional appointments of conferees and to specify particular portions of the House bill and Senate amendment as the subject of the various appointments.

Before the Chair reports the conferees, the Chair wishes to make an additional statement.

On opening day of the 102d Congress, the Chair announced that "consistent with clause 6 of rule X, the Chair intends to develop and implement a policy that would enable him to the fullest extent feasible to simplify the appointment of conferees."

As the Chair is about to announce an appointment of conferees from more than one committee in the second session, and based upon the Chair's additional experience with complicated conference appointments in the first session notwithstanding his opening day announcement, the Chair will remind Members that conference committees are after all select committees in the sense that they go out of existence when their report is filed. The appointment by the Chair of various groups of conferees in the context of the particular House and Senate provisions sent to conference should not be construed as precedent binding the Speaker to subsequent joint referrals of

all bills amending the work product of that particular conference.

The conferees are as follows:

From the Committee on Foreign Affairs, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Messrs. Fascell, Gejdenson, Wolpe, Johnston of Florida, Engel, Murphy, Orton, Broomfield, Roth, Bereuter, and Miller of Washington.

As additional conferees from the Committee on Armed Services, for consideration of sections 120 and 303 of the Senate amendment, and modifications committed to conference: Messrs. Mavroules, Hertel, Pickett, Hunter, and Kyl.

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 201(c), 205, and 207-10 of the Senate amendment, and modifications committed to conference: Ms. Oakar and Messrs. Neal of North Carolina, LaFalce, Leach, and McCandless.

As additional conferees from the Committee on the Judiciary, for consideration of sections 120, 123 and 502 of the House bill, and sections 121, 124, 302, 305 and 306 of the Senate amendment, and modifications committed to conference: Messrs. Brooks, Schumer, Hughes, Sensenbrenner, and Gekas.

There was no objection.

***Resolution Under Suspension of the Rules Authorizing Appointment***

**§ 6.51 The House may suspend the rules and adopt a resolu-**

tion providing that the House insist upon its amendment to a Senate bill, request a conference with the Senate, and that the Speaker immediately appoint conferees.

On June 18, 1948,<sup>(9)</sup> Mr. Walter G. Andrews, of New York, made the following motion for the disposal of S. 2655, the Selective Service Act of 1948:

MR. ANDREWS of New York: Mr. Speaker, I move to suspend the rules and pass the resolution, House Resolution 690, which I send to the desk.

THE SPEAKER:<sup>(10)</sup> The Clerk will report the resolution.

The Clerk read as follows:

*Resolved*, That the House insist upon its amendment to S. 2655, ask a conference with the Senate on the disagreeing votes, and that the Speaker immediately appoint conferees. . . .

THE SPEAKER: The question is, Shall the rules be suspended and the resolution passed?

The question was taken and, two-thirds having voted in favor thereof, the motion was agreed to.

THE SPEAKER: The Chair appoints the following conferees: Messrs. Andrews of New York, Short, Cole of New York, Bates of Massachusetts, Vinson, Brooks, and Kilday.

9. 94 CONG. REC. 8829, 8830, 80th Cong. 2d Sess.

10. Joseph W. Martin, Jr. (Mass.).

### *Resolutions Precluding Motion To Instruct*

§ 6.52 A resolution may provide that an appropriation bill, with Senate amendments thereto, be taken from the Speaker's table, to the end that all Senate amendments be disagreed to, that a conference be requested, and that the Speaker shall immediately appoint conferees on the part of the House without intervening motion.

On May 23, 1939,<sup>(11)</sup> Speaker William B. Bankhead, of Alabama, directed the Clerk to report a resolution offered by Mr. Edward E. Cox, of Georgia.

The Clerk read as follows:

H. RES. 201

*Resolved*, That immediately upon the adoption of this resolution the bill (H.R. 5269) making appropriations for the Department of Agriculture and for the Farm Credit Administration for the fiscal year ending June 30, 1940, and for other purposes, with Senate amendments thereto, be, and the same hereby is, taken from the Speaker's table, to the end that all Senate amendments be, and the same are, disagreed to and a conference is requested with the Senate upon the disagreeing votes of the two Houses, and the Speaker

11. 84 CONG. REC. 6000, 6001, 76th Cong. 1st Sess.



shall immediately appoint conferees on the part of the House without intervening motion.

The House agreed to the resolution and the Speaker appointed conferees.

*Parliamentarian's Note:* The adoption of such a resolution (or motion) directing the Speaker to appoint conferees without intervening motion precludes a motion to instruct these conferees prior to their appointment.

## § 7. Power and Discretion of Conferees

The authority of the managers at a conference is limited by several restrictions.<sup>(12)</sup> Their report is subject to a point of order if they agree to a provision that is beyond any of the limits of their authority.<sup>(13)</sup> First, conferees may consider only matters in disagreement between the two Houses.<sup>(14)</sup> This restriction now applies in situations where one House has stricken all after the enacting or resolving clause of a bill or resolution of the other and inserted in its

12. See generally § 19, *infra*.

13. See § 19.1, *infra*.

14. See §§ 7.1-7.7, 19.5, 19.6, *infra*; and *House Rules and Manual* § 546 (1997).

place an entirely new bill (a substitute).<sup>(15)</sup>

The Legislative Reorganization Act of 1970<sup>(16)</sup> amended Rule XXVIII clause 3, to restrict the discretion of the conferees by prohibiting them from introducing in a conference substitute any additional topic, question, issue, or proposition, not committed to conference by either House, and by proscribing any modification in a conference substitute which would be beyond the scope of such specific topic, question, issue, or proposition as so committed to the conference committee by either or both Houses.<sup>(17)</sup> This represents a departure from the traditional custom of the House whereby conferees had extremely wide latitude when considering a bill or resolution and a substitute therefor. In the past in such cases conferees were free to discard language which occurred in both the original legislation and the substi-

15. Rule XXVIII clause 3, *House Rules and Manual* § 913(a) (1997). See § 7.2, *infra*.

16. 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(3) (Oct. 26, 1970), which was adopted as part of the rules of the House pursuant to H. Res. 5, 117 CONG. REC. 114, 92d Cong. 1st Sess., Jan. 22, 1971.

17. See §§ 19.5, 19.6, *infra*.

tute,<sup>(18)</sup> could report out any germane amendment,<sup>(19)</sup> and could even report from conference an entirely new bill germane to the subject matter before them.<sup>(20)</sup>

Second, since the beginning of the 92d Congress, conferees have been required to take cognizance of the rule on germaneness.<sup>(1)</sup> Prior to this time, there was no procedure whereby the House could address itself specifically to the issue of nongermane Senate material contained either in conference reports or in amendments between the Houses.<sup>(2)</sup> The Legis-

lative Reorganization Act of 1970<sup>(3)</sup> added a provision to the rules of the House which required conferees to obtain specific prior authority from the House before they could agree to any Senate amendment which would be held non-germane if offered in the House.<sup>(4)</sup> The rules were amended again late in the 92d Congress<sup>(5)</sup> to delete this requirement of specific prior authority and to provide a method whereby separate votes could be taken during consideration of a conference report on nongermane matter contained therein. The rejection of any such Senate amendment results in the rejection of the entire conference report.<sup>(6)</sup>

Third, conferees may not agree to any Senate amendment to a general appropriation bill which

18. See 86 CONG. REC. 10146, 10174-77, 76th Cong. 3d Sess., Aug. 12, 1940; and 8 Cannon's Precedents § 3266.

19. See 8 Cannon's Precedents §§ 3248, 3263, 3265.

20. See 93 CONG. REC. 6361-82, 80th Cong. 1st Sess., June 4, 1947; 91 CONG. REC. 2838-40, 79th Cong. 1st Sess., Mar. 27, 1945; 8 Cannon's Precedents §§ 3248, 3263; and 5 Hinds' Precedents §§ 6421, 6423, 6424.

1. Rule XVI clause 7, *House Rules and Manual* §§ 794-800 (1997). See generally Ch. 28, *supra*.

2. See 113 CONG. REC. 34032-34, 90th Cong. 1st Sess., Nov. 28, 1967, especially the remarks of Messrs. Comer, Jones, and Celler regarding the Senate practice of adding nongermane amendments to House proposals.

3. 84 Stat. 1140, Pub. L. No. 91-510, § 126(b) (Oct. 26, 1970), which was adopted as part of the rules of the House pursuant to H. Res. 5, 117 CONG. REC. 114, 92d Cong. 1st Sess., Jan. 22, 1971.

4. See annotation to Rule XX clause 2, *House Rules and Manual* § 829 (1997).

5. H. Res. 1153, the provisions of which took effect immediately prior to the beginning of the 93d Congress.

6. Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).

provides for an expenditure not previously authorized by law, and which would therefore violate Rule XXI clause 2,<sup>(7)</sup> or any Senate amendment providing for an appropriation on any bill other than a general appropriation bill, unless prior specific authority to do so is granted by the House by a separate vote on each such amendment.<sup>(8)</sup> This general restriction on the authority of the managers does not apply when they consider a House amendment to a Senate bill.<sup>(9)</sup> Several additional specific exceptions to this restriction regarding consideration of Senate amendments should be noted. When a legislative item remains in an appropriation bill as passed by the House and a Senate amendment increases the amount of money being authorized, the conferees may agree to this without prior authority from the House.<sup>(10)</sup> Also when an appropriation bill is considered and passed in the House under a special rule which waives points of order against

items therein unauthorized by law, the conferees may agree to these provisions although they remain unauthorized.<sup>(11)</sup> On one occasion conferees presented a conference report on a general appropriation bill which allocated to several projects specific funds which had not been authorized, and the Speaker overruled a point of order noting that these specifically allocated appropriations were contained within a lump-sum appropriation which was limited by the language of the bill to projects authorized by law.<sup>(12)</sup> Conferees need not obtain authority from the House to eliminate an appropriation contained in a Senate amendment to a legislative bill.<sup>(13)</sup>

On occasion, the conferees may recommend in their report that the House agree to an amendment in the third degree.<sup>(14)</sup> Although the report is subject to a point of order on that ground, the infraction may be ignored or waived.<sup>(15)</sup>

7. *House Rules and Manual* § 834 (1997).

8. Rule XX clause 2, *House Rules and Manual* § 829 (1997). See §§ 7.19-7.22, 19.15, 19.16, *infra*.

9. § 7.30, *infra*.

10. § 7.27, *infra*.

11. §§ 7.28, 7.29, *infra*.

12. § 19.22, *infra*.

13. § 19.21, *infra*.

14. See Ch. 32, §§ 6.3, 6.4, *supra*.

15. See the proceedings concerning Senate amendment No. 47 to H.R. 5389, 77 CONG. REC. 5975-6015, 6098-130, 6145-54, 6165, 6166, 73d Cong. 1st Sess., June 14 and 15,

***Matters in Disagreement Between the Houses***

**§ 7.1 Where a Senate housing bill authorized a sum of money for education grants, and the House struck out this provision, the conferees remained within the scope of conference by retaining the provision but reducing the amount of the authorization.**

On June 23, 1959,<sup>(16)</sup> the House was considering the conference report on S. 57, the Housing Act of 1959. Mr. Graham A. Barden, of North Carolina, rose with a point of order:

Mr. Speaker, I make a point of order against the provisions of the conference report, and I do so realizing that I probably will be overruled on account of the fact that the rule seems to refer to amendments of the Senate. However, I think it is of sufficient importance at this time that a point of order should be discussed because in section 812 of the conference report it is stated:

There is hereby authorized to be appropriated not to exceed \$300,000 for a 3-year period commencing on July 1, 1959, to be used by the Housing and Home Finance Administrator for the purpose of providing

1933; and H. Jour. 431, 432, 73d Cong. 1st Sess. (1933).

16. 105 CONG. REC. 11599, 11600, 11615, 86th Cong. 1st Sess.

scholarships and fellowships in public and private nonprofit institutions of higher education for the graduate training of professional city planning and housing technicians and specialists. Persons shall be selected for such scholarships and fellowships solely on the basis of ability.

Certainly that would have been subject to a point of order had this matter been brought to the House in a bill pending on the floor of the House. . . .

THE SPEAKER:<sup>(17)</sup> The Chair is ready to rule. The only question before the Chair is whether or not this provision was within the scope of the conferees. The Senate adopted this provision in toto, and it provided \$500,000 for 3 years.<sup>(18)</sup> The conferees agreed upon \$300,000 for 3 years. The Chair cannot see how we can stretch it to the point where this matter would be subject to a point of order and states again that he believes it was definitely within the scope of the conferees and therefore overrules the point of order.

***Scope of Discretion Between Dates***

**§ 7.2 Where one House strikes all after the enacting clause of a bill of the other, and inserts a new text, the conferees have a wide range of discretion in writing new language; but they continue to**

17. Sam Rayburn (Tex.).

18. *Parliamentarian's Note*: The House had totally eliminated this scholarship provision when it passed S. 57.

**be bound by the differences submitted to them, and where dates are concerned, they cannot go beyond the latter or within the shorter.**

On Dec. 11, 1967,<sup>(19)</sup> Thaddeus J. Dulski, of New York, the Chairman of the Committee on Post Office and Civil Service, called up the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967. Mr. H. R. Gross, of Iowa, rose with a point of order:

Mr. Speaker, I make a point of order against the conference report on the grounds that the House managers exceeded their authority and did not confine themselves to the differences committed to them, in violation of the rules and precedents of the House of Representatives.

The House bill, in section 107(a) provided a minimum charge of 3.8 cents for bulk third-class mail effective January 7, 1968. Section 107(a) of the Senate amendment provided a two-step minimum charge—the first of 3.6 cents effective January 7, 1968, and a second 4-cent rate effective January 1, 1969.

The differences committed to the conferees with respect to this postage rate and the effective dates for this rate were: A rate range between 3.6 cents and 4 cents; a January 7, 1968, effective date for a one-rate charge with no further rate provided; and January 7,

1968, and January 1, 1969, effective dates for any two-rate charges.

The conference report contains a two-rate charge—the first, 3.6 cents, effective January 7, 1968; the second, 4 cents effective July 1, 1969.

The July 1, 1969, effective date for a second rate goes beyond the disagreements confided to the conferees. By agreeing to any effective date for a second rate beyond January 1, 1969, the House managers have clearly exceeded their authority.

Mr. Speaker, the precedents of the House, Cannon's Precedents, volume VIII, section 3264, have established that where two Houses fix different periods of time the conferees have latitude only between the two, but may not go beyond the longer nor within the shorter. . . .

Rule 28 clause 3 of the Rules of the House [as it existed in the 90th Congress] reads:

*Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, but their report shall not include matter not committed to the conference committee by either House.*

The Senate bill was an amendment—in the nature of a substitute for the House bill. The conference report is an additional substitute on the same subject. However, the conference report distinctly includes matter not committed to the conferees by either House, and I make the point of order on that basis. . . .

19. 113 CONG. REC. 35811, 90th Cong. 1st Sess.

THE SPEAKER:<sup>(20)</sup> Does the gentleman from New York desire to be heard on the point of order?

MR. DULSKI: Mr. Speaker, I concede the point of order.

THE SPEAKER: The Chair sustains the point of order.

§ 7.3 *Parliamentarian's Note:* The report of the managers must not include matter not committed to the conference committee by either House, nor may their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modification is beyond the scope thereof as so committed to the conference committee.<sup>(1)</sup>

### *Multiple Points of Order Against Conference Report*

20. John W. McCormack (Mass.).

1. The Legislative Reorganization Act of 1970 modified the rules of the House to place this restriction on the authority of the conferees when considering a bill and its substitute in conference. 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(3), (Oct. 26, 1970). Rule XXVIII clause 3, *House Rules and Manual* § 913(a) (1997); and *Deschler's Procedure* (93d Cong.), Ch. 33 § 6.2, supra.

§ 7.4 Instance where the Speaker entertained multiple points of order against a conference report and then overruled them all, finding that the conferees had stayed within the scope of the matters committed to them, even though they had—in some instances—added words and phrases not in either the Senate bill or the House amendment in the nature of a substitute.

A rather protracted parliamentary battle over consideration of the Outer Continental Shelf Amendments of 1976 was concluded on Sept. 28, 1976,<sup>(2)</sup> when actual debate on the conference report began. The Speaker first disposed of seven arguments that the conferees had gone beyond the confines set by Rule XXVIII clause 3, in reaching their compromise.

Both Mr. Hamilton Fish, Jr., of New York, who pressed the various points of order, and Mr. John M. Murphy, of New York, who argued in defense of the conference agreement, made extensive arguments.

2. 122 CONG. REC. 33020, 33021, 33023, 94th Cong. 2d Sess.

MR. FISH: Mr. Speaker, prior to 1971, managers considering a bill and an amendment in the nature of a substitute were free to exercise wide discretion in discarding language appearing in both versions and in making germane amendments, even beyond the scope of the various issues in disagreement. All this was changed by the Legislative Reorganization Act of 1970. Section 125(B) of that act revised clause 3 of rule 28, so that each specific topic, question, issue, or proposition must now be looked at individually, as if linear amendments had been made by one House to the bill of the other. Under this rule the conferees cannot report new matter not committed by either House. Also, where the two Houses propose different language on a particular issue, the two versions set the boundaries for conference consideration of that issue. Amendments outside those boundaries may not be reported, even if germane. Where one House is silent on an issue proposed by the other, the silent House is deemed to be incorporating current law, if any, on the subject into its version. If both versions contain matter on a given issue, that issue must be reported by the conference, in disagreement if necessary. Finally, since the substitute is being handled as if it were several linear amendments, it is not in order for the managers to modify or fail to report language which is identical in both versions.

Mr. Speaker, the most glaring violation of rule 28, clause 3, is found at the bottom of page 27 of the printed version of the conference report in proposed subsection 22(e). In both the Senate bill and the House amendment a positive

duty is put on designated officials to consider allegations of safety violations. Specifically, the Senate lists the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating. The House lists the same two officials and adds the Secretary of Labor as well. With respect to this particular issue, therefore, the only matter in disagreement is whether or not to include the Secretary of Labor on the list. . . .

Finally, proposed section 20(b)(1)(A) of the Senate bill and section 21(c)(1) of the House amendment required Federal officials to, and I quote identical language from both versions, "promulgate a complete set of safety regulations." The conference report gratuitously added the word "new" in the middle of the quoted language. Since both versions were identical, this should have been handled in the statement of the managers. It is not in order to consider such a modification of identical language, pursuant to rule 28, clause 3, and the conference report should be ruled out of order. I thank the Chair.

MR. MURPHY of New York: Mr. Speaker, before reviewing as the specific points of order, I must review the rules and procedures of the House. Rule 28, paragraph three, indicates whenever a disagreement to a bill through an amendment in the nature of a substitute has been committed to a conference committee, the conference may report a total substitute so long as no additional topic, question, issue, or proposition is included and so long as any modification suggested by the conference is not beyond the scope of the

topics, questions, issues, or propositions sent to such conference.

After hearing all of the argument, the Speaker ruled.

THE SPEAKER:<sup>(3)</sup> The Chair is prepared to rule.

The gentleman from New York (Mr. Fish) argues in his first point of order under clause 3, rule XXVIII, that the conferees have exceeded the scope of the matter committed to conference by removing from the Secretary of the Department in which the Coast Guard is operating concurrent responsibility for considering allegations of violations of safety regulations. It is the Chair's opinion that the portions of the conference report dealing with safety regulations and enforcement must be read as a whole. The House and Senate versions had differing provisions on the various aspects of that subject and gave regulatory and enforcement responsibility to differing officials. The conference report compromise gives the authority to the Interior and Labor Departments and makes the conforming change in the provision dealing with consideration of allegations of violations. For the reasons stated by the gentleman from New York (Mr. Murphy) the Chair overrules the point of order.

The gentleman's second point of order on scope deals with the findings at the beginning of the conference report, wherein the conferees agreed to language finding adverse impacts on the various States. It appears to the Chair that the language is between the Sen-

ate language, addressing the coastal zones of the various States, and the House language, addressing the various coastal States and other States. The conference language is no broader than the House language and the Chair overrules the point of order.

In his third point of order on scope, the gentleman from New York only points to language in the statement of managers and argues that a statement of intent by the conferees exceeds the scope of conference. Such a point of order must lie against language in the conference report itself and not in the joint statement and the Chair overrules the point of order.

The gentleman's fourth point of order on scope deals with the section of the conference report relating to judicial review of the Secretary of the Interior's determination whether to override State and regional recommendations as to development on the shelf. It appears to the Chair that the gentleman singles out one provision which must be read in conjunction with the other provisions in both bills on judicial review. Both bills provide for judicial review of shelf activities in other sections than the one pointed out. The conference language clarifies the fact that the limitation on judicial review of the Secretary's determination does not inhibit seeking judicial review of the underlying activities on the Outer Continental Shelf and does not exceed the scope of the matter committed to conference.

The gentleman makes several additional points of order on scope. The conference report exempted from the requirement of submission of development plans two regions, the Gulf of Mexico and Santa Barbara. The House

3. Carl Albert (Okla.).



version had exempted areas where there had been development prior to January 1, 1975. The intent of the conferees, as expressed in the joint statement, was to name the areas on which there had been such development, rather than retain the broader and categorical language of the House amendment.

The gentleman also argues that the conferees have modified the requirement as to production rate by eliminating the word "efficient." As the manager of the conference report has pointed out, the word efficient appeared in differing phrases in the House and Senate bill. The Senate bill and the House amendment did not have identical tests and did not have identical purposes, as the Senate bill required submission of a plan and the House amendment required regulations. The modification of the language is clearly within the scope.

The last argument of the gentleman from New York is that the conferees have added the word "new" in a provision that did not contain that word in either the Senate bill or the House amendment. A careful reading of the Senate bill demonstrates that the two provisions were not identical, as the Senate bill contained the word "repromulgate," not contained in the House amendment. Therefore, the issue whether the regulations were to be new regulations or could be existing regulations was a matter before the conferees.

For the reasons stated, the Chair overrules all the points of order.

### *Conference Provision Not Authorized by Law*

§ 7.5 Where the House provision in an appropriation bill provided \$454.5 million for military assistance, including \$54.6 million for the Republic of China and \$50 million for Korea, and the Senate reduced the overall figure to \$350 million and struck out the funds and the earmarking language for China, the conferees did not exceed their authority when they agreed to an overall figure of \$404.5 million and included specific allocations for both countries carried in the House bill.

On Dec. 20, 1969,<sup>(4)</sup> Mr. Otto E. Passman, of Louisiana, called up the conference report on H.R. 15149, the foreign assistance appropriations bill for fiscal 1970. The House had passed H.R. 15149 under a special rule waiving points of order, and by so doing was able to send to the Senate a bill which appropriated \$454.5 million for military assistance with \$54.5 million earmarked for the Republic of China, despite the fact that

4. 115 CONG. REC. 40447, 40448, 91st Cong. 1st Sess.

the foreign assistance authorization bill, H.R. 14580, carried no earmarking language and authorized only \$350 million for all military assistance. Mr. Sidney R. Yates, of Illinois, raised a point of order against the conference report, contending that in restoring the earmarked \$54.5 million for the Republic of China, the conferees agreed to a provision that was not authorized by law. Speaker John W. McCormack, of Massachusetts, responded:

The gentleman from Illinois has raised a point of order against the conference report on the bill H.R. 15149.

... As pointed out in the debate on this point of order, the conference report now before the House does carry an amount for military assistance that is \$54,500,000 above the figure which would be authorized by H.R. 14580, the Foreign Assistance Act of 1969.

However, the Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of \$454,500,000. The Senate reduced this figure to \$350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

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

***Conferees' Discretion Between  
a Named Sum and a Formula***

**§ 7.6 Where a Senate bill authorized appropriations for the federal payment to the District of Columbia in an amount equal to 40 percent of revenues estimated under existing revenue-raising authority to be available for each fiscal year, and a House amendment in the nature of a substitute provided an annual authorization of \$250 million for each fiscal year, House conferees did not exceed their authority under Rule XXVIII clause 3 by recommending amounts which, though higher than those contained in the House amendment, were lower than the revenue estimates for those years and were based upon the revenue-raising authority conferred upon the District under existing law.**

On Dec. 17, 1973,<sup>(5)</sup> the House was considering the conference report on S. 1435, the District of Columbia home rule bill. Mr. Earl F. Landgrebe, of Indiana, raised a point of order:

5. 119 CONG. REC. 42035, 42036, 93d Cong. 1st Sess.

I raise a point of order against the conference report in reporting section 502—Authorization of Appropriations.

The conferees have clearly exceeded any authority in projecting a Federal payment of \$300 million for fiscal year 1978.

The original Senate version of the bill called for a percentage of general fund revenues as the Federal payment. That percentage was 40 percent by fiscal year 1978.

The House version called for a lump-sum payment not to exceed \$250 million.

The limits of disagreement are either a lump sum of \$250 million or a percentage—40 percent—of whatever the general fund revenues are, not will be, in 1978. The conferees could have chosen either method. Instead, they chose to mix apples and oranges and come up with an authorization which not only exceeds the amounts stated in either version of the bill, but is an amount which greatly exceeds any figure, any statistic or any information presented for either committee's consideration.

Charles C. Diggs, Jr., of Michigan, Chairman of the Committee on the District of Columbia, responded to the point of order:

MR. DIGGS: . . . Mr. Speaker, the amounts in the conference report reflect the compromise between the House bill, as authorized and the amounts that would have been generated under the Senate provisions as estimated by the Executive Office of the Budget, and these amounts are not based on any subsequent authority which the Mayor and Council might

need to raise revenue, but rather are firmly grounded in the basic revenue authority which is in the report. . . .

For that reason, Mr. Speaker, I think that the point of order raised by the gentleman from Indiana (Mr. Landgrebe) should not be sustained.

THE SPEAKER:<sup>(6)</sup> The Chair is ready to rule.

The gentleman from Indiana makes the point of order that the conferees have exceeded their authority under clause 3, rule XXVIII by including in section 502 of the conference report an authorization above the amounts contained in either the Senate bill or in the House amendment in the nature of a substitute. The Senate bill in section 201, provided that the authorization for the Federal payment for fiscal 1975 and each year thereafter shall be an amount equal to 40 per centum of such fees, charges, receipts, and revenues so estimated for such fiscal year. The House amendment, in section 502, provided for an annual authorization of \$250,000,000 for fiscal 1975 and each year thereafter. During their deliberations, the conferees were provided by the District of Columbia government an estimate of general fund revenues for fiscal years 1975 through 1978. . . . Based upon calculations of 40 percent of those estimated revenues the conferees have recommended authorization figures for fiscal years 1975 through 1978 which though higher than the authorizations for fiscal 1976, 1977, and 1978 in the House amendment are lower than the 40 percent of estimated revenue figures for those years submit-

6. Carl Albert (Okla.).

ted by the District of Columbia government to the conferees during their deliberations.

In the opinion of the Chair, the House conferees have remained within their scope of authority under clause 3, rule XXVIII and the point of order is overruled.

***Increasing Entitlement Beyond Figure in Either Bill***

**§ 7.7 Where portions of a conference report on veterans' benefits contained higher entitlements for vocational rehabilitation assistance per month than those contained in either the House bill or the Senate amendment, the Speaker held that the conferees had exceeded the scope permitted them by Rule XXVIII clause 3 and sustained a point of order against the report.**

On Aug. 22, 1974,<sup>(7)</sup> when the conference report on the Vietnam-Era Veterans' Readjustment Act was called up for consideration, a point of order was lodged against the report on the ground that the conferees had exceeded the scope of differences committed to them. After argument by the Member

7. 120 CONG. REC. 30050-52, 93d Cong. 2d Sess.

pressing the point of order, Mr. H. R. Gross, of Iowa, and the rebuttal by the chairman of the Committee on Veterans' Affairs, Mr. William Jennings Bryan Dorn, of South Carolina, the Chair sustained the point of order.

CONFERENCE REPORT ON H.R. 12628, VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974

MR. DORN: Mr. Speaker, I call up the conference report on the bill (H.R. 12628) to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and other persons; to make improvements in the educational assistance programs; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from South Carolina?

POINT OF ORDER

MR. GROSS: Mr. Speaker, I ask to be recognized at the proper time to make a point of order against the conference report.

THE SPEAKER: The gentleman can be recognized prior to the reading of the statement of the managers on the conference report.

Is there objection to the request of the gentleman from South Carolina?

There was no objection.

8. Carl Albert (Okla.).

THE SPEAKER: The gentleman from Iowa is recognized.

MR. GROSS: Mr. Speaker, I raise a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Amendments of 1974. The conference report violates clause 3 of rule XXVIII in that the conferees exceeded the scope of the conference.

Clause 3 of rule XXVIII states, in part, that the report of conferees:

Shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses *if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.* (emphasis added)

H.R. 12628, as approved by this House on February 19, authorized a 13.6 percent increase in monthly subsistence allowances for veterans participating in vocational rehabilitation training and veterans educational programs. The Senate, on June 19, adopted an amendment in the nature of a substitute that authorized an 18.2-percent increase in monthly payments under this legislation. The House subsequently disagreed with the Senate amendment and a conference was held.

Sections 2 and 5 of the House-passed bill provided for an increase in benefits of 13.6 percent for specific categories of eligible veterans and dependents. The corresponding provisions passed by the Senate, sections 101 and 213, authorize an increase of 18.2 percent in those benefits. The conference report, in sec-

tions 101 and 104, clearly authorize an increase of 22.7 percent in monthly allowances for those same categories of trainees. This modification is beyond the scope of the specific disagreement committed to the conference committee and is a clear violation of clause 3 of rule XXVIII. . . .

Mr. Speaker, sections 101 and 104 of the conference report exceed the scope of the conference. And I ask that the point of order be sustained.

THE SPEAKER: Does the gentleman from South Carolina desire to be heard on the point of order?

MR. DORN: I do, Mr. Speaker.

Mr. Speaker, I welcome the opportunity to explain the background of the particular provisions of the conference-reported bill which appear to be the basis for the gentleman's raising of a point of order.

To simplify my explanation, may I take the example of a single veteran who is attending full-time college training. Under the existing law he receives an educational allowance of \$220 per month. This allowance is paid to him directly to assist in bearing his tuition, subsistence, and other educational expenses. As passed by the House, H.R. 12628 proposed to increase this allowance to \$250, representing an increase of 13.6 percent over the current rate. Following extended hearings and deliberations on the part of the Senate in which there was considerable support for an added or supplemental partial tuition allowance, which would also be payable directly to the veteran, the Senate returned our bill with an amendment in the nature of a complete substitute. Probably the most significant aspect of the Senate substitute

was to provide a new rate "package" consisting of an 18-percent increase in the basic monthly allowance to \$260 for a single veteran, coupled with an additional "partial tuition assistance allowance" under a formula which would result, in the typical case, a maximum of \$720 per school year. Accordingly the total assistance package proposed by the Senate potentially available for a single veteran, including the partial tuition assistance allowance, would approximate \$290 per month. . . .

I think it is also significant to point out that the net fiscal effect of adoption of the conferees' recommendations will result in an annual savings to the Government of almost a half billion dollars per year over the Senate version.

In conclusion, Mr. Speaker, considered in the context of the overall rate structure package which was considered by the conferees, it is our strong conviction that the agreement on the single educational allowance rate contained in the conference bill does not violate either the letter or the spirit of rule XXVIII of the House of Representatives.

MR. GROSS: Mr. Speaker, may I be heard very briefly further?

THE SPEAKER: The gentleman from Iowa is recognized on his point of order.

MR. GROSS: Mr. Speaker, I respectfully submit that the gentleman has offered his resistance to the point of order based upon section 102 of the bill. My point of order goes to sections 101 and 104 of the conference report.

THE SPEAKER: The gentleman is correct.

Does the gentleman from South Carolina desire to be heard on the specific point of order made by the gentle-

man from Iowa? As the Chair understood it, the gentleman's argument related primarily to a point of order that might have been made on a different section.

MR. DORN: Mr. Speaker, I would like to comment further to the distinguished gentleman from Iowa.

The decision of the conferees to drop the partial tuition assistance and establish a single basic allowance of \$270 for chapter 34 trainees encompassed 98 percent of all trainees involved. Since both the House and Senate bills set the same percentage increase for trainees under Chapter 34, which may be 98 percent of all trainees, and disabled veterans training under chapter 31 to make up 2 percent of the trainees, the conferees decided to remain consistent to the positions of both the House and Senate, and therefore extended the 23 percent increase to all classes of veterans.

THE SPEAKER: Is the gentleman arguing correctly to the point of order, or is the gentleman, in effect, conceding?

The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Act Amendments of 1974, on the ground that the conferees have exceeded the scope of their authority.

Specifically, it is alleged that the conference report provides a greater amount of vocational rehabilitation assistance per month and a greater apprenticeship or on-the-job training assistance, per month than either the House or Senate versions.

The Chair has examined section 101 of the conference report, which amends

a table in title 38, United States Code, section 1504(b) to provide \$209 a month in vocational assistance for a veteran with no dependents enrolled full time at an educational institution. Section 2 of the House bill amends the payment figure to provide \$193 a month. Section 101 of the Senate amendment in the nature of a substitute amends the same figure to provide only \$201 a month.

The conference amendment clearly exceeds the dollar amount of either the House or Senate version.

Similarly, section 104 of the conference report amends a table in title 38, United States Code, section 1787(b) to provide \$196 a month assistance during the first 6 months for an individual with no dependents, for apprenticeship or on-the-job training.

The House bill provides, in section 5, \$182 for that purpose, and the Senate amendment provides, in section 213, \$189 for that purpose.

The conference report exceeds the dollar amount contained in both the House bill and the Senate amendment in the nature of a substitute.

As the conferees have exceeded their authority under clause 3, rule XXVIII, the Chair therefore sustains the point of order against the conference report.

MOTION OFFERED BY MR. DORN

MR. DORN: Mr. Speaker, I move that the House recede from its disagreement to the Senate amendment to the text of the bill and agree to the same with the following amendment.

The Clerk read as follows:

Mr. Dorn moves that the House recede from its disagreement to the Senate amendment to the text of the

bill and agree to the same with the following amendment: In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

That this Act may be cited as the "Vietnam-Era Veterans' Readjustment Assistance Act of 1974".

***Application of the Scope of Conference Rule; Compromise Between No Discretion and Broad Discretion***

§ 7.8 Where a bill of one House permits an unlimited delegation of authority from a federal official to the states, and the version of the other House precludes any such delegation, the conferees may recommend a curtailed delegation without introducing a "new topic" and violating the "scope" rule.

When the conference report on the U.S. Grain Standards Act of 1976 was laid before the House as unfinished business on Oct. 1, 1976,<sup>(9)</sup> a point of order was raised as shown herein.

THE SPEAKER:<sup>(10)</sup> The unfinished business is the further consideration of the conference report on the bill (H.R. 12572) to amend the U.S. Grain Standards Act to improve the grain inspection

9. 122 CONG. REC. 35102, 35103, 94th Cong. 2d Sess.

10. Carl Albert (Okla.).

tion and weighing system, and for other purposes, which the Clerk will report by title.

The Clerk read the title of the bill.

THE SPEAKER: Pursuant to the order of the House on Thursday, September 30, 1976, the conference report is considered as having been read.

(For conference report and statement see proceedings of the House of September 29, 1976.)

#### POINT OF ORDER

MR. [W. HENSON] MOORE [of Louisiana]: Mr. Speaker, I renew the point of order I reserved at the conclusion of business on this conference report last evening.

THE SPEAKER: The gentleman will state his point of order.

MR. MOORE: Mr. Speaker, the point of order I make is that the conference report on page 5, section 8, subsection (5)(2) violates clause 3 of rule XXVIII of the Rules of the House. Clause 3 of rule XXVIII says, and I quote:

Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement. Moreover, their report shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition com-

mitted to the conference committee by either or both Houses if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.

Mr. Speaker, I point out that in the House-passed bill, H.R. 12572, section 7(e) there is the proposal that the Secretary of Agriculture can determine a State agency that is qualified to perform official inspections, and can so designate it or delegate it under this section of the House bill.

Mr. Speaker, I point out that this section, section 7(e) of the House bill says that any State agency, past, present, or one that may come into being in the future, could be designated or could be delegated the authority to do inspections and weighing by the Secretary, if found to be qualified. . . .

So what we have in the Senate bill is that no State agency or private agency is able to do any inspections. What we have under the House section is that any State agency existing now, in the past, or possibly in the future, could be delegated the authority to do inspections.

Then the conference report comes back, Mr. Speaker, and herein lies the point of order. The conference report comes back. Page 5, section 8, subsection (5)(1) amends (e)(2) of the existing act and says:

If the Administrator determines pursuant to paragraph (3) of this subsection that a State agency which was performing official inspection at an export port location under this Act on July 1, 1976, is qualified to perform official inspection and meets the criteria in subsection . . .



And then goes on through.

The point I am trying to make, Mr. Speaker, is that under clause 3 of rule XXVIII the insertion of this date sets up a new question, a new topic, a new issue, a new proposition for determining who is going to do inspections that was not in either the Senate bill which called for all Federal, or in the House bill which called for the availability of all States being able to do it.

I would point out, Mr. Speaker, that in the committee report from the House committee on this bill there are 17 States—17 States, Mr. Speaker—which have export ports: Alabama, California, Illinois, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New York, Pennsylvania, Ohio, Oregon, South Carolina, Texas, Virginia, Washington, and Wisconsin.

Under the Senate bill none of these 17 export States could have had a State grain inspection agency. Under the House bill any or all of these could be, depending upon the discretion of the qualifications by the Secretary of Agriculture.

But under the conference report, Mr. Speaker, nine States can by law, eight States cannot by law by the insertion of this new issue, this new topic of a grandfathering clause of July 1, 1976. . . .

THE SPEAKER: Does the gentleman from Washington desire to be heard on the point of order?

MR. [THOMAS S.] FOLEY [of Washington]: Yes, Mr. Speaker.

Mr. Speaker, the question has been raised on the point of order by the gentleman from Louisiana whether the provision in the conference report that authorizes the Secretary to designate

certain agencies for inspection, if they were performing inspections on July 1, 1976, is beyond the scope of the conference, or not germane to the conference.

Mr. Speaker, the Senate bill, as the gentleman from Louisiana points out, requires exclusive Federal inspections at all export ports. The House bill authorized the Secretary at his discretion to delegate to State agencies that opportunity to perform inspections. The whole focus of the House debate in permitting State agencies to be delegated was to preserve the rights of those States who were carrying on inspections at the time that the particular bill was passed by the House and carried it on properly.

The discretion given to the Secretary was to determine whether they were carrying it on properly.

The conference determined that they would fix a time where States that were carrying on inspections properly would be eligible for further export inspection at the said Secretary's discretion.

The decision, I think, is germane to both the Senate bill and the House bill, but particularly to the House bill, that had focused on the opportunity for States that were carrying on inspections to do so.

Accordingly, Mr. Speaker, I believe the point of order should be overruled. . . .

MR. MOORE: Mr. Speaker, will the gentleman yield?

MR. FOLEY: I yield for debate only. . . .

THE SPEAKER: The gentleman from Louisiana is not speaking to the point of order. The gentleman is speaking to the merits and the gentlemen cannot

yield to each other on the point of order, the Chair controls argument on the point of order.

The Chair is prepared to rule.

From the joint statement, the Chair finds on pages 32 and 33, a discussion of who is to perform official inspection of export locations. The House bill and the Senate amendment amend section 7 of the act and provide that all grain required or authorized to be inspected under the act, at export port locations and export elevators in the case of the Senate amendment, and of U.S. grain in Canadian ports, be performed by authorized Federal employees.

The House bill, however, gives the [Secretary] the power to delegate his authority to a State inspection agency if he determines the State agency to be qualified, although the responsibility for such official inspection shall remain his; and he may revoke the delegation at any time without a hearing.

The Chair feels that the language clearly indicates that a broad authority to delegate to the States is given by the House to the Secretary, and that there is a limitation of that authority in the conference report. Therefore, the conference report represents a compromise between the total Federal inspection authority in the Senate amendment and the unlimited discretionary delegation of authority to the States in the House bill, which does not introduce a new topic which goes beyond the scope of the two versions.

The Chair, therefore, overrules the point of order.

*Determining Questions of Scope; Changing Permissive to Mandatory Authority*

§ 7.9 Where a Senate bill amended existing law to require that certain funds be utilized for the continuation of a research project, and not toward its cancellation, and House language authorized a sum for continuation, the conferees were held to have exceeded their authority by agreeing to a provision specifying a site for the project conditioned on considerations of health and safety, thus exceeding the "scope of differences" in conference; a point of order was sustained because of the inclusion of new matter not included in either version.

On Oct. 14, 1977,<sup>(11)</sup> a point of order was raised against a conference report on the Energy Research and Development Administration Act of 1978 (S. 1811). The point of order was targeted at conference language contained in section 106(d)(3) of the agreement on the ground that the conference language specified a site of a proj-

11. 123 CONG. REC. 33770-72, 95th Cong. 1st Sess.

ect which was funded in different manners by the Senate bill and House amendment. A portion of the disputed section of the conference report, the point of order and the arguments that followed are carried below.

CONFERENCE REPORT ON S. 1811,  
ENERGY RESEARCH AND DEVELOP-  
MENT ADMINISTRATION AUTHORI-  
ZATION ACT OF 1978

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I call up the conference report on the Senate bill (S. 1811) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection. . . .

PARLIAMENTARY INQUIRY

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. UDALL: Mr. Speaker, I desire to make a point of order against the con-

ference report. Is this the appropriate time?

THE SPEAKER: It is.

POINT OF ORDER

MR. UDALL: Mr. Speaker, I make a point of order against the conference report. . . .

Mr. Speaker, I make a point of order. Section 106(d)(3), adopted by the conference committee on the bill now before the House, exceeds the authority of the conference committee in that it inserts new substantive provisions in the legislation which were not included in the bill, either as passed by the House or passed by the Senate.

I would like to be heard briefly on the point of order.

The portion of the conference text targeted by Mr. Udall was as follows:

"(d) The Congress declares that any funds appropriated pursuant to an authorization to design, construct, and operate a specified project or conduct a specified program are intended to be used only for the design, construction, and operation of that project or the conduct of that program, in accordance with such authorization. Accordingly— . . .

"(3) such Project (notwithstanding any other provision of law or the structure, pace, and timing of the liquid metal fast breeder reactor program) shall be located at the existing Clinch Riversite, unless that site is determined to be unsuitable from the standpoint of radiological health and safety, and to the maximum extent possible shall be designed, constructed, and operated in accordance with the existing project arrangements, objectives, and schedules: *Provided*, That site preparation and

12. Thomas P. O'Neill, Jr. (Mass.).

also those construction activities for which a construction permit is required shall not commence during the fiscal year ending September 30, 1978, but the foregoing limitation on commencement of site preparation activities shall not be deemed to prohibit or in any way limit the grant of a limited work authorization for those activities during any fiscal year: *Provided further*, That the Secretary and all other appropriate Federal agencies are directed to undertake all such efforts as are necessary to assure that the earliest possible decisions on a limited work authorization and a construction permit are obtained: *And provided further*, That nothing in this Act shall be deemed to authorize, approve, or constitute a commitment to commercialization of LMFBR technology; and . . .

Debate continued on Mr. Udall's point of order:

MR. UDALL: The point of order, Mr. Speaker, is based on the conference report violation of rule 28, which requires that the report shall not include matter not committed to the conference committee by either House. The offending provision of the conference report is section 106. It amends section 103 of Public Law 91-273 as amended, and impose new requirements on the Clinch River breeder project.

Specifically, section 106 would require that the project be located at the existing Clinch River site unless that site is determined to be unsuitable from the standpoint of radiological health and safety; that the "maximum extent possible" the project shall be designed, constructed and operated in accordance with existing arrangements, objectives and schedules; and the Secretary and "all other appropri-

ate Federal agencies" (assumably the Nuclear Regulatory Commission) are directed "to undertake all such efforts as are necessary to assure the earliest possible decisions on a limited work authorization and a construction permit." . . .

Mr. Speaker it cannot be argued that anything in the Senate bill or House amendment justifies this conference report's treatment of licensing issues. That both the House and the Senate conferees may have concluded that the project be built at Clinch River has nothing to do with the fact that under existing law the project must be licensed by the Commission at that site or another location. Under section 182(a) of the Atomic Energy Act "the place of the use" of the facility must "be in accord with the common defense and security" of the United States. By excluding the defense and security consideration, the conference report directly modifies licensing requirements and nothing in either the House or Senate version addresses this issue.

The other provisions I mentioned are also modifications of existing licensing law and like the siting provisions, these modifications have no relation to the authorizations of the House and Senate bills. . . .

The point of order should be sustained. . . .

THE SPEAKER: The gentleman from Texas (Mr. Teague) is recognized.

MR. TEAGUE: Mr. Speaker, this report has been adopted by the other body. During the debate on the floor, Senator Hart of Colorado asked Senator Church, the chairman of the subcommittee in the other body, about the same point the gentleman from Arizona

raises here. I would like to read Senator Church's answer because I think it is the best way to be stated.

Senator Hart said to Senator Church:

\*\*\* I am concerned with one provision of the conference report which deals with the Clinch River breeder reactor project, and that language is contained in section 106(d)(3). \*\*\* I want to make sure that the record is absolutely clear that this section does not modify in any way the licensing and regulatory authority of the discretion of the Nuclear Regulatory Commission under the Atomic Energy Act. \*\*\* I would greatly appreciate it if the Senator from Idaho would give me his assurances to that effect.

Senator CHURCH. \*\*\* The provision in the report to which he refers in no way limits the authority of the Nuclear Regulatory Commission to protect public health and safety or the common defense and security.

The Nuclear Regulatory Commission's authority to protect the environment of the Clinch River site is not limited. \*\*\*

There are no alternative sites before the Commission. The language of the report in no way interferes with the discretionary authority or the power of the Commission to proceed as it normally would to a conclusion of this proceeding.

THE SPEAKER: Do any other Members desire to speak on the point of order? . . .

MR. [WALTER] FLOWERS [of Alabama]: Mr. Speaker, I think it would be in order very briefly to review the facts of the matter.

First of all, the House passed the 1978 authorization bill for the project in the amount of \$150 million, which contemplated construction at the site.

The project was first authorized in Public Law 91-273.

The Senate-passed bill contains language which incorporates a heading entitled "The Clinch River Breeder Reactor Project."

Furthermore, the Senate incorporates by reference a letter from Dr. Robert Fri, Acting Administrator of ERDA, and a letter from the Comptroller General, Mr. Elmer Staats, both of which talk about the Clinch River breeder reactor project at the site, Clinch River.

We have not in the conference report done anything except specify the site. What has not been done is anything that would affect the licensing for the facility. . . .

The conference committee has tried to bring together a fair compromise of the House and Senate positions. Both contemplate construction at the Clinch River, Tenn., site. That is what we are talking about, the Clinch River site.

What we tried to do in the conference report is to clearly focus our attention on that point so the issue is drawn.

Mr. Speaker, that is all we are trying to do, and I do not think that the point of order should be sustained. . . .

THE SPEAKER: Do any other Members desire to be heard on the point of order?

MR. [JAMES M.] JEFFORDS [of Vermont]: I do, Mr. Speaker. I desire to be heard on the point of order.

THE SPEAKER: The Chair recognizes the gentleman from Vermont (Mr. Jeffords) on the point of order.

MR. JEFFORDS: Mr. Speaker, it seems to me that the critical question here is simply this: If neither the House nor the other body, in their provisions, amended a provision of the law, in this

case section 106 of Public Law 91-273, can the mere fact that one of the bodies, in their action, references a document—in this case it is, I believe, the Comptroller General's report—which mentions the law, they broaden the scope as they then did in conference so as to amend the law? . . .

THE SPEAKER: Do any other Members desire to be heard on the point of order.

If not, the Chair is ready to rule on the point of order.

The gentleman from Arizona makes a point of order against the conference report on S. 1811 on the ground that the conferees have included in their report new matter not committed to conference, in violation of clause 3 of rule XXVIII.

Section 106 of the conference report amends existing law to require that the Clinch River breeder reactor project be located at a certain site, unless determined unsuitable from the standpoint of radiological health and safety, to prohibit certain construction activities on such project in fiscal year 1978, and to assure expedited decisions on work authorizations and construction permits. Section 101 of the House amendment authorized a sum for the liquid metal fast breeder reactor project, and earmarked a certain portion of that sum for certain development and testing. Section 103 of the Senate bill S. 1811 amended existing law to require that funds appropriated for the Clinch River breeder reactor project, pursuant to the authorization in existing law, be applied towards the continuation of that project, and not towards its cancellation or termination.

Section 103 of the Senate bill S. 1811 amended existing law to state the intent of Congress and to require that funds appropriated for the Clinch River breeder reactor project, pursuant to the authorization in existing law, be applied towards that project, and not towards its cancellation or termination; the Senate bill also endorsed an opinion of the Comptroller General relating to the continuation of the project. Insofar as section 106 of the conference report requires that funds shall not be used to terminate the Clinch River project and requires that funds appropriated pursuant to an authorization for a specific project shall only be used to proceed with that project, the report constitutes a proper modification of the issues which were contained in section 103 of the Senate bill.

But the mandate of the new subsection 106(d)(3) added to Public Law 91-273 as amended, by section 106 of the conference report, which requires that the project be located as a certain physical location, was not included in the Senate bill. Although the Senate bill did endorse on behalf of Congress an opinion of the Comptroller General which discusses the necessity of constructing the project at a certain site, the Senate bill did not absolutely require that result as does the conference report. Moreover, the report would allow altering that designated site in the case of unsuitability from the radiological health and safety standpoint. While it may be desirable as a matter of policy to include that exception, neither the House amendment nor the Senate bill addresses that policy. The remainder of subsection (d)(3) added by the report specifies a certain construction

schedule as a matter of law, which the gentlemen from Texas and Washington have characterized as a compromise between the full level of funding adopted by the House and the lesser authorization adopted by the Senate.

The Chair appreciates the difficulty of the conferees in fashioning a recommendation incorporating the concerns of the House and Senate in this complex area. It appears to the Chair, however, that the Senate bill and the House amendment, as well as the hearings, reports and debates in both Houses addressed a variety of conceptual issues but did not commit to conference language which allowed the conferees to enact those issues into affirmative and mandatory provisions of law.

The Chair feels that a precedent relevant to the present situation occurred on December 20, 1974, as cited in Deschler's Precedents, chapter 33, section 6.9.<sup>(13)</sup> On that instance, Speaker Albert ruled that the inclusion of a new provision in a conference report, relating to the Alaska Native Claims Settlement Act, was in violation of clause 3 of rule XXVIII, since that specific topic had not been addressed in either the House bill or the Senate amendment thereto. The argument was made on that occasion that the Senate amendment if enacted would have required, under existing law, the result mandated by the new provision in the conference report. The Chair ruled as follows in response to that argument: "If what the gentleman says is true, the addition of this language in the confer-

ence report would have been redundant. To have put it in the conference report would have been unnecessary; the Chair must conclude that a new issue has been injected which was not contained in the Senate amendment."

For the reasons stated, the Chair sustains the point of order.

MOTION OFFERED BY MR. TEAGUE

MR. TEAGUE: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Teague moves that the House insist on its amendment to the Senate bill S. 1811 and request a further conference with the Senate thereon.

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Teague).

The motion was agreed to.

### *Determining Scope of Conference Where One House Silent on Issue*

§ 7.10 While the scope of differences committed to conference, where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject, may properly be measured between those issues presented in the amending language and comparable provisions of existing law, the inclusion in a conference report of new

13. See § 7.10, *infra*.

**matter not specifically contained in the amending version and not demonstrably repetitive of existing law may be ruled out as an additional issue not committed to conference in violation of Rule XXVIII clause 3.**

On Dec. 17, 1974, House conferees exceeded their authority by filing a report which included a matter not in either the Senate amendment or existing law. The Senate amendment to the House bill had amended the Alaska Native Claims Settlement Act to establish a thirteenth region for Natives not residents of Alaska and to create a Thirteenth Regional Corporation to receive and distribute benefits under the Act to new enrollees. The original House bill contained no comparable provision, so the House position was the existing law. By including in their report a provision for cancellation of stock previously issued by Native Corporations to Natives who enroll in the thirteenth region, a matter not contained either in the Senate amendment or specifically provided in existing law,<sup>(14)</sup> the House

14. Alaska Native Claims Settlement Act, 85 Stat. 692, 693.

conferees exceeded their authority under Rule XXVIII clause 3.<sup>(15)</sup>

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Washington?

POINT OF ORDER

MR. [DONALD E.] YOUNG of Alaska: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. YOUNG of Alaska: Mr. Speaker, I make a point of order that section 5(e) of the conference report introduces language presenting a specific topic or question that was not committed to the conference committee by either House and is not a germane modification of the matters in disagreement. The insertion of section 5(e) is a violation of clause 3 of rule XXVIII of the rules of the House.

THE SPEAKER: Does the gentleman from Washington wish to be heard on the point of order?

MR. MEEDS: I do, Mr. Speaker.

15. *House Rules and Manual* § 913a (1997). See ruling at 120 CONG. REC. 41849, 41850, 93d Cong. 2d Sess., Dec. 20, 1974.

16. Carl Albert (Okla.).



Mr. Speaker, both the conference report and the Senate bill give authority for the distribution of certain funds and provides that the 13th region, which would be created or provided by the conference bill, would be payable to these people as though the 13th region had been created in December of 1973.

Now, while the Senate bill did not mention the question of stock, that if the Senate bill had been passed it would have been necessary to do precisely what we have done in the conference report.

Therefore, the intended power of the Senate bill is covered in the language of the conference report and the conference reported bill. It is clearly within the scope, because it would absolutely be necessary to do this to carry out the Senate bill as it was enacted and it was in conference.

THE SPEAKER: The Chair is prepared to rule.

The Chair has examined the Senate amendment and finds that there was absolutely no reference in the Senate amendment that the Chair finds to a cancellation of stock previously issued by Native corporations to Natives who are enrolled in the 13th region. Therefore the conference report is in violation of clause 3, rule XXVIII.

The Chair, therefore, sustains the point of order.

MR. MEEDS: Mr. Speaker, could I be heard?

THE SPEAKER: The gentleman may be heard, but will the gentleman indicate that there is new language in the conference report not contained in the Senate amendment.

MR. MEEDS: Mr. Speaker, I agree there is not language in the Senate bill

which does this, but if the Senate bill were carried out after it were passed, what is set forth in the conference report would have to be done. It is a mechanical thing that would necessarily follow.

When the 13th region was not created, certain stock was issued to individuals who would have been members of that 13th region in other corporations. When the 13th region is created, as it is by the Senate bill and by conference, it would then be necessary to redistribute and refund that fund, so it is a necessary concomitant of either bill that this procedure be carried out, and it is simply set out in the conference reported bill.

THE SPEAKER: The Chair will read clause 3, rule XXVIII:

Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement.

If what the gentleman says is true, the addition of this language in the conference report would have been redundant. To have put it in the conference report would have been unnecessary; the Chair must conclude that a new issue has been injected which was not contained in the Senate amendment.

The Chair, much as he dislikes to do so, must sustain the point of order.

The provision in the conference report toward which the point of order was directed was as follows:<sup>(17)</sup>

CONFERENCE REPORT (H. REPT. NO. 93-1620)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate with an amendment as follows:

That there shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior. . . .

17. 120 CONG. REC. 40541, 40542, 93d Cong. 2d Sess., Dec. 17, 1974.

SEC. 5. The Alaska Native Claims Settlement Act (85 Stat. 688) is hereby further amended by inserting at the end thereof a new section 28 as follows: . . .

"(e) Any stock issued by a corporation under subsection (g) of section 7 of this Act to any Native who is enrolled in the thirteenth region pursuant to this section shall, upon enrollment of that Native, be canceled by the issuing corporation without liability to it or the Native whose stock is so canceled.

**§ 7.11 In determining whether a provision in a conference report goes beyond the bounds set by the differences committed to conference, where one House is silent on the subject, the Speaker must: (1) analyze the Senate language; (2) determine the boundaries set by existing law (the position of the silent House); (3) weigh the arguments for and against the point of order; and (4) finally make a determination as to the propriety of the conference provision.**

On occasion, the duty of the Chair to make a decision on whether an item is within the scope of conference is made difficult by the ambiguity of the language against which the point of order is directed. On Feb. 28,

1978,<sup>(18)</sup> when the conference report on the Federal Trade Commission Amendments of 1978<sup>(19)</sup> was before the House, the Chair had to determine whether 25 employees of the FTC, in positions established in the Senate amendment, were or were not civil service employees or were, to the contrary, personnel paid at civil service rates but independent of the reach of all the protections afforded in the underlying civil service law.

The conference provision, the arguments by the Member making the point of order, the response of the manager of the conference, and the Speaker's ruling are carried here.

CONFERENCE REPORT ON H.R. 3816,  
FEDERAL TRADE COMMISSION AMENDMENTS OF 1978

Mr. [Bob] Eckhardt [of Texas]: Mr. Speaker, I call up the conference report on the bill (H.R. 3816) to amend the Federal Trade Commission Act to expedite the enforcement of Federal Trade Commission cease and desist orders and compulsory process orders; to increase the independence of the Federal Trade Commission in legisla-

tive, budgetary, and personnel matters; and for other purposes.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I raise a point of order against the conference report.

THE SPEAKER:<sup>(20)</sup> The gentleman will state it.

MR. DERWINSKI: Mr. Speaker, I raise a point of order against the conference report on H.R. 3816 on the ground that the conferees exceeded the bounds of conference in violation of House Rule XXVIII, clause 3.

Mr. Speaker, the Senate-approved bill, in section 107, contained language authorizing the appointment of 25 super-grade (GS-16, -17, and -18) positions for attorneys, economists, special experts, and outside counsels. Further, in that same section, the Senate bill provided that "Any appointment or removal of an employee of the Commission to or from any position in the categories GS-16, -17, and -18 may be made by the Commission without regard to any provision of title 5, United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service \*\*\*"

Section 3324 of title 5, United States Code, requires that an appointment to a position in GS-16, -17, or -18, may be made only on approval of the qualifications of the proposed appointee by the Civil Service Commission. There are only four exceptions to that requirement in section 3324 of title 5,

18. 124 CONG. REC. 5009, 5010, 95th Cong. 2d Sess.

19. Conf. Rept. on H.R. 3816, 95th Cong. 2d Sess.

20. Thomas P. O'Neill, Jr. (Mass.).

none of which apply to the positions described in section 107 of H.R. 3816.

The House bill, being silent on the appointment of additional supergrade positions, contained no exception to section 3324 of supergrade positions in the FTC, and therefore continued the application of this section.

Mr. Speaker, therefore both the House and Senate bills would apply section 3324 of title 5, United States Code, to the 25 newly created supergrade positions.

The conference report in section 2(b) authorizes the appointment of 25 supergrade positions without regard to the provisions of title 5, United States Code, thereby exempting these positions from the provisions of section 3324 of title 5.

Mr. Speaker, my point is that the Senate bill explicitly and the House bill implicitly provided for the application of section 3324 of title 5, United States Code, to supergrade positions in the FTC. Therefore, an exemption from the application of this provision of law was not in conference, and by providing an exemption, the conferees exceeded the scope of conference.

Mr. Speaker, as precedent, I cite Deschler's Procedure, chapter 33, section 15.4:

Where one House strikes out of a bill of the other House all after the enacting clause and inserts a new text, House conferees, under clause 3 of Rule XXVIII, may not include in their report a modification of a proposition which is beyond the scope of that proposition as committed to conference. 117 Cong. Rec. 46596-602, 46779, 92d Cong. 1st Sess., Dec. 13, 14, 1971 [conference report on S. 2891], holding that where a Senate

bill included a provision authorizing a 5.5% pay comparability adjustment for federal employees compensated under "statutory" pay systems, and the House amendment contained no comparable provision, House conferees exceeded their authority by including in their report language which broadened the scope of the Senate provision, by deleting the term "statutory", so as to include federal employees covered under other pay systems.

Therefore, Mr. Speaker, having cited this precedent, I make my point of order.

Mr. Speaker, I insist upon my point of order.

THE SPEAKER: Does the gentleman from Texas (Mr. Eckhardt) desire to be heard upon the point of order?

MR. ECKHARDT: I do, Mr. Speaker.

THE SPEAKER: The gentleman from Texas is recognized.

MR. ECKHARDT: Mr. Speaker, it seems to me that the gentleman is reading from a document referring to H.R. 3816 and an amendment of the Senate of the United States, on page 16, where there is indeed reference to section 3324. We did not take that section. The section that was taken by the House and became a part of the conference is found on page 16, and it is under (c) and contains no reference to that title. The persons involved are not supergrades. They are not GS-16's but they were called upon to be paid at that rate. Therefore there is nothing that was done in the conference that was not within the scope of the provisions of the Senate originally. Essentially we did what is always done in a conference, we arrived at a compromise agreement between the positions of the

Senate and the House within the scope of the two bills.

THE SPEAKER: Does the Chair understand that these 25 employees in the conference report and in the Senate amendment are not civil service classified employees?

MR. ECKHARDT: That is right.

MR. DERWINSKI: Mr. Speaker, may I be heard further?

THE SPEAKER: The gentleman from Illinois is recognized.

MR. DERWINSKI: Mr. Speaker, with reference to the provision of the original Senate bill that the gentleman from Texas (Mr. Eckhardt) has just referred to, I call the attention of the Chair to paragraph (c) which authorizes the Commission to assign the duties and to fix the compensation for not more than 25 attorneys. But then I call the attention of the Speaker to the following paragraph, paragraph (d), in which it states that:

Any appointment or removal of an employee of the Commission to or from any position . . . may be made by the Commission without regard to any provision of title 5, United States Code. . . .

Paragraph (d) as I read it supersedes the language of the Senate in paragraph (c), and therefore the conferees went beyond the scope of the conference.

MR. ECKHARDT: Mr. Speaker, may I be heard further?

THE SPEAKER: The gentleman from Texas is recognized.

MR. ECKHARDT: Mr. Speaker, I would add that paragraph (d) does not relate to the same employees as paragraph (c) does.

(c) refers to persons who are not supergrades and who are not GS-16's.

(d) says:

Any appointment or removal of an employee of the Commission to or from any position in categories GS-16, GS-17, and GS-18, may be made by the Commission without regard to any provision of title 5, \*\*\*

But these persons are not from any positions in categories GS-16, GS-17, and GS-18. The persons covered by paragraph (c) are no more than 25 attorneys, economists, or specialists, who are treated at a rate at the level of GS-16 but they are not and never have been GS-16's nor are they supergrades.

THE SPEAKER: The Chair is ready to rule.

The question is whether the 25 professionals referred to in the Senate amendment are considered FTC employees in the positions of categories GS-16, -17, or -18, or whether they are merely paid at those rates without being in these positions. In other words, whether the employees referred to (c) on page 16 and (d) on page 16 of the Senate amendment are the same employees or are different employees.

In the opinion of the Chair the conferees have stayed within the scope of the differences committed to conference with respect to the 25 professionals dealt with in section 2(b) of the conference report.

The Senate amendment and the conference report treat those 25 professionals in an identical way as employees of the FTC who are paid at rates of pay not in excess of rates applicable to GS-18, but who are not FTC employees in any classified position in categories GS-16, -17, or -18, to whom section

3324 of title V would certainly apply under both House and Senate versions.

In the opinion of the Chair, the point of order is not well taken.

### *Where Dates Are in Issue*

**§ 7.12 Where the Senate has amended a House-passed bill to change the effective date therein, the authority of the conferees on the bill is limited to the difference between the dates in each version, and where the dates contained in both bills have since passed, the conferees must report the Senate amendment back in technical disagreement so that the effective date can be considered separately.**

On Mar. 11, 1970,<sup>(1)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Harley O. Staggers, of West Virginia, to submit the conference report on H.R. 6543, the Public Health Cigarette-Smoking Act, with amendment No. 13, still in disagreement. The report stated in part:

*Amendment numbered 13*

This amendment is reported in technical disagreement. The amendment

struck out the effective date in the House bill which was July 1, 1969, and inserted in lieu thereof an effective date (with respect to all but section 5 of the Act) of January 1, 1970. Both dates have, of course, passed and technically the matter could not be resolved in the conference. The new warning on cigarette packages required by the conference agreement necessitates a transition period to permit cigarette packages to be imprinted with the warning. Accordingly the managers on the part of the House will offer an amendment in the House to recede and concur in Senate amendment numbered 13 with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

"Sec. 3. Section 5 of the amendment made by this Act shall take effect as of July 1, 1969. Section 4 of the amendment made by this Act shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act. All other provisions of the amendment made by this Act except where otherwise specified shall take effect on January 1, 1970."

*Parliamentarian's Note:* The Senate, which acted first on the conference report, was precluded from receding from its amendment with an amendment.<sup>(2)</sup> However, the House could have kept the papers following the conference

1. 116 CONG. REC. 6793-95, 91st Cong. 2d Sess.

2. *House Rules and Manual*, Jefferson's Manual § 526 (1997).

and acted first on the amendment in disagreement by receding and concurring in the Senate amendment with an amendment. The Senate could then have concurred in the House amendment. Or the conferees could have agreed to either the House or Senate version and then, following the adoption of the conference report in both Houses, could have considered by unanimous consent a concurrent resolution directing the Clerk of the House, in the enrollment of the bill, to insert a new date in lieu of that carried in the conference version.

***Question Raised Against Validity of Report; Report Properly Signed by Majority of Confer-ees***

**§ 7.13 The Speaker overruled a point of order that a conference report failed to include a provision allegedly agreed upon in conference where a majority of the conferees of both Houses had signed the report and where the House conferees had the authority, under Rule XXVIII clause 3, to omit that provision.**

On Dec. 17, 1973,<sup>(3)</sup> after the conference report on S. 1435, the District of Columbia Self-Government and Government Reorganization Act, was called up by Mr. Charles C. Diggs, Jr., of Michigan, Mr. Earl F. Landgrebe, of Indiana, rose:

MR. LANDGREBE: Mr. Speaker, I want to make a point of order concerning section 738 of conference report No. 93-703, "Advisory Neighborhood Councils" for the reason that it fails to provide as the conferees stated and intended during the conference held on this legislation.

In conference, the requirement was Neighborhood Councils must first be approved by the electors in the same public referendum required for the approval of the charter. Nowhere in section 738 does that requirement appear.

If the legislation were approved, the councils would be created by operation of law, not by the affirmation of the electors as provided for by the conferees. This section is contrary to the intent of the conferees and this report must not be considered. . . .

THE SPEAKER:<sup>(4)</sup> The Chair is prepared to rule. The gentleman from Indiana makes a point of order that the conference report violates the rules and precedents of the House. Since the conference report on the bill S. 1435 was filed on December 6, 1973, the Chair has carefully scrutinized the agree-

3. 119 CONG. REC. 42034, 42035, 93d Cong. 1st Sess.

4. Carl Albert (Okla.).

ments that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. Obviously where, as here, there is a Senate bill and a House amendment in the nature of a substitute therefor and both are extensive and comprehensive legislative proposals the task of writing a conference compromise is a difficult and painstaking task. . . .

The gentleman from Indiana has made the further point of order that the conference report is not properly before the House because a subsection of the report, allegedly agreed to in conference is not contained in the report submitted to the two Houses.

The Chair, of course, has no knowledge of how this agreement was reached. The only information the Chair has on what was agreed to in conference is derived from the conference report. The Chair does note that the subsection allegedly omitted was not contained in the Senate bill and thus the managers had the authority, under clause 3, rule XXVIII to eliminate that provision if they so desired.

Volume 5 of Hinds' Precedents section 6497, states that "A conference report is received if signed by a majority of the managers of each House." The Chair has examined the report and the papers and finds that it is signed by 6 of the 10 managers on the part of the House and by all 7 managers on the part of the Senate. The Chair can only observe that the report is here in a legal manner.

The Chair therefore overrules the point of order.

### *Authorization To Consider Inadvertently Omitted Matters*

§ 7.14 By concurrent resolution, managers of a conference were authorized to consider, in addition to certain Senate amendments to a House bill pending before them, proposals by the Senate to strike other provisions of the House bill.

On July 20, 1956,<sup>(5)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Clair Engle, of California, who made the following request:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (S. Con. Res. 86) authorizing the conferees on H.R. 1774, abolishing the Verendrye National Monument, N. Dak., to consider certain additional Senate amendments that were inadvertently omitted from the official papers. . . .

THE SPEAKER: The Clerk will report the Senate concurrent resolution (S. Con. Res. 86).

The Clerk read as follows:

*Resolved by the Senate (the House of Representatives concurring), That the conferees on H.R. 1774, in addition to the Senate amendments already pending before them, be*

5. 102 CONG. REC. 13724, 84th Cong. 2d Sess.



authorized to consider the following amendments:

"(3) Page 1, line 6, strike out all after 'permits' down to and including 'site' in line 8.

"(4) Page 1, strike out all after line 8 over to and including line 5 on page 2.

"(5) Page 2, strike out lines 6 to 20, inclusive."

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

There was no objection.

The Senate concurrent resolution was agreed to.

### *Enlarging Matter in Scope of Conference*

**§ 7.15 By adoption of a concurrent resolution in both Houses, providing that a new section be inserted in the engrossment of the Senate amendment to a House bill, conferees may be authorized to consider a matter not originally committed to them in the House bill or the Senate amendment thereto.**

When H.R. 10612, the Tax Reform Act of 1976, was in conference, it became necessary to consider a topic not before the conferees since the matter was in neither the House text or the Senate amendment. The Senate concurrent resolution in this instance

was called up in the House by unanimous consent.<sup>(6)</sup>

MR. [OMAR T.] BURLESON of Texas: Mr. Speaker, on behalf of the gentleman from Oregon (Mr. Ullman), who as we all know is now occupied in conference on the tax bill, I ask unanimous consent to take from the Speaker's table the Senate Concurrent Resolution (S. Con. Res. 137) to correct the engrossment of the Senate amendments to H.R. 10612, and consider the Senate concurrent resolution in the House.

The Clerk read the title of the Senate concurrent resolution.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate concurrent resolution as follows:

#### S. CON. RES. 137

*Resolved by the Senate (the House of Representatives concurring), That the following language be inserted in the engrossment of the Senate amendments to H.R. 10612 and be considered as being in conference:*

"SEC. 1510. TREATMENT OF CERTAIN LIFE INSURANCE CONTRACTS GUARANTEED RENEWABLE.

"(a) IN GENERAL.—Paragraph (d)(5) of section 809 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following sentence: 'For purposes of this paragraph, the period for which any contract is issued or renewed in-

6. 122 CONG. REC. 28969, 94th Cong. 2d Sess., Sept. 2, 1976.

7. Carl Albert (Okla.).

cludes the period for which such contract is guaranteed renewable.

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1957."

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

### *Application of Germaneness Rule*

#### **§ 7.16 A House amendment to a Senate amendment, reported from conference in disagreement, must be germane to the Senate amendment.**

On Dec. 16, 1944,<sup>(8)</sup> the House was considering Senate amendment No. 17 to H.R. 5587, the first defense appropriation bill for 1945, which had been reported back from conference in disagreement. A motion by Mr. Clarence Cannon, of Missouri, to recede and concur in this amendment was divided on demand by Mr. Francis H. Case, of South Dakota, who then offered a preferential motion to concur with an amendment. Mr. Cannon raised a point of order against this motion, explaining:

The pending proposition is tied up with and incident to titles II and III of

the act of October 14, 1940, which is an act providing solely for activities in connection with the prosecution of the war. The proposition the gentleman suggests has no relation to the war; it deals solely with an act of God and is entirely new matter not contemplated by the act of October 14, 1940, and appears in neither the House nor Senate bills. . . .

THE SPEAKER:<sup>(9)</sup> The Chair under the statement of the gentleman from Missouri and in a way supported by the gentleman from Illinois cannot see anything in the amendment or the proposal of the gentleman from South Dakota [Mr. Case] except an act of God; therefore the Chair thinks that the amendment is not germane and sustains the point of order.

MR. CASE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CASE: Mr. Speaker, is it not true that in ruling upon questions of this sort where they involve securing an agreement between the two bodies of the Congress considerable latitude is allowed for the purpose of reaching an agreement in the interest of comity and that the ordinary rules of germaneness do not apply strictly?

THE SPEAKER: The Chair would differ with the gentleman on that. The Chair does not think that conferees on the part of the House and the Senate could set aside the rule of germaneness.

8. 90 CONG. REC. 9611, 9612, 78th Cong. 2d Sess.

9. Sam Rayburn (Tex.).

*Test of Germaneness Where Senate Amendment Strikes House Text*

§ 7.17 Where a Senate amendment proposes to strike out language in a House bill, the test of germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and that proposed to be stricken in the House text.

On Dec. 12, 1974,<sup>(10)</sup> following the adoption of the conference report on the bill H.R. 16901, the agricultural, environmental, and consumer appropriations for fiscal 1975, amendments reported in disagreement were under consideration.

The manager of the bill, Mr. Jamie L. Whitten, of Mississippi, offered a motion to recede and concur in a Senate amendment with an amendment which was a substitute for the Senate text in amendment numbered 8.

The Senate amendment was a restriction on use of funds in the bill to administer any tax on parking facilities. The compromise language was also a restriction on

funds in the bill but addressed a larger category of projects.

The amendments, the point of order, and the Chair's ruling are carried here.

THE SPEAKER:<sup>(11)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 8: Page 52, line 20, strike: "SEC. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to administer any program to tax, limit, or otherwise regulate parking facilities."

MOTION OFFERED BY MR. WHITTEN

MR. WHITTEN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Whitten moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows:

"SEC. 510. No part of any funds appropriated under this Act may be used by the Environmental Protection Agency to implement or enforce any provision of a state implementation plan promulgated or approved pursuant to Section 110 of the Clean Air Act that requires the review of indirect sources, as defined in 40 CFR 52.22(b)(1), pending completion of judicial review, pursuant to Section 307(b) of the Clean Air Act, or the indirect source regulations set forth in 40 CFR 52.22, or any other such regulation relating to indirect sources." . . .

10. 120 CONG. REC. 39272, 39273, 93d Cong. 2d Sess.

11. Carl Albert (Okla.).

MR. [PAUL G.] ROGERS [of Florida]: Mr. Speaker, I make a point of order against the amendment as read.

THE SPEAKER: The gentleman will state his point of order.

MR. ROGERS: Mr. Speaker, I raise a point of order on the ground of non-germaneness.

The House provision provided only for parking, and the Senate struck completely the House provision.

This language is not germane in that it goes far beyond parking. The amendment would cover airports, it would cover highways, it would cover shopping centers, and it would cover sports arenas, regardless of whether any parking facilities are attached or associated.

There is no question but what this is not germane. It is far beyond what the House had stated, and I think it is not appropriate to be in an appropriation bill at all. Therefore I ask that it be stricken in accordance with the arguments used against the amendment.

THE SPEAKER: Does the gentleman from Mississippi desire to be heard on the point of order?

MR. WHITTEN: I do, Mr. Speaker.

Mr. Speaker, the legislation to which the gentleman from Florida has referred has had the effect of stopping employment in the cities of this country. It has done this because they have to have a permit from the Environmental Protection Agency for parking. It has prevented new buildings in universities, hospitals, shopping centers—and this at a time of great unemployment in the United States. . . .

In the Senate it was felt that since there are lawsuits pending throughout the United States, I think in at least

four instances, that this legislation covering parking was the key, that that part which had parking in it should be included in the conference and the conferees felt that in the interest of the Nation that those related matters which are a part and parcel of the provisions to which we were trying to direct our attention, should be accepted, and it was accepted by the conferees. . . .

MR. ROGERS: Mr. Speaker, if the gentleman will yield further, may I just say that these regulations insofar as the contracts for airports, highways, shopping centers and sporting arenas are not even effective until next year, the parking which the House acted on was covered, so that they are not germane.

THE SPEAKER: The Chair is ready to rule.

There is only one issue involved here and that is whether the amendment included in the motion of the gentleman from Mississippi is germane. It obviously is far more comprehensive than the House provision, and is not germane thereto. The Chair, therefore, sustains the point of order.

MOTION OFFERED BY MR. WHITTEN

MR. WHITTEN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Whitten moves that the House insist on its disagreement to the amendment of the Senate.

THE SPEAKER: The question is on the motion offered by the gentleman from Mississippi (Mr. Whitten).

***Selective Waivers of Points of Order Against Conference Report***

§ 7.18 The Committee on Rules has sometimes recommended selective waivers of points of order under Rule XXVIII clause 3, permitting points of order to lie against only specified sections of the report which might go beyond the scope of differences submitted to conference.

On Feb. 27, 1974,<sup>(12)</sup> the Committee on Rules called up a special order for consideration of the conference report on S. 2589, the Energy Emergency Act. The rule waived points of order against the report, but permitted points of order to be raised against two sections therein which arguably contained matter beyond the scope of the managers' authority under Rule XXVIII clause 3.

The previous question on the rule was defeated, an amendment was offered and adopted which provided for a blanket waiver but permitted a separate vote on the controversial sections.

The rule as reported, and the amendment offered after defeat of

12. 120 CONG. REC. 4397, 4407, 4408, 93d Cong. 2d Sess.

the previous question, are carried here.

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON S. 2589, ENERGY EMERGENCY ACT

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 901 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 901

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report except against sections 105 and 110 thereof for failure to comply with the provisions of clause 3, rule XXVIII are hereby waived. Debate on said conference report shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member, for a separate vote to be had on a motion to strike out section 104 of the conference report. At the conclusion of any separate vote demanded under this procedure, and if section 104 has not been stricken out by such separate vote, the previous question shall be

considered as ordered on agreeing to the conference report.

THE SPEAKER:<sup>(43)</sup> The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

MR. PEPPER: . . . House Resolution 901 provides that all points of order against the conference report are waived except against sections 105 and 110 for failure to comply with the provisions of clause 3, rule XXVIII of the Rules of the House of Representatives—pertaining to amendments accepted by the conferees which are beyond the scope of the House and Senate bills. . . .

Mr. Speaker, I yield 1 minute for the purpose of discussion only to the distinguished gentleman from West Virginia, the chairman of the Committee on Interstate and Foreign Commerce (Mr. Staggers). . . .

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I take the floor to urge the defeat of the previous question on this rule. As I am sure my colleagues are aware, the rule would permit a single Member of this House to assert a point of order against two sections of the bill—section 105 dealing with energy conservation plans and section 110, the so-called price rollback provision. In so doing the Rules Committee has provided an opportunity for a single opponent of this legislation to defeat it. Such a result most certainly would not be in the public interest. . . .

I know that the conference agreement remains controversial. I would expect legislation this important and complex to be so. But I urge that we

permit the conference agreement to stand the test of a vote by the 435 Members of this House.

If the previous question is defeated, I will offer an amendment to the rule in the nature of a substitute which waives points of order on the entirety of the conference agreement, but permits separate votes on its most controversial sections. Accordingly, Members would have an opportunity to specifically express their assent or dissent to sections 104, 105, and 110 of the bill. If the House defeats the conference agreement then so be it. But at least let us give the House the chance to vote on it. Accordingly, I respectfully ask you to defeat the previous question on this rule. . . .

MR. PEPPER: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: The question is on ordering the previous question.

MR. PEPPER: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 144, noes 259, answered “present” 3, not voting 25. . . .

So the previous question was not ordered.

The Clerk announced the following pairs:

On this vote: . . .

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A  
SUBSTITUTE OFFERED BY MR.  
STAGGERS

MR. STAGGERS: Mr. Speaker, I offer an amendment in the nature of a substitute.

13. Carl Albert (Okla.).

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Staggers: Strike out all after the resolving clause of House Resolution 901 and insert in lieu thereof the following:

"That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report for failure to comply with the provisions of clause 3, Rule XXVIII, are hereby waived. Debate on said conference report shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member for a separate vote to be had on motions to strike out the following provisions of the conference report: Sections 110, 105, and 104, and such separate votes, if demanded, shall be taken in the foregoing order. At the conclusion of all of the separate votes demanded under this procedure, and if none of the sections have been stricken by such separate votes, the previous question shall be considered as ordered on agreeing to the conference report."

THE SPEAKER: The gentleman from West Virginia is recognized for 1 hour. . . .

MR. STAGGERS: Mr. Speaker, I thank the gentleman from Illinois for his

comments. I am certain he is very sincere.

Mr. Speaker, I move the previous question on the amendment and on the resolution.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

### *Appropriation on Legislative Bill*

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

On May 22, 1936,<sup>(14)</sup> Mr. James M. Mead, of New York, called up the conference report on H.R. 9496, a bill to protect the federal government against losses sustained in mail delivery of checks containing veterans' benefits. Mr. James P. Buchanan, of Texas, raised a point of order against the

14. 80 CONG. REC. 7790-92, 74th Cong. 2d Sess.

conference report. The Speaker, Joseph W. Byrns, of Tennessee, responded:

The gentleman from New York [Mr. Mead], chairman of the Committee on the Post Office and Post Roads, presents a conference report signed by the conferees on the part of the Senate and the House. The gentleman from Texas [Mr. Buchanan] makes the point of order that the conference report is out of order because the conferees on the part of the House in conference agreed to an amendment of the Senate providing an appropriation contrary to the rules of the House.

Senate amendment no. 1 contains the following language:

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

This amendment also contains the following language:

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

Rule XX, clause 2, of the rules of the House of Representatives<sup>(15)</sup> reads as follows:

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

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

The Chair therefore sustains the point of order.

**§ 7.20 Where a Senate amendment carrying an appropriation was attached to a legislative bill originating in the House and such bill and amendment are referred to a conference committee, the managers on the part of the House may not agree in conference to such amendment but must bring it back to the House for a separate vote.**

15. *House Rules and Manual* § 829 (1997).



On July 29, 1935,<sup>(16)</sup> Mr. Marvin Jones, of Texas, made the following parliamentary inquiry:

When an amendment carries an appropriation, such amendment being attached by the Senate to a legislative bill originating in the House, is it necessary that it be brought back for a separate vote on that particular amendment?

THE SPEAKER:<sup>(17)</sup> The Chair thinks so, under the rules.

The rule,<sup>(18)</sup> with which the gentleman is familiar, reads:

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

The Chair thinks it is very clear, therefore, that the amendment would have to be brought back to the House for a separate vote.

### § 7.21 Where conferees agreed to a Senate amendment with an amendment providing

16. 79 CONG. REC. 12004, 74th Cong. 1st Sess.

17. Joseph W. Byrns (Tenn.).

18. Rule XX clause 2, *House Rules and Manual* § 829 (1997).

that “benefits shall be paid from the civil service retirement and disability fund,” such agreement constituted a violation of Rule XX clause 2, and was ruled out on a point of order.

On Oct. 4, 1962,<sup>(19)</sup> Mr. Tom Murray, of Tennessee, called up the conference report on H.R. 7927, the Postal Rate and Pay Act of 1962. Mr. H. R. Gross, of Iowa, raised a point of order:

Mr. Speaker, I make the point of order against the conference report on the ground that it violates clause 2 of rule XX of the House rules.<sup>(20)</sup> . . .

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

Sec. 1104. Notwithstanding any other provision of law, the benefits made payable under the Civil Service Retirement Act by reason of the enactment of this part shall be paid from the civil service retirement and disability fund.

The words “shall be paid from the civil service retirement and disability fund” constitute an appropriation within the meaning of clause 2 of rule XX. . . .

Mr. Speaker, since the pending conference report includes the language

19. 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.

20. *House Rules and Manual* § 829 (1997).

making an appropriation it is, I submit, out of order under clause 2 of rule XX. . . .

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentleman from Iowa [Mr. Gross] makes a point of order that the language contained on page 110, section 104, line 12, "shall be paid from the civil service retirement and disability fund" is in violation of clause 2, rule XX.

The Chair sustains the point of order.

***Appropriations in Legislative Bills, Restriction on Managers Authority***

**§ 7.22 A conference report on a House bill authorizing funds for environmental research was ruled out on a point of order where the managers had agreed to a Senate amendment which diverted previously appropriated funds for a new purpose, thus violating Rule XX clause 2.**

When the conference report on H.R. 2676, the Environmental Protection Agency research authorization for fiscal year 1980, was called up by the manager on Nov. 29, 1979,<sup>(2)</sup> a point of order was made against it on the ground

1. Carl Albert (Okla.).

2. 125 CONG. REC. 34113-15, 96th Cong. 1st Sess.

that the managers on the part of the House had agreed to a Senate amendment constituting an appropriation in violation of the cited rule. An appropriation, previously agreed to, had provided funding for research and development to be allocated at the discretion of the Administrator. The conference language attempted to mandate that allocation to certain projects.

The point of order, and the offending language which is cited therein, are carried as well as the subsequent motion offered by the manager, Mr. Don Fuqua, of Florida, which "encouraged" but did not "mandate" the use of the previously appropriated funds.

MR. FUQUA: Mr. Speaker, I call up the conference report on the bill (H.R. 2676) to authorize appropriations for environmental research, development, and demonstrations for the fiscal year 1980, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Pursuant to the rule the conference report is considered as having been read. . . .

The gentleman from Florida (Mr. Fuqua) will be recognized for 30 minutes, and the gentleman from Pennsylvania (Mr. Walker) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. Fuqua).

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

## POINT OF ORDER

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

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

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

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

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

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

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

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

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

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

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

So the conference report was ruled out on the point of order.

## AMENDMENTS IN DISAGREEMENT

The Clerk will designate the first amendment in disagreement.

Senate amendment No. 1 reads as follows:

Senate amendment No. 1: Page 1, strike out all after line 6 over to and including line 10 on page 7 and insert:

SEC. 2. (a) There are authorized to be appropriated to the Environmental Protection Agency for environmental research, development, and demonstration activities for the fiscal year 1980 for the following activities:

(1) \$95,999,500 for water quality activities authorized under the Federal Water Pollution Control Act of which—

(A) \$23,124,000 is for Health and Ecological Effects programs: *Provided*, That of the funds appropriated pursuant to this paragraph, \$900,000 shall be obligated and expended on the Cold Climate Research program through the Environmental Protection Agency's Corvallis Environmental Research Laboratory, Corvallis, Oregon. . . .

MR. FUQUA: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Fuqua moves that the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SEC. 2. (a) There are authorized to be appropriated to the Environmental Protection Agency for environmental research, development, and demonstration activities for the fiscal year 1980 for the following activities:

(1) \$66,659,000 for water quality activities authorized under the Federal Water Pollution Control Act of which—

(A) \$25,224,000 is for the Health and Ecological Effects program:

*Provided*, That the Agency is encouraged to obligate and to expend \$900,000 of these funds on the Cold Climate Research program through the Agency's Corvallis Environmental Research Laboratory, Corvallis, Oregon. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Florida (Mr. Fuqua).

The motion was agreed to.

The remaining amendments in disagreement were subsequently considered en bloc and disposed of by a single motion to recede and concur.

***Restrictions on Conferees Agreeing to Legislative Provisions in Appropriation Conference***

**§ 7.23 A House rule prohibits the inclusion in a conference report on a general appropriation bill of Senate amendments containing legislation; but where such amendments are reported from conference in disagreement and called up for disposition by separate motion, they are not subject to points of order under Rule XX.**

On Dec. 4, 1975, the House had under consideration the conference report on a general appropriation bill.<sup>(4)</sup> When the Speaker laid before the House an amendment in disagreement, a Member made a point of order against the amendment on the ground that it contained legislation in violation of Rule XXI clauses 2(b) and (c).<sup>(5)</sup> Rule XX was also cited. The Speaker<sup>(6)</sup> overruled the point of order, as shown.<sup>(7)</sup>

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

The Clerk read as follows:

4. H.R. 8069, Labor-HEW appropriations for fiscal 1976.
5. *House Rules and Manual* §§ 834b, 834c (1997).
6. Carl Albert (Okla.).
7. 121 CONG. REC. 38714, 94th Cong. 1st Sess., Dec. 4, 1975.

Senate amendment No. 72: Page 47, line 4, insert:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

POINT OF ORDER

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I raise a point of order on the amendment. This is legislation on an appropriation bill, and I would like to be heard on the point of order.

THE SPEAKER: The gentleman from Massachusetts may be heard on his point of order.

MR. CONTE: Mr. Speaker, I rise in support of a point of order against Senate amendment No. 72 to the Labor-HEW Appropriations Act of 1976.

At this point, I should like to direct the Chair to rule 21, section 2 of the House regarding the prohibition of legislation in an appropriations bill. The pertinent language states:

Nor shall any provisions in any such bill or amendment thereto changing existing law be in order. . . .

While the Senate amendment No. 72 might appear to only act as a limitation on spending, it will actually change basic law as I will now set out.

Section 215(a), title II of the Equal Educational Opportunities Act of 1974 provides the following language, which limits the specific distance a student may be transported in a schoolbusing program:

No court, department or agency of the United States shall, pursuant to section 214, order the implementation of a plan that would *require the transportation of any student to a school other than the school closest to his place of residence* which provides the appropriate grade level and type of education for such student. (Emphasis added.)

Notice that the distance a student can be transported is limited to the "school closest or next closest to his place of residence." I should now address myself to the language of the Senate amendment here in question:

None of the funds contained in this act shall be used to *require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home*, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964. (Emphasis added.)

As is readily apparent, where the Equal Educational Opportunities Act of 1974 (Public Law 93-380) limits busing to either the student's immediate or adjacent school district, the Senate amendment further limits the transportation to the student's immediate district. I am sure the Chair can see this apparent attempt to change the effect of section 215(a) of Public Law 93-380.

I should like to note that while this is a Senate amendment and may be consistent with the rules of that House—it is not controlling. It is clear that since this is an appropriations bill and naturally originates in the House, it is the House rules which are controlling and I cite rule 20 on this point:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the State of the Union, if, originating in the House, it would be subject to that point.

For these reasons, Mr. Speaker, I contend that this amendment carries the standard of a simple limitation in an appropriations bill, but in reality is a prima facie case of legislation in an appropriations bill, which on its face changes existing law.

Therefore, I urge that this point of order be sustained.

Thank you, Mr. Speaker.

THE SPEAKER: The Chair is ready to rule.

The Chair overrules the point of order raised by the gentleman from Massachusetts (Mr. Conte) because when that stage is reached that an amendment is in disagreement between the two Houses, the rule—clause 1 of rule XX—cited by the gentleman from Massachusetts no longer applies and the amendment may be disposed of in the House. The Senate amendment is reported back in disagreement and not as part of the conference report, therefore clause 2 of rule XX is not applicable and the Senate amendment may be considered by the House.

### *House Authorization To Include Legislation in Appropriation Measure*

§ 7.24 The House may by unanimous consent send an appropriation bill to conference and authorize the

### **House conferees to agree to Senate legislative amendments notwithstanding the restrictions contained in Rule XX clause 2.**

On June 3, 1936,<sup>(8)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas, to make the following request:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. 12624, the first deficiency appropriation bill, together with the Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate; also that the managers on the part of the House, notwithstanding the provisions of clause 2, rule XX, be authorized to agree to any Senate amendment with or without amendment, except the Senate amendment having to do with the Florida ship canal and the Senate amendment providing \$300,000,000 for public-works projects.

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

There was no objection.

### *Appropriation Unauthorized by Law*

§ 7.25 A point of order against a conference report, made on the theory that the managers

8. 80 CONG. REC. 8822, 74th Cong. 2d Sess.

**on the part of the House had agreed to a Senate amendment to an appropriation bill which provided for an appropriation which was not authorized by law (and thus in violation of Rule XXI clause 2), was overruled.**

On the legislative day of Sept. 25, 1961,<sup>(9)</sup> after the Clerk read the conference report on H.R. 9169, supplemental appropriations for fiscal 1962, the following occurred:

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the conference report, and I refer especially to the paragraph on page 30, under the title of "Preservation of Ancient Nubian Monuments—Special Foreign Currency Program":

For purchase of Egyptian pounds which accrue under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704), for the purposes authorized by section 104(k) of that Act, \$4,000,000 to remain available until expended.

Mr. Speaker, to my mind that appropriation is not covered by the statute on which it is based. . . .

To my mind, this authorization was not covered by the language of section 104(k). In my opinion, it does not include the sort of operation that is men-

tioned here. It does not have proper authority for an appropriation of this character. It does not authorize purchase of currency. . . .

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Chair is prepared to rule. . . .

The Chair has carefully studied the provisions of section 104(k), the organic law, which includes among other things:

To promote and support programs of medical and scientific research, cultural and educational development, health, nutrition, and sanitation: *Provided*, That foreign currencies shall be available for the purpose of this subsection (in addition to funds otherwise made available for such purposes) only in such amounts as may be specified from time to time in appropriation acts. . . .

Continuing what the Chair has said, it is the opinion of the Chair that section 104(k) justifies the language contained in the conference report, and the Chair overrules the point of order.

### ***Expansion of Exception to Restrictions on Executive Power***

**§ 7.26 When a Senate amendment to a House bill contained a prohibition against impoundment of appropriations authorized in the bill, as well as an exception to this prohibition, the language agreed upon by the conferees which broadened this exception was held to be**

9. 107 CONG. REC. 21521, 21522, 87th Cong. 1st Sess.

10. John W. McCormack (Mass.).

**a further restriction and not to exceed the authority of the conferees.**

On July 7, 1943,<sup>(11)</sup> the House was preparing to consider the conference report on H.R. 2798, the roads bill, when Mr. John Taber, of New York, raised a point of order:

Mr. Speaker, I make the point of order that the conference report is not within the range of the conference in that section 9 of the bill as proposed in the conference report is not an item that was in the bill as it passed the House or the Senate.

After hearing Mr. Jesse P. Wolcott, of Michigan, on the point of order, Speaker Sam Rayburn, of Texas, gave the following ruling:

The Chair is prepared to rule.

Section 9 of the Senate amendment reads as follows:

No part of any appropriation authorized in this act shall be impounded or withheld from obligation or expenditure by any agency or official other than the Commissioner of Public Roads.

Section 9 is purely a limitation and it is a limitation on everyone except the Commissioner of Public Roads.

The language agreed upon in conference is more restrictive than the language of the original section 9 in the opinion of the Chair because it strikes

out the words "other than the Commissioner of Public Roads" and inserts "unless the War Production Board shall certify that the use of critical material for additional highway construction would impede the conduct of the war."

It seems to the Chair, section 9 dealing with limitations, that this is simply a further restriction and limitation and the Chair would be compelled to overrule the point of order raised by the gentleman from New York.

The point of order is overruled.

***Amendment to Legislative Item Left in Appropriation Bill***

**§ 7.27 Where an item in an appropriation bill legislative in nature passes the House without a point of order being made against it and the Senate merely increases the amount of money provided therefor, a conference report may not be ruled out of order on the ground that the conferees exceeded their authority by not bringing the matter back to the House for a separate vote.**

On May 11, 1945,<sup>(12)</sup> Mr. Louis C. Rabaut, of Michigan, called up the conference report on H.R. 2603, making appropriations for fiscal 1946 for the Departments of

11. 89 CONG. REC. 7385, 7386, 78th Cong. 1st Sess.

12. 91 CONG. REC. 4466, 4468, 4469, 79th Cong. 1st Sess.



State, Justice, Commerce, the Judiciary, and federal loan agencies. Mr. Robert F. Jones, of Ohio, made a point of order against the report on the ground that it made appropriations for activities not previously authorized by law—conducting an industrial census. Speaker Sam Rayburn, of Texas, responded:

The Chair is ready to rule.

The Chair has listened to the statement of the gentleman from Ohio in support of the point of order he raises against the conference report. The paragraph starting on page 54, beginning at line 7 and ending on line 7, page 55, was in the bill when it passed the House. Even though the paragraph might have been subject to a point of order then, it was not made, and the paragraph remained in the bill. The Chair is of the opinion this is only a question of amount of money. The House put in appropriation of \$4,757,000 under the heading of compiling census reports, and so forth. If in the House an amendment had been made changing the sum of \$4,757,000 to \$5,318,000, or any other amount, it would certainly have been in order.

MR. JONES: Mr. Speaker, may I be heard further on the point of order?

THE SPEAKER: Yes.

MR. JONES: Mr. Speaker, when the original bill was in the House, there was a point of order made against the following language, which I think was an authorization for this item which had been left in the bill. The language is as follows:

And for sample surveys throughout the United States for the purpose of estimating the size and characteristics of the Nation's labor force and population, including personal services, at the seat of government.

That clause was left out of the bill. This, as I understand, Mr. Speaker, is for a sample survey of industrial statistics.

THE SPEAKER: But the Chair goes back to the original proposition that the paragraph remained in the bill. . . .

. . . The paragraph was not stricken out in the House on a point of order. The only question involved being a question of amount, the Chair overrules the point of order.

***Waiver of Points of Order Against Appropriation Bill; Waiver Carries Over to Conference Report***

**§ 7.28 Where a special rule in the House waives points of order against portions of an appropriation bill which are unauthorized by law, and the bill passes the House with those provisions included therein and goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since waiver of points of order under Rule XXI clause**

**2,<sup>(13)</sup> carries over to the consideration of the same provisions when the conference report is before the House.**

On Dec. 20, 1969,<sup>(14)</sup> Mr. Otto E. Passman, of Louisiana, submitted and called up the conference report on H.R. 15149, foreign assistance appropriations for fiscal 1970. Mr. Sidney R. Yates, of Illinois, raised a point of order against the report on the ground that it contained appropriations that had not yet been authorized by law. Mr. Gerald R. Ford, of Michigan, defended the conference report, explaining an earlier assertion by Mr. Passman that the provisions alleged to be objectionable by Mr. Yates were in the appropriations bill as it passed the House.

MR. GERALD R. FORD: . . . Mr. Speaker, we do as a matter of practice appropriate money from time to time that is not specifically authorized as a matter of law. Furthermore, in this particular case when the foreign aid appropriation bill came to the floor of the House, a specific rule was granted waiving points of order.

It would be my argument that the benefit of that rule would still be appli-

13. *House Rules and Manual* § 834 (1997).

14. 115 CONG. REC. 40445-48, 91st Cong. 1st Sess.

cable in the consideration of the conference report.

MR. [CLEMENT J.] ZABLOCKI [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(15)</sup> The Chair will hear the gentleman further.

MR. ZABLOCKI: Mr. Speaker, does the rule waiving points of order under which the House appropriation bill was considered by the Committee of the Whole House on the State of the Union continue through conference report consideration? Would not the rule apply only for consideration of the appropriation bill waiving points of order during the time it was considered by the Committee of the Whole? Certainly the rule should not carry over to the conference report? If it does the Members of the House abrogate their legislative prerogatives. . . .

My parliamentary inquiry, Mr. Speaker, is: Does the rule under which the appropriation bill came to the House carry over and continue into the conference report?

THE SPEAKER: The Chair will state that will have a bearing on the point of order that is raised at the present time. . . .

. . . [T]he Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of \$454,500,000. The Senate reduced this figure to \$350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

15. John W. McCormack (Mass.).

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

**§ 7.29 Where an appropriation bill is considered in the House under a rule waiving points of order against a provision therein which is unauthorized by law, and the Senate then amends the unauthorized provision, reducing the sum of money involved and striking out a portion of the language, conferees may (without violating the provisions of Rule XX clause 2)<sup>(16)</sup> agree to a sum between the two and restore the House language.**

On Dec. 20, 1969,<sup>(17)</sup> Mr. Otto E. Passman, of Louisiana, called up the conference report on H.R. 15149, foreign assistance appropriations for fiscal 1970. Mr. Sidney R. Yates, of Illinois, raised a point of order against this conference report on the ground that it contained provisions unauthorized by law. He stated that the conference compromise on H.R. 14590, the foreign assistance authoriza-

tion bill, provided for a total amount of \$350 million for military assistance without specifying amounts for any particular country. The House version of the appropriations bill contained the following provisions that were deleted in conference on the authorization bill: a total amount for military assistance of \$454.5 million with \$50 million earmarked for Korea and \$54.5 million for the Republic of China. Mr. Yates then alluded to the conference report on H.R. 15149:

MR. YATES: . . . It is stated on page 7 of the conference report with respect to amendments Nos. 23, 24, 25, and 26, under the heading "Military Assistance":

Insert appropriate section numbers; appropriate \$404,500,000 instead of \$454,500,000 as proposed by the House and \$350,000,000 as proposed by the Senate;—

Then there is this language, Mr. Speaker:

and restore language deleted by the Senate earmarking \$54,500,000 for the Republic of China.

Mr. Clement J. Zablocki, of Wisconsin, was then recognized by Speaker John W. McCormack, of Massachusetts:

Mr. Speaker, I rise in support of the point of order and to express my strong opposition to the conference report on foreign aid appropriations.

16. *House Rules and Manual* § 829 (1997).

17. 115 CONG. REC. 40445-48, 91st Cong. 1st Sess.

This report contains a line item for foreign military assistance of \$404.5 million. That amount is \$54.5 million more than the amount which the House authorized yesterday by approving the conference report on the foreign aid authorization bill.

For that reason, I believe that this conference report is completely and flagrantly out of order. Let me cite to this body rule XXI, part 2, of the Rules of the House of Representatives. It states:

No appropriation shall be reported in any general appropriations bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

Mr. Passman then explained the particular relationship between the foreign-aid authorization and appropriations bills.

MR. PASSMAN: Mr. Speaker, may I be heard further on the point of order?

Mr. Speaker, it is my understanding that the lateness of the so-called authorization bill, which does not exist in fact, as yet, and the very fact that the majority leader of the other body said there would be no authorization bill, and the chairman of the Foreign Relations Committee said there would be no authorization bill, made it necessary for us to move this bill through the Appropriations Committee, the Rules Committee, and the Rules Committee gave us a rule waiving points of order. We have moved the bill, as I understand it, according to the rules of the House, and this appropriation bill became an authorization bill also, in the absence of any authorization act. Even

at this late hour we still do not have an authorization bill because the conference report on the authorization bill was only adopted yesterday by both Houses and has not yet reached the President for his signature.

Mr. Gerald R. Ford, of Michigan, added:

... [I]n this particular case when the foreign aid appropriation bill came to the floor of the House, a specific rule was granted waiving points of order.

It would be my argument that the benefit of that rule would still be applicable in the consideration of the conference report.

MR. ZABLOCKI: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The Chair will hear the gentleman further.

MR. ZABLOCKI: Mr. Speaker, does the rule waiving points of order under which the House appropriation bill was considered by the Committee of the Whole House on the State of the Union continue through conference report consideration? ...

THE SPEAKER: The Chair will state that will have a bearing on the point of order that is raised at the present time. ...

The Chair is aware of the fact pointed out by the gentleman from Illinois—that the authorization bill for fiscal 1970, while passed by both Houses, has not yet become law. As pointed out in the debate on this point of order, the conference report now before the House does carry an amount for military assistance that is \$54,500,000 above the figure which

would be authorized by H.R. 14580, the Foreign Assistance Act of 1969.

However, the Chair recalls that when this appropriation bill passed the House, it was considered under a rule waiving points of order. The House agreed to a total figure for military assistance of \$454,500,000. The Senate reduced this figure to \$350 million. The conferees have reached an agreement between these two amounts, as they had the authority to do.

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

### ***Appropriations in Amendments to Senate Bills***

**§ 7.30 Although the managers on the part of the House may not without the prior consent of the House agree to a Senate amendment providing for an appropriation not authorized by law or an appropriation upon any bill other than a general appropriation bill, this restriction does not apply where a Senate bill with House amendments is committed to conference.**

On Jan. 25, 1972,<sup>(18)</sup> Mr. Thomas E. Morgan, of Pennsylvania, called up the conference report on S. 2189, the Foreign Assistance Act

18. 118 CONG. REC. 1076, 1077, 92d Cong. 2d Sess.

of 1971, and obtained the consent of the House that the statement of the managers be read in lieu of the report. At this point, Mr. H. R. Gross, of Iowa, raised a point of order against the conference report on the grounds that it contained matter that was beyond the range of disagreement submitted to the conferees, and which was not germane to the Senate bill or House amendment. Mr. Morgan responded to the point of order:

... Last November the House sent to conference two foreign aid bills, one economic and one military, which passed the Senate. At that time the House struck out all after the enacting clauses of both bills and inserted in lieu thereof the complete text of H.R. 9910, which had passed the House last August.

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

THE SPEAKER:<sup>(19)</sup> The Chair is ready to rule.

The gentleman from Iowa has raised a point of order against the conference report on the ground that the House

19. Carl Albert (Okla.).

conferees have exceeded their authority by including in the conference report provisions not germane or not in either the Senate bill or the House amendment and agreed to an appropriation in violation of clause 2, rule XX.<sup>(20)</sup> That rule provides in relevant part:

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

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

The Chair also points out that the resolution under which this conference report is being considered specifically waives points of order under clause 3, rule XXVIII.<sup>(1)</sup>

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

For these reasons, the Chair overrules the point of order.

## § 8. Changing Conferees; Resignations

Conference committees are in the nature of a "select committee"

<sup>20</sup> *House Rules and Manual* § 829 (1997).

1. *Id.* at § 913(a) (1997).

and as such are appointed by the Speaker.<sup>(2)</sup> Once appointed, they are in a sense agents of the House and must have permission of that body to resign or be excused.

Once they have received this permission, the Speaker can fill the vacancy thus created.

In the 103d Congress, the Speaker was given the authority to add or remove conferees after his initial appointment.<sup>(3)</sup>

A conference committee is terminated when either House acts on its report or when discharged by action of the House.<sup>(4)</sup>

## *Removal of Conferees*

**§ 8.1 Where several conferees could not attend an urgent conference meeting, the manager of the bill asked unanimous consent that they be removed as managers on the part of the House and that the Speaker appoint replacements.**

2. Rule X clause 6(f), *House Rules and Manual* § 701e (1997).

3. Rule X clause 6(f), *House Rules and Manual* § 701e (1997); 139 CONG. REC. 49, 103d Cong. 1st Sess., Jan. 5, 1993 (H. Res. 5).

4. Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

Rule X clause 6(f)<sup>(5)</sup> now gives the Speaker the authority to remove conferees after their original appointment or to appoint additional conferees. This authority was added in the 103d Congress.<sup>(6)</sup> The request carried below from the proceedings of Dec. 15, 1980,<sup>(7)</sup> was made under the earlier practice, where the removal of a conferee was with the consent of the House.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, inasmuch as the existing continuing resolution expires at midnight tonight, it is absolutely necessary for the Congress to act today on the further continuing resolution to provide financing for many departments and agencies. Inasmuch as several of the House conferees are not immediately available, I ask unanimous consent that Messrs. Smith of Iowa, Addabbo, and Conte, be removed as conferees on the remaining amendment to House Joint Resolution 637, and the Speaker be authorized to appoint substitute conferees.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Mississippi?

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5. See *House Rules and Manual* § 701e (1997).
  6. See H. Res. 5, 139 CONG. REC. 50, Jan. 5, 1993.
  7. 126 CONG. REC. 34177, 34178, 96th Cong. 2d Sess.
  8. Thomas P. O'Neill, Jr. (Mass.).

MR. [JOHN] ROUSSELOT [of California]: Mr. Speaker, reserving the right to object, could the gentleman give us the names of the three Members who are removed from the conference?

MR. WHITTEN: . . . Excuse me, that is a matter for the Speaker. . . .

This is the Speaker's prerogative. I was out of order on the question of appointing new conferees.

MR. [ROBERT E.] BAUMAN [of Maryland]: Many of us are periodically.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Mississippi? The Chair hears none, and appoints the following conferees: Messrs. Murtha, Dicks, and McEwen.

### *Excusing Manager From Service*

#### **§ 8.2 House managers at a conference are excused from service on the committee of conference only by action of the House.**

On Oct. 23, 1969,<sup>(9)</sup> the following proceedings occurred in regard to S. 1857, a National Science Foundation appropriation bill:

MR. [GEORGE P.] MILLER of California: Mr. Speaker, I ask unanimous consent that the gentleman from California (Mr. Bell), one of the members on the part of the House on the conference on the bill S. 1857, be excused. The

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9. 115 CONG. REC. 31198, 91st Cong. 1st Sess.

gentleman was called to California this morning.

THE SPEAKER:<sup>(10)</sup> Without objection, it is so ordered.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Kansas (Mr. Winn) as a manager on the part of the House at the conference on the bill S. 1857, to fill the vacancy resulting from the resignation of the gentleman from California (Mr. Bell).

The Clerk will notify the Senate of the change in conferees.<sup>(11)</sup>

### ***Replacements***

#### **§ 8.3 When the resignation of a conferee is by unanimous consent accepted by the House, the Speaker then appoints a successor.**

On Aug. 9, 1972,<sup>(12)</sup> the following proceedings occurred in regard to H.R. 15692, a bill authorizing the Small Business Administration to reduce the interest rate on certain disaster loans:

10. John W. McCormack (Mass.).

11. See, for example, 102 CONG. REC. 8198, 84th Cong. 2d Sess., May 15, 1956; 97 CONG. REC. 10141, 82d Cong. 1st Sess., Aug. 16, 1951; and 95 CONG. REC. 3233, 81st Cong. 1st Sess., Mar. 25, 1949.

12. 118 CONG. REC. 27520, 92d Cong. 2d Sess.

The Speaker<sup>(13)</sup> laid before the House the following resignation as a conferee:

AUGUST 9, 1972.

The SPEAKER,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: I hereby resign as a conferee in connection with the conference between the Senate and the House of Representatives on the bill, H.R. 15692.

Sincerely,

THOMAS L. ASHLEY.

THE SPEAKER: Without objection, the resignation is accepted.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Pennsylvania (Mr. Moorhead) as a conferee on the disagreeing votes of the two Houses on the amendments of the Senate to the bill H.R. 15692, to fill the existing vacancy.<sup>(14)</sup>

#### ***Request To Be Excused as Conferee Made by a Colleague***

#### **§ 8.4 By unanimous consent, a Member was excused from further service as a House conferee (at the request of another Member) and the Speaker appointed another Member to fill the vacancy.**

13. Carl Albert (Okla.).

14. See, for example, 118 CONG. REC. 8480, 8481, 92d Cong. 2d Sess., Mar. 15, 1972; 117 CONG. REC. 34348, 34349, 92d Cong. 1st Sess., Sept. 30, 1971; and 116 CONG. REC. 32745, 91st Cong. 2d Sess., Sept. 21, 1970.



On Dec. 2, 1971,<sup>(15)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. John L. McMillan, of South Carolina, to make this request concerning H.R. 11341, the District of Columbia Revenue Act:

MR. MCMILLAN: Mr. Speaker, I ask unanimous consent that the gentleman from Mississippi (Mr. Abernethy) may be excused as a manager on the part of the House at the conference on the bill H.R. 11341, and that the Speaker be authorized to appoint another Member to fill the vacancy.

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

There was no objection.

THE SPEAKER: The Chair appoints as a manager on the part of the House at the conference on the bill (H.R. 11341) the gentleman from Georgia (Mr. Stuckey) to fill the existing vacancy thereon.<sup>(16)</sup>

**§ 8.5 By unanimous consent, a Member was excused from service as a conferee upon request of another Member, and the Speaker thereupon appointed a successor to fill the vacancy.**

15. 117 CONG. REC. 44258, 92d Cong. 1st Sess.

16. See also 113 CONG. REC. 35134, 90th Cong. 1st Sess., Dec. 6, 1967; and 112 CONG. REC. 5358, 89th Cong. 2d Sess., Mar. 9, 1966.

On Dec. 10, 1973,<sup>(17)</sup> the following proceedings occurred in regard to H.R. 11324, the Daylight Savings Time Act:

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent that the gentleman from Georgia (Mr. Stuckey) be excused from further service as a conferee on the bill H.R. 11324, and that the Speaker be authorized to appoint a Member to fill the vacancy.

THE SPEAKER:<sup>(18)</sup> Is there objection to the request of the gentleman from West Virginia?

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Texas (Mr. Eckhardt) to fill the vacancy, and the Senate will be notified of the action of the House.

**§ 8.6 One of the House managers at a conference with the Senate was, at the request of the senior House manager and by unanimous consent, excused from further service as a conferee and the Speaker then appointed a successor.**

On Oct. 23, 1969,<sup>(19)</sup> the following proceedings occurred in regard

17. 119 CONG. REC. 40500, 93d Cong. 1st Sess.

18. Carl Albert (Okla.).

19. 115 CONG. REC. 31198, 91st Cong. 1st Sess.

to S. 1857, the National Science Foundation appropriation bill:

MR. [GEORGE P.] MILLER of California: Mr. Speaker, I ask unanimous consent that the gentleman from California (Mr. Bell), one of the members on the part of the House on the conference on the bill S. 1857, be excused. The gentleman was called to California this morning.

THE SPEAKER:<sup>(20)</sup> Without objection, it is so ordered.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Kansas (Mr. Winn) as a manager on the part of the House at the conference on the bill S. 1857, to fill the vacancy resulting from the resignation of the gentleman from California (Mr. Bell).

The Clerk will notify the Senate of the change in conferees.<sup>(1)</sup>

### *Letters of Resignation*

**§ 8.7 Where a Member resigns from a committee of conference to which he has been appointed, the consent of the House is required, and the letter of resignation is laid before the House and accepted.**

While a Speaker may remove a conferee, under the authority granted to the Speaker in the 103d

20. John W. McCormack (Mass.).

1. See also 118 CONG. REC. 24864, 92d Cong. 2d Sess., July 24, 1972.

Congress (by the amendment to Rule X clause 6(f)),<sup>(2)</sup> the unilateral resignation of a manager still requires the concurrence of the House.

Once a resignation is accepted, the Speaker (or a Speaker Pro Tempore, by unanimous consent) then can appoint a new conferee or realign the assignment of conferees, under the authority of the new rule. The proceedings of July 20, 1993,<sup>(3)</sup> are illustrative.

#### RESIGNATION AS CONFEREE AND APPOINTMENT OF CONFEREE ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

The Speaker pro tempore laid before the House the following resignation as a conferee:

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
*Washington, DC, July 20, 1993.*

Hon. THOMAS S. FOLEY,  
*Speaker, U.S. House of Representatives, Washington, DC*

DEAR MR. SPEAKER: I have been named as a conferee to the Budget Reconciliation bill, H.R. 2264, due to my position on the House Natural Resources Committee. Due to unexpected time constraints in my other positions, Armed Services and Intelligence, I respectfully request that I be allowed to withdraw as a conferee.

2. See *House Rules and Manual* § 701e (1997).

3. 139 CONG. REC. 16260, 103d Cong. 1st Sess.

Thank you for your attention to this matter and if you have any question please feel free to call me.

Sincerely,

JAMES V. HANSEN,  
*Member of Congress.*

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> Without objection, the resignation is accepted.

There was no objection.

THE SPEAKER PRO TEMPORE: Without objection, the gentleman from Wyoming [Mr. Thomas] is appointed to replace the gentleman from Utah [Mr. Hansen] as a member of the Committee of Conference on the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994.

There was no objection.

THE SPEAKER PRO TEMPORE: The Clerk will notify the Senate of the change in conferees.

MODIFICATIONS IN APPOINTMENT OF CONFEREES ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

THE SPEAKER PRO TEMPORE: Without objection, the Chair announces the following modifications in the appointment of conferees on H.R. 2264: . . .

In the panel appointed from the Committee on Public Works and Transportation, Mr. Borski is appointed in lieu of Mr. de Lugo.

***Vacancy by Death***

**§ 8.8 The Speaker may appoint a conferee to fill the vacancy**

4. Michael R. McNulty (N.Y.).

**caused by the death of another Member.**

On Apr. 8, 1948,<sup>(5)</sup> the following proceedings occurred:

MR. [ALBERT L.] REEVES [Jr., of Missouri]: Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint a conferee on the part of the House on the bill (H.R. 2389) for the relief of Harriet Townsend Bottomley to fill the vacancy caused by the death of our former colleague from Indiana, Mr. Springer.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Missouri? [After a pause.] The Chair hears none, and appoints the gentleman from New Jersey [Mr. Case] as a conferee. The Clerk will notify the Senate of the action of the House.<sup>(7)</sup>

***Where Member Declines To Serve***

**§ 8.9 Where a Member declines to serve on a conference committee, the question is put to the House to excuse him and then the Speaker immediately appoints another Member.**

5. 94 CONG. REC. 4255, 80th Cong. 2d Sess.

6. Joseph W. Martin, Jr. (Mass.).

7. See also 119 CONG. REC. 36222, 36223, 93d Cong. 1st Sess., Nov. 7, 1973.

On Aug. 13, 1937,<sup>(8)</sup> the following proceedings occurred:

MR. [SAM D.] MCREYNOLDS [of Tennessee]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the resolution (H.J. Res. 437) relative to determination and payment of certain claims against the Government of Mexico, with Senate amendments, disagree to the Senate amendments, and ask for a conference. . . .

THE SPEAKER:<sup>(9)</sup> Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. McReynolds, Bloom, and Fish.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I respectfully decline to accept the appointment as conferee on this bill.

THE SPEAKER: Without objection, the gentleman from New York is relieved of responsibility as a conferee.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Massachusetts [Mr. Martin] conferee in the place of the gentleman from New York [Mr. Fish].

### ***Resignation of Conferee; Statement on Floor***

**§ 8.10 The resignation of a conferee is "accepted" by the House, usually by unanimous consent; and where a man-**

**ager on the part of the House resigned after a dispute about the scope of his involvement in a conference on a bill that had been jointly referred in the House to two committees and which had conference representation from both, he made a statement for the Record setting forth his reasons.**

Where the Speaker appoints conferees from two House committees, without delineating the portions of the matter in conference that is within either committee's jurisdiction, the managers can participate fully in all conference deliberations.

During the conference on the bill H.R. 3474,<sup>(10)</sup> the Energy Research and Development Administration authorization for fiscal 1976, a motion was adopted in conference to limit the managers participation between those representing the Joint Committee on Atomic Energy and those appointed from the Committee on Science and Technology. The resignation and the statement by the resigning conferee are self-explanatory.

8. 81 CONG. REC. 8847, 75th Cong. 1st Sess.

9. William B. Bankhead (Ala.).

10. 121 CONG. REC. 35980, 35981, 94th Cong. 1st Sess., Nov. 11, 1975.

The Speaker laid before the House the following resignation as a manager of H.R. 3474:

WASHINGTON, D.C.,  
November 11, 1975.

HON. CARL ALBERT,  
*The Speaker,*  
*U.S. House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: Please accept this as my resignation from your designation as a manager of H.R. 3474.

I shall set forth my reasons for resigning in a statement on the floor of the House today.

Respectfully,

TENO RONCALIO,  
*Congressman for Wyoming.*

THE SPEAKER:<sup>(11)</sup> Without objection, the resignation will be accepted.

There was no objection. . . .

MR. RONCALIO: Mr. Speaker, I was appointed by you on September 5, 1975, to serve as a manager on the part of the House for the conference committee considering the Energy Research and Development Administration authorization for fiscal year 1976.

Today, the conferees met for the first time and elected a chairman for the conference, Mr. Teague. The conferees then agreed to a motion by Mr. McCormack to separate the conferees into nuclear and nonnuclear groups each considering these respective parts of the bill. I was in opposition to this motion.

Mr. Speaker, the subject matter of this legislation is not divided by title into nuclear and nonnuclear matters. It provides funding for all ERDA energy

programs. Nor were we named specifically by you to act as managers and conferees on specific titles or subject areas of the legislation. There were no restrictions at the time of appointment.

Mr. Speaker, I have spent the last 3 years in the House almost totally absorbed in energy matters, both nuclear and nonnuclear. The entire bill has matters in it of great importance to the people of my State and to me as their Representative. I could not agree with the McCormack motion which would have prohibited me from voting on coal and other fossil fuel R. & D. funding and other items of vital interest to my State. I, therefore, have no alternative but to respectfully resign this conference.

### *Authority of Speaker Pro Tempore*

**§ 8.11 By unanimous consent the House accepted the resignation of a conferee and authorized the Speaker Pro Tempore to appoint another Member in his place.**

On Sept. 20, 1961,<sup>(12)</sup> Speaker Pro Tempore John W. McCormack, of Massachusetts, recognized Mr. John L. McMillan, of South Carolina:

MR. MCMILLAN: Mr. Speaker, I ask unanimous consent that the gentleman from Mississippi [Mr. Abernethy] be

12. 107 CONG. REC. 20491, 87th Cong. 1st Sess.

11. Carl Albert (Okla.).

excused as a conferee on the bill H.R. 5968, and that another Member be designated as a conferee in his place.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from South Carolina?

There was no objection.

THE SPEAKER PRO TEMPORE: The Chair appoints to the committee of conference the gentleman from Alabama [Mr. Huddleston] vice the gentleman from Mississippi [Mr. Abernethy].

The Clerk will notify the Senate of the appointment by the Speaker pro tempore.

### *Resignation of Conferee Following Conviction*

**§ 8.12 The House accepted the resignation of a conferee who had been convicted of a felony in a federal criminal trial, where the Member resigning did so to comply with a resolution adopted earlier in that Congress expressing the sense of the House that persons in such a situation should refrain from participating in committee business.**

On Sept. 24, 1974,<sup>(13)</sup> the Speaker laid before the House a letter of resignation of a conferee. The resignation was prompted by

13. 120 CONG. REC. 32420, 93d Cong. 2d Sess.

a House policy regarding a Member's participation in committee deliberations after conviction of a felony.

House Resolution 128 had been adopted<sup>(14)</sup> by the House in the preceding year and provided as follows:

#### H. RES. 128

*Resolved*, That it is the sense of the House of Representatives that any Member of, Delegate to, or Resident Commissioner in, the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is then a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is re-elected to the House after the date of such conviction. This resolution shall not affect any other authority of the House with respect to the behavior and conduct of its Members.

The provisions of this resolution were later made part of Rule XLIII, the Code of Official Con-

14. 119 CONG. REC. 36943, 36944, 93d Cong. 1st Sess., Nov. 14, 1973.

duct, and are carried today as clause 10 of that rule.<sup>(15)</sup>

The letter of resignation and the action of the House thereon are included.

RESIGNATION OF CONFEREE AND APPOINTMENT OF CONFEREE ON S. 386 AND H.R. 11221

The Speaker laid before the House the following communication:

WASHINGTON, D.C.,  
September 19, 1974.

Hon. CARL ALBERT,  
*Speaker, House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: In view of my present circumstances, and because of the provisions of House Resolution 128, I hereby tender my resignation as a member of the conference committee on S. 386 and H.R. 11221.

With warmest personal regards, I am,

Sincerely yours,

FRANK J. BRASCO.

THE SPEAKER:<sup>(16)</sup> Without objection, the resignation will be accepted.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from California (Mr. Stark) as a conferee on the bill S. 386 to fill the vacancy resulting from the resignation of the gentleman from New York (Mr. Brasco), and the Chair appoints the gentleman from Pennsylvania (Mr. Moorhead) as a conferee on the bill H.R. 11221 to fill the vacancy resulting from the resignation of the gentleman from New York (Mr. Brasco).

15. See *House Rules and Manual* § 939 (1997).

16. Carl Albert (Okla.).

The Clerk will notify the Senate of the action of the House.

***Resignation of Conferee Accepted by House***

**§ 8.13 The House may accept the resignation of a conferee after the Speaker lays before it a letter from the resigning Member.**

On July 13, 1954,<sup>(17)</sup> Speaker Joseph W. Martin, Jr., of Massachusetts, laid before the House the following letter from Mr. Graham A. Barden, of North Carolina:

JULY 13, 1954.

Hon. JOSEPH MARTIN,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. SPEAKER: I hereby tender my resignation as a conferee on H.R. 7434, H.R. 7601, H.R. 9040, and S. 2759.

Very truly yours,

GRAHAM A. BARDEN.

THE SPEAKER: Without objection, the resignation is accepted.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Pennsylvania, Mr. Kelley, to serve on the conference committee on the bill H.R. 7434, on the bill H.R. 7061, and on the bill H.R. 9040, and the Senate will be notified accordingly.

17. 100 CONG. REC. 10426, 83d Cong. 2d Sess.

The Chair appoints the gentleman from West Virginia, Mr. Bailey, to serve on the conference committee on the bill S. 2759, and the Senate will be notified accordingly.<sup>(18)</sup>

**§ 8.14 When a conferee submits a letter of resignation to the Speaker, it is not effective until laid before the House and accepted by that body.**

A conference committee is a select committee, and while the Speaker has the appointment authority under Rule X clause 6(f),<sup>(19)</sup> the House must accept a resignation, as demonstrated by the proceedings of Nov. 14, 1989.<sup>(20)</sup>

RESIGNATION AS CONFEREE AND APPOINTMENT AS CONFEREE ON H.R. 2712, EMERGENCY CHINESE ADJUSTMENT OF STATUS FACILITATION ACT OF 1989

The Speaker pro tempore laid before the House the following resignation as a conferee:

COMMITTEE ON THE JUDICIARY,  
*Washington, DC, November 10, 1989.*

18. See also 90 CONG. REC. 5265, 78th Cong. 2d Sess., June 3, 1944; and 84 CONG. REC. 10732, 76th Cong. 1st Sess., Aug. 1, 1939.

19. See *House Rules and Manual* § 701e (1997).

20. 135 CONG. REC. 28834, 101st Cong. 1st Sess.

Hon. THOMAS S. FOLEY,  
*Speaker, U.S. House of Representatives, Washington, DC*

DEAR MR. SPEAKER: As you know, on October 4, 1989, I was appointed as a House conferee on the bill, H.R. 2712, the Emergency Chinese Adjustment of Status Facilitation Act of 1989. As passed by the House on July 31 of this year, H.R. 2712 responds to the Chinese government's repression of the pro-democracy movement and actions against pro-democracy students by granting those students a waiver from the requirement that they return to China for two years before being eligible to change their immigrant status.

It now appears that the House may be concluding the business of the First Session within the next few days. I would not want my absence from the Congress for medical reasons to impede the enactment of this critically needed piece of legislation, leaving thousands of Chinese students in doubt as to their immigration status. Accordingly, in order to expedite resolution of this matter, I am submitting my resignation as a conferee on this bill.

With every good wish, I am  
Sincerely,

JACK BROOKS,  
*Chairman.*

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> Without objection, the resignation is accepted.

***Resignations Submitted by Telegram***

**§ 8.15 The House accepted the resignation of a Member from a conference committee which was submitted by tele-**

1. James H. Bilbray (Nev.).



**gram, and the Speaker then appointed another conferee.**

On June 22, 1944,<sup>(2)</sup> the following proceedings occurred in regard to H.R. 4292, the 1945 Department of Agriculture appropriation bill:

THE SPEAKER:<sup>(3)</sup> The Chair has a telegram from the gentleman from Vermont [Mr. Plumley] resigning as a conferee on the agricultural appropriation bill.

Without objection, the resignation is accepted, and the gentleman from New York [Mr. Taber] is appointed in his stead.

There was no objection.<sup>(4)</sup>

***Notification to Senate***

**§ 8.16 The Speaker directs the Clerk to notify the Senate of any change in House conferees.**

On Sept. 30, 1971,<sup>(5)</sup> the following proceedings occurred:

The Speaker<sup>(6)</sup> laid before the House the following resignation as a conferee:

2. 90 CONG. REC. 6510, 78th Cong. 2d Sess.
3. Sam Rayburn (Tex.).
4. See also 90 CONG. REC. 7378, 78th Cong. 2d Sess., Aug. 29, 1944; and 86 CONG. REC. 9289, 9290, 76th Cong. 3d Sess., July 8, 1940.
5. 117 CONG. REC. 34348, 34349, 92d Cong. 1st Sess.
6. Carl Albert (Okla.).

WASHINGTON, D.C.  
September 29, 1971.

Hon. CARL ALBERT,  
*Speaker of the House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: On September 23, 1971, you appointed me one of the conferees on H.R. 9844, the fiscal year 1972 Military Construction Authorization bill.

Due to my schedule I will be unable to serve in this capacity, and hereby tender my resignation.

Sincerely,

CHARLES S. GUBSER.

THE SPEAKER: Without objection, the resignation is accepted.

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from New York, Mr. King, as a manager on the part of the House at the conference on the bill H.R. 9844, to fill the vacancy caused by the resignation.

The Clerk will notify the Senate of the appointment by the Speaker.<sup>(7)</sup>

***House Notified of Senate Changes***

**§ 8.17 The House is informed by message of a change in Senate conferees.**

7. See also 111 CONG. REC. 26967, 89th Cong. 1st Sess., Oct. 14, 1965; 110 CONG. REC. 3170, 88th Cong. 2d Sess., Feb. 19, 1964; and 104 CONG. REC. 15436, 85th Cong. 2d Sess., July 29, 1958.

On Oct. 20, 1965,<sup>(8)</sup> the Record contained the following reference to a message from the Senate:

The message also announced that Mr. Prouty be appointed a conferee on the bill (S. 2118) entitled "An act to amend sections 9 and 37 of the Shipping Act, 1916, and subsection O of the Ship Mortgage Act, 1920" in place of Mr. Dominick, excused.<sup>(9)</sup>

### ***Rescinding Appointments***

**§ 8.18 The House agreed to a Senate concurrent resolution rescinding the action of the two Houses in appointing conferees and returning the bill to the Senate for further amendment.**

On May 20, 1940,<sup>(10)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. Sam Rayburn, of Texas, who made the following request:

Mr. Speaker, I ask unanimous consent for the immediate consideration of Senate Concurrent Resolution 47.

The Clerk read the concurrent resolution, as follows:

*Resolved by the Senate (the House of Representatives concurring), That the action of the two Houses, respectively, with reference to the appointment of conferees on the bill (H.R. 8438) making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1941, and for other purposes, be, and it is hereby, rescinded; and that the bill, with the accompanying papers, be returned to the Senate.*

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

There was no objection.

The Senate concurrent resolution was agreed to.

8. 111 CONG. REC. 27648, 27649, 89th Cong. 1st Sess.

9. See also 107 CONG. REC. 16844, 16845, 87th Cong. 1st Sess., Aug. 23, 1961.

10. 86 CONG. REC. 6463, 6464, 76th Cong. 3d Sess.

## C. INSTRUCTIONS TO CONFEREES; MOTIONS TO INSTRUCT

### § 9. In General

Motions to instruct House managers at a conference of the two Houses are in order at three stages of the legislative process. First, one such motion is in order after a conference has been requested or agreed to and before conferees have been appointed.<sup>(1)</sup> Although only one motion to instruct is in order at this stage, it is subject to germane amendment if the previous question has not been ordered on the motion.<sup>(2)</sup>

Additional motions to instruct conferees are in order and are of the highest privilege under a House rule when the conferees have failed to file a report within 20 calendar days after their appointment or within 36 hours thereafter during the last six days of any session.<sup>(3)</sup> And, whereas only one valid motion to instruct conferees is in order prior to their appointment, this limitation does

1. § 9.1, *infra*. See §§ 9.2, 10.1–10.4, *infra*.
2. §§ 9.2, 9.3, *infra*. See § 9.2, *infra*, for a discussion of the test of germaneness in this situation.
3. Rule XXVIII clause 1(b), *House Rules and Manual* § 910 (1997). See generally § 14, *infra*.

not apply to motions authorized by this rule.<sup>(4)</sup>

Finally, the House may instruct its conferees after they have filed their report by adopting a motion to recommit the conference report with instructions.<sup>(5)</sup> The disqualification of a motion to instruct does not preclude the offering of a proper motion at the same stage in the proceedings.<sup>(6)</sup> When one House adopts a conference report, the conferees are thereby discharged and the other House no longer has the opportunity to recommit.

Motions to instruct are debatable under the hour rule,<sup>(7)</sup> although a motion to recommit a conference report with instructions to the conferees is not subject to debate.<sup>(8)</sup> The right of recogni-

4. §§ 14.14–14.17, *infra*.

5. See, generally, § 32, *infra*.

6. 8 Cannon's Precedents § 3235.

7. § 11.4, *infra*.

8. *Parliamentarian's Note*: On Nov. 15, 1973, Speaker Carl Albert (Okla.), ruled that the debate on motions to recommit with instructions authorized by Rule XVI clause 4, applied only to such motions affecting bills and joint resolutions, and not, in that instance, to a motion to recommit a simple resolution with instructions. This ruling also precludes debate on

tion to offer the motion belongs to the minority,<sup>(9)</sup> and the Member offering the motion initiates and has the right to close the debate.<sup>(10)</sup>

Under a rule adopted in the 101st Congress, the debate time on such a motion is divided between the majority and minority parties.<sup>(11)</sup> The proponent may yield time to another Member<sup>(12)</sup> although he loses the floor if he yields for an amendment.<sup>(13)</sup>

Since instructions to managers on the part of the House cannot bind the managers on the part of the Senate<sup>(14)</sup> such instructions are advisory in nature,<sup>(15)</sup> and a conference report may not be ruled out on a point of order on the ground that the conferees have violated their instructions.<sup>(16)</sup>

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the motion to recommit a conference report with instructions to the conferees. See 119 CONG. REC. 37141, 37142, 37149-51, 93d Cong. 1st Sess.

9. §§ 11.1, 11.2, *infra*.
10. § 11.12, *infra*.
11. See Rule XXVIII clause 1(b), *House Rules and Manual* § 909a (1997). See also § 11.9, *infra*, for modern practice permitting a three-way division of the debate time.
12. §§ 11.6, 11.7, *infra*.
13. § 11.13, *infra*.
14. § 12.1, *infra*.
15. §§ 12.2, 12.3, *infra*.
16. § 12.6, *infra*.

While a motion to instruct conferees may extend their power by authorizing agreement to Senate amendments which would otherwise be out of order in the House,<sup>(17)</sup> it may not instruct them to do what they might not do otherwise.<sup>(18)</sup>

The motion may be precluded by a resolution which provides for the appointment of conferees without intervening motion.<sup>(19)</sup>

The motion may be laid on the table<sup>(20)</sup> without carrying the bill to the table with it.<sup>(1)</sup>

Instructions to conferees expire when their report is filed and have no effect if a further conference is held.<sup>(2)</sup> Therefore, when amendments are reported from conference in disagreement and a further conference is requested or agreed to, a motion to instruct is again in order before the appointment of conferees for this further conference.<sup>(3)</sup>

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17. Rule XX clause 2, *House Rules and Manual* § 829 (1997). See § 12.19, *infra*.
  18. § 12.12, *infra*.
  19. 7 Cannon's Precedents § 774; 8 Cannons' Precedents § 3394. See § 2.29, *supra*.
  20. §§ 9.8-9.13, *infra*.
    1. 8 Cannon's Precedents § 2658.
    2. *Id.* at § 3240.
    3. *Id.*

*Number of Motions***§ 9.1 Only one motion to instruct conferees is in order before they are appointed.**

On May 29, 1968,<sup>(4)</sup> Mr. Richard H. Poff, of Virginia, asked whether a motion to instruct House conferees would be in order after the House adopted a motion to send to conference H.R. 5037, the Law Enforcement and Criminal Justice Assistance Act of 1967. Speaker John W. McCormack, of Massachusetts, replied that a motion to instruct conferees would be in order before the appointment of the conferees. Mr. Poff then made a further parliamentary inquiry.

Am I correct in assuming that only one such motion to instruct would at this time be in order?

THE SPEAKER: The gentleman's assumption is correct.

*Amendments in Order***§ 9.2 Prior to the appointment of conferees, only one motion to instruct is in order, but before the previous question is ordered on this motion it is subject to an amendment, an amendment to this amendment, a substitute for the**

4. 114 CONG. REC. 15499, 90th Cong. 2d Sess.

**original amendment, and an amendment to the substitute; and any such amendment need only be germane to the subject matter of either the House or Senate measure as committed to conference, and need not be germane to the original motion to instruct.**<sup>(5)</sup>

On Oct. 31, 1939,<sup>(6)</sup> the House adopted a resolution sending House Joint Resolution 306, the Neutrality Act of 1939, to conference. Mr. James A. Shanley, of Connecticut, offered a motion to instruct the House Members who would then be appointed conferees. After the Clerk reported this

5. *Parliamentarian's Note:* This more permissive test of germaneness is used when amending instructions to conferees, since such instructions are advisory in nature, are not binding on the conferees and therefore exert only an indirect effect on the matter in conference. The more proscriptive test of germaneness, which requires an amendment to be germane to the particular measure it proposes to amend, is employed in most other cases where the adoption of such an amendment has a more direct effect on that particular measure. See Ch. 32, § 11.26, supra, and generally, Ch. 28, supra.

6. 85 CONG. REC. 1104, 1105, 76th Cong. 2d Sess.

motion, Mr. Carl E. Mapes, of Michigan, initiated a series of parliamentary inquiries:

MR. MAPES: Mr. Speaker, the question has been frequently asked whether subsequent motions to instruct the conferees shall take the form of amendments to the pending motion or whether, if this motion should be either voted up or voted down, separate motions may be made to instruct the conferees on other provisions of the legislation.

THE SPEAKER:<sup>(7)</sup> In answer to the parliamentary inquiry of the gentleman from Michigan, the Chair will state that under the rules of the House only one motion to instruct the conferees is permissible, but that motion is subject to amendment.

MR. MAPES: So the answer of the Speaker is that other Members who desire to have the conferees instructed in other respects must present their motions in the form of amendments to the pending motion?

THE SPEAKER: Or in the form of a substitute to the original amendment. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: How much time for debate do we have on this motion, and how is the time to be controlled?

THE SPEAKER: Under the present situation in the House, the gentleman from Connecticut is entitled to 1 hour. . . .

MR. MAPES: There seems to be an idea in the minds of some that the amendments that can be offered to this

motion are limited to four in number. I do not know where that idea comes from. My own thought is that, of course, the number that can be pending at any one time is limited, but as one amendment is disposed of, further amendments can be presented indefinitely. . . .

THE SPEAKER: The Chair will read into the Record, in answer to the inquiry, Rule XIX of the Rules of the House, "Of Amendments":

When a motion or proposition is under consideration a motion to amend and a motion to amend that amendment shall be in order, and it shall also be in order to offer a further amendment by way of substitute, to which one amendment may be offered, but which shall not be voted on until the original matter is perfected, but either may be withdrawn before amendment or decision is had thereon. Amendments to the title of a bill or resolution shall not be in order until after its passage and shall be decided without debate. . . .

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: For the information of the House, is it correct that an amendment to the motion to instruct conferees offered by the gentleman from Connecticut is in order at any time until the previous question is ordered?

THE SPEAKER: If a Member gets recognition to offer an amendment and it is germane to the subject matter of either the House or Senate bill.

The Chair thinks it important in construing the rules, for the information of all Members of the House, to state that it must always be remembered that an amendment must be germane to the subject matter under consideration. In

7. William B. Bankhead (Ala.).

this instance it means the amendment must be germane to some provision in the Senate amendment to the House joint resolution or in the House joint resolution itself.

The Chair may state, in order to fully clarify this matter so there may be no misunderstanding or confusion about the rights of Members—and there is no legitimate ground for confusion on this question—that now that a motion has been offered by the gentleman from Connecticut to instruct the conferees, an amendment to that motion will be in order if germane, and to that amendment an amendment may be offered if germane. To the original amendment to the motion a substitute may be offered and an amendment to the substitute may be offered, as declared by the rule which the Chair has just read, and all five of those propositions may be pending at the same time. The rule provides, however, the method in which they shall be called for disposition.<sup>(8)</sup>

**§ 9.3 If the previous question is voted down on a motion to instruct conferees, the motion is subject to germane amendment.**

On Oct. 19, 1971,<sup>(9)</sup> Mr. F. Edward Hébert, of Louisiana, sought unanimous consent to take from the Speaker's table H.R. 8687 (military procurement authoriza-

8. See also 85 CONG. REC. 1204-10, 76th Cong. 2d Sess., Nov. 1, 1939.

9. 117 CONG. REC. 36832-35, 92d Cong. 1st Sess.

tions, fiscal 1972) with Senate amendments thereto, disagree to those amendments and agree to a conference requested by the Senate. The Speaker, Carl Albert, of Oklahoma, then recognized Mr. Sidney R. Yates, of Illinois:

Mr. Speaker, reserving the right to object, and I only do so to propound a parliamentary inquiry—

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Speaker, my parliamentary inquiry is this: Assuming the gentleman from Illinois proposes to offer a motion to instruct the conferees, and assuming that that motion does not contain the so-called Mansfield amendment, when the previous question is requested on that motion is it in order that if the previous question is voted down to offer an amendment to that motion to instruct the conferees?

THE SPEAKER: The Chair will state to the gentleman from Illinois in response to his parliamentary inquiry that if the previous question on the motion to instruct is voted down any germane amendment would be in order.<sup>(10)</sup>

***Precedence of Motion To Instruct***

**§ 9.4 Where two Members sought recognition at the same moment, one to call up a conference report and the other to instruct conferees**

10. See also 114 CONG. REC. 15499-512, 90th Cong. 2d Sess., May 29, 1968.

**on another bill which had been in conference for over 20 days, the Chair recognized the Member offering the motion to instruct, which, under Rule XXVIII clause 1(c),<sup>(11)</sup> is given “the highest privilege.”**

On Oct. 22, 1990,<sup>(12)</sup> when two Members sought recognition, the Chair decided to recognize a Member offering a motion to instruct conferees instead of another who wanted to call up a conference report. No challenge was made to this order of recognition. The proceedings are carried as an example of the Chair’s use of his power of recognition.

MOTION TO INSTRUCT CONFEREES ON  
H.R. 5400, CAMPAIGN COST REDUCTION AND REFORM ACT OF 1990

MR. [WILLIAM M.] THOMAS of California: Mr. Speaker, I offer a privileged motion to instruct conferees on the bill (H.R. 5400) to amend the Federal Election Campaign Act of 1971 and certain related laws to clarify such provisions with respect to Federal elections to reduce costs in House of Representatives elections, and for other purposes.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The Clerk will report the motion.

11. See *House Rules and Manual* § 910 (1997).
12. 136 CONG. REC. 31942, 31949, 101st Cong. 2d Sess.
13. Romano L. Mazzoli (Ky.).

The Clerk read as follows:

Mr. Thomas of California moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill H.R. 5400 be instructed to agree to Section 105 of the House passed bill.

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Thomas] will be recognized for 30 minutes and the gentleman from Washington [Mr. Swift] will be recognized for 30 minutes.

After disposition of the motion to instruct, the House proceeded to the consideration of the conference report.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, pursuant to House Resolution 517, I call up the conference report on the bill (H.R. 5268) making appropriations for Rural Development, Agriculture, and Related Agencies programs for the fiscal year ending September 30, 1991, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 517, the conference report is considered as having been read.

**§ 9.5 The Speaker may at his discretion recognize for a motion to suspend the rules, instead of recognizing for a motion to instruct conferees, since the “highest privilege” accorded the motion to instruct is, in effect, temporary.**



ily waived when the Speaker uses his authority to recognize for a motion which suspends all rules which would inhibit consideration of the measure called up under suspension.

On Mar. 1, 1988,<sup>(14)</sup> a "suspension day," the Speaker had recognized a Member to move to suspend the rules and pass a bill. After a second was ordered,<sup>(15)</sup> Mr. William E. Dannemeyer, of California, attempted to offer his privileged motion to instruct under Rule XXVIII clause 1(c), the "20-day" rule. The Speaker's ruling that under the circumstances, the motion to suspend the rules could be considered and the inquiries which followed are carried here.

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 90) to establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes, as amended.

The Clerk read as follows:

14. 134 CONG. REC. 2748-51, 100th Cong. 2d Sess.
15. Seconds on motions to suspend the rules were required until the 102d Congress, when the procedure was eliminated by the adoption of H. Res. 5, Jan. 3, 1991, p. 39.

S. 90

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Big Cypress National Preserve Addition Act" . . . .

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> Is a second demanded?

MR. [ROBERT J.] LAGOMARSINO [of California]: Mr. Speaker, I demand a second.

ATTEMPT TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 5, SCHOOL IMPROVEMENT ACT OF 1987

MR. DANNEMEYER: Mr. Speaker, I have a privileged motion at the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Dannemeyer moves that the managers on the part of the House at the conference on H.R. 5 and the Senate amendment thereto be instructed to agree to section 703 of the Senate amendment.

THE SPEAKER PRO TEMPORE: The Chair will have to examine to see whether or not the present motion just read is a privileged motion, if the gentleman will bear with the Chair for a moment.

The Chair would state to the distinguished gentleman from California that this is a highly privileged motion under rule XXVIII but it is not more privileged than a motion to suspend the

16. Kenneth J. Gray (Ill.).

rules. Therefore, the Chair could entertain it later today.

PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. DANNEMEYER: Mr. Speaker, the rules of the House provide that after the appointment of conferees any Member may file a motion to instruct conferees after 20 calendar days have elapsed; is that correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

But there was a motion pending at the time the gentleman offered his motion and therefore the Chair has ruled that the motion to suspend the rules has the same privilege as the gentleman's motion and the Chair is in the process of recognizing two Members for 20 minutes each to debate the pending bill.

MR. DANNEMEYER: Then I take it, Mr. Speaker, from the ruling of the Chair that this Member would be at liberty to renew this motion after the conclusion of the motion that was pending at the time the motion was made?

THE SPEAKER PRO TEMPORE: The gentleman is correct. When no other higher motion is pending then the motion the gentleman is offering would be in order at that time. . . .

ATTEMPT TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 5, SCHOOL IMPROVEMENT ACT OF 1987

MR. DANNEMEYER: Mr. Speaker, I have a privileged motion at the desk.

MR. [MERVYN M.] DYMALLY [of California]: Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1447).

PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. DANNEMEYER: Mr. Speaker, when I made the motion to instruct conferees before, there was then pending in the House a procedure to take up a specific bill under suspension of the rules and the Chair ruled that since that motion had preceded my motion to instruct conferees they were of equal dignity and the pending motion would proceed. Now I have achieved recognition before the motion to take up another bill on suspension, and now it would appear to this Member from California that from a parliamentary standpoint I should be recognized at this point to go forward on my motion, should I not?

THE SPEAKER PRO TEMPORE: The Chair will state to the distinguished gentleman from California that the Chair has the power of recognition and the Chair stated to the gentleman that today motions to suspend the rules have equal privilege with the gentleman's motion. Therefore, the Chair is going to dispose of the two suspensions as matters of equal privilege, and then the gentleman from California could be recognized for the purpose he seeks recognition.

***Precedence of Previous Question Relative to an Amendment to Motion To Instruct***

**§ 9.6 The motion for the previous question takes precedence over an amendment to a motion to instruct conferees.**

On July 24, 1973,<sup>(17)</sup> Mr. Robert D. Price, of Texas, offered a preferential motion to instruct the House conferees on S. 1888, the Agriculture and Consumer Protection Act of 1973. After Mr. Price moved the previous question on his motion, the following proceedings occurred:

THE SPEAKER:<sup>(18)</sup> The question is on ordering the previous question.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I have an amendment to the preferential motion.

THE SPEAKER: The Chair will state that ordering the previous question is the business before the House at this time.

***Effect of Amendment to Motion To Instruct***

**§ 9.7 Whether or not an amendment to a motion to instruct conferees replaces**

**or leaves intact the original instructions depends on the form of the amendment.**

On Nov. 15, 1983,<sup>(19)</sup> the previous question was rejected on an initial motion to instruct conferees on the appropriation bill for the Department of Defense, fiscal year 1984. The motion, made before the Speaker's appointment of conferees, was offered by a minority Member from the Committee on Appropriations.

An amendment to the motion was then offered by another minority Member. Because of the manner in which the amendment was drafted, it added further instructions to, and did not replace, those initially offered.

APPOINTMENT OF CONFEREES ON H.R. 4185, DEPARTMENT OF DEFENSE APPROPRIATIONS, 1984

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4185) making appropriations for the Department of Defense for the fiscal year ending September 30, 1984, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference requested by the Senate.

The Clerk read the title of the bill.

17. 119 CONG. REC. 25539-41, 93d Cong. 1st Sess.

18. Carl Albert (Okla.).

19. 129 CONG. REC. 32685, 32686, 32688, 32689, 32693, 98th Cong. 1st Sess.

THE SPEAKER:<sup>(20)</sup> Is there objection to the request of the gentleman from New York?

There was no objection.

MOTION OFFERED BY MR. YOUNG OF FLORIDA

MR. [C. W. (BILL)] YOUNG of Florida: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Young of Florida moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill H.R. 4185, be instructed to insist on the House position on Senate amendments numbered 188 and 191.

THE SPEAKER: The gentleman from Florida (Mr. Young) is recognized for 1 hour.

MR. YOUNG of Florida: I would be happy to yield to the gentleman, but I would prefer to yield to the gentleman from New Jersey (Mrs. Roukema) because she had asked first. For the purpose of debate only, I yield 1 minute to the distinguished gentleman from New Jersey.

MRS. [MARGE] ROUKEMA [of New Jersey]: First a parliamentary inquiry, then debate, Mr. Speaker.

PARLIAMENTARY INQUIRY

MRS. ROUKEMA: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentlewoman will state it.

MRS. ROUKEMA: Mr. Speaker, what is the precise nature of the debate time?

The gentleman from Florida now controls the time. If the motion to instruct is defeated, will there then be time for debate controlled by the gentleman from Illinois (Mr. Porter)?

THE SPEAKER PRO TEMPORE: There is only one motion to instruct on which the gentleman from Florida (Mr. Young) is proceeding. That is why he controls the time.

If the previous question is voted down, an amendment may be offered to the motion and would be debatable for 1 hour.

MRS. ROUKEMA: I thank the Chair. . . .

PARLIAMENTARY INQUIRY

MR. [JAMES] WEAVER [of Oregon]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WEAVER: Mr. Speaker, if the previous question is voted down and an amendment is then offered, the motion offered by the gentleman from Florida (Mr. Young) would remain intact, would it not, if the amendment dealt with binary nerve gas?

THE SPEAKER PRO TEMPORE: It would depend on the amendment offered at the time, if there were such an amendment offered of any sort.

The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. YOUNG of Florida: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

20. Thomas P. O'Neill, Jr. (Mass.).

1. Dennis M. Hertel (Mich.).

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 164, nays 256, not voting 14, as follows: . . .

So the previous question was not ordered. . . .

AMENDMENT OFFERED BY MR. PORTER TO THE MOTION OFFERED BY MR. YOUNG OF FLORIDA

MR. [JOHN EDWARD] PORTER [of Illinois]: Mr. Speaker, I offer an amendment to the motion.

The Clerk read as follows:

Amendment offered by Mr. Porter to the motion offered by Mr. Young of Florida: At the end of the motion before the period on the last line add: "and to insist on disagreement to that part of the Senate amendment numbered 73 to 'Procurement of Ammunition, Army' which provides \$124,400,000 for production facilities for and procurement of chemical munitions, and the accompanying provision."

THE SPEAKER PRO TEMPORE: The question is on the amendment offered by the gentleman from Illinois (Mr. Porter) to the motion offered by the gentleman from Florida (Mr. Young).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. PORTER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 258, nays 166, not voting 10, as follows:

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct, as amended, offered by the gentleman from Florida (Mr. Young).

The motion to instruct, as amended, was agreed to.

### *Tabling Motion To Instruct*

#### **§ 9.8 A motion to lay on the table a motion to instruct House managers is in order.**

On Feb. 28, 1950,<sup>(2)</sup> after the House adopted a motion to agree to the further conference requested by the Senate on S. 1008, a bill to define the application of the Federal Trade Commission Act and the Clayton Act to certain pricing practices, the following proceedings occurred:

MR. [JOHN A.] CARROLL [of Colorado]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Carroll moves that the managers on the part of the House at the conference of the disagreeing votes of the two Houses on the bill S. 1008 be instructed to insist upon the House amendment.

2. 96 CONG. REC. 2501-16, 81st Cong. 2d Sess.

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I move that the motion to instruct conferees be laid on the table.

THE SPEAKER:<sup>(3)</sup> The question is on the motion of the gentleman from Pennsylvania to lay on the table the motion to instruct conferees.

The motion to lay on the table the motion to instruct the House conferees was agreed to.

**§ 9.9 A motion to instruct conferees is subject to the motion to table, which must be submitted in writing if any Member so demands.**

The effort to respond to the Senate's request for a conference on S. 21, the California Desert Protection Act of 1994, resulted in protracted proceedings in the House. Nine electronic votes, 17 motions, and several points of order intervened between the time the chairman of the Natural Resources Committee, George Miller, of California, was recognized to offer the motion to go to conference under Rule XX clause 1,<sup>(4)</sup> and the Speaker's appointment of conferees some six hours later. The final

steps in this long process are noted here.<sup>(5)</sup>

MOTION TO INSTRUCT CONFEREES ON  
S. 21, CALIFORNIA DESERT PROTECTION ACT OF 1994

MR. [JERRY] LEWIS of California: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Lewis of California moves to instruct the House conferees on the Senate bill (S. 21) to designate certain lands in the California desert as wilderness, to establish Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes, to insist on the following amendments of the House:

Section 102(I)—Argus Range Wilderness (Bill Thomas Amendment).

Section 112—Law Enforcement Access.

Section 113—Fish and Wildlife Management.

Section 208—Death Valley National Park Advisory Commission.

Section 308—Joshua Tree National Park Advisory Commission.

Title IV—Mojave National Preserve.

Section 416—Mojave National Preserve Advisory Commission.

Section 417—No Adverse Affect on Land Until Acquired.

Section 606—Native American Uses—Timbisha Shoshone Land Study.

Section 702—Authorization of Appropriations.

Section 703—Land Appraisal—Endangered Species Amendment.

3. Sam Rayburn (Tex.).

4. *House Rules and Manual* § 827 (1997).

5. See 140 CONG. REC. 27655-57, 103d Cong. 2d Sess., Oct. 4, 1994. For other proceedings relating to this conference, see also §§ 2.2-2.4, 2.12, *supra*.

## Section 901—Buy American Act.

MR. LEWIS of California (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Is there objection to the request of the gentleman from California?

MR. [GEORGE] MILLER of California: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read. . . .

## MOTION TO TABLE OFFERED BY MR. MILLER OF CALIFORNIA

MR. MILLER of California: Mr. Speaker, I move to lay on the table the motion to instruct offered by the gentleman from California [Mr. Lewis].

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Miller] moves to table the motion to instruct.

MR. LEWIS of California: Mr. Speaker, is it in writing?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman from California [Mr. Lewis] that the motion to table is a preferential motion.

MR. LEWIS of California: Mr. Speaker, is the motion in writing?

THE SPEAKER PRO TEMPORE: The motion is in writing.

The Clerk will report the motion.

The Clerk read as follows:

Mr. Miller of California moves to lay the motion to instruct on the table.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from California [Mr. Miller] to lay on the table the motion to instruct offered by the gentleman from California [Mr. Lewis].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. LEWIS of California: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 274, noes 147, not voting 13. . . .

MR. MILLER of California: Mr. Speaker, I move to reconsider the motion to table the motion to instruct.

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Speaker, I move to lay on the table the motion to reconsider.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] to lay on the table the motion to reconsider.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

## RECORDED VOTE

MR. [RANDY (DUKE)] CUNNINGHAM [of California]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 271, noes 142, not voting 21. . . .

So the motion to lay on the table the motion to reconsider was agreed to. . . .

A motion to reconsider was laid on the table.

6. William J. Hughes (N.J.).

**§ 9.10 When a motion to instruct House managers at a conference is pending, a motion to lay that motion on the table is in order; if the motion to table is voted down, the question next occurs on ordering the previous question on the motion to instruct.**

On Aug. 3, 1961,<sup>(7)</sup> Mr. James E. Van Zandt, of Pennsylvania, offered a motion to instruct the House conferees on H.R. 7576, authorizing appropriations for the Atomic Energy Commission. After debate had been completed thereon, Mr. Clarence Cannon, of Missouri, moved to lay that motion on the table. Mr. Charles A. Halleck, of Indiana, then rose.

MR. HALLECK: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman will state it.

MR. HALLECK: Under the rules of the House, is this motion to table in order?

THE SPEAKER PRO TEMPORE: The motion is in order.

MR. HALLECK: If the motion to table is voted down, will the vote then come on the motion itself?

THE SPEAKER PRO TEMPORE: On ordering the previous question on the motion.

**§ 9.11 The House adopted a preferential motion to lay on the table a motion to instruct House conferees to agree to a Senate amendment to a House bill.**

On July 27, 1971,<sup>(9)</sup> the following proceedings occurred in regard to H.R. 9272, the 1972 appropriations bill for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies.

MR. [DON] EDWARDS of California: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Edwards of California moves that the managers on the part of the House in the conference on the disagreeing votes of the two Houses on the bill (H.R. 9272) be instructed to agree to the amendment of the Senate numbered 35. . . .

MR. [JOHN J.] ROONEY of New York: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Rooney of New York moves to lay on the table the motion of the gentleman from California (Mr. Edwards).

THE SPEAKER:<sup>(10)</sup> The question is on the preferential motion offered by the

7. 107 CONG. REC. 14957-59, 87th Cong. 1st Sess.

8. Carl Albert (Okla.).

9. 117 CONG. REC. 27305-12, 92d Cong. 1st Sess.

10. Carl Albert (Okla.).



gentleman from New York (Mr. Rooney).

The motion to table was agreed to.<sup>(11)</sup>

**§ 9.12 The House rejected a preferential motion to lay on the table a motion to instruct the House managers at a conference, and then proceeded to agree to the motion to instruct.**

On Dec. 18, 1969,<sup>(12)</sup> the House had just agreed to a request by Mr. Daniel J. Flood, of Pennsylvania, to agree to the conference requested by the Senate on H.R. 13111, appropriations for fiscal 1970 for the Department of Health, Education, and Welfare, the Department of Labor, and other related agencies. Mr. Silvio O. Conte, of Massachusetts, then made the following motion:

Mr. Conte moves that the Managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill, H.R. 13111, be instructed to agree to the amendments of the Senate numbered 87 and 88.

MR. FLOOD: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

11. See also 116 CONG. REC. 40271-89, 91st Cong. 2d Sess., Dec. 8, 1970.

12. 115 CONG. REC. 39826-30, 91st Cong. 1st Sess.

Mr. Flood moves to lay on the table the motion of the gentleman from Massachusetts (Mr. Conte).

THE SPEAKER:<sup>(13)</sup> The question is on the preferential motion. . . .

The question was taken; and there were—yeas 181, nays 216, not voting 36. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Massachusetts (Mr. Conte).

The motion was agreed to.

**§ 9.13 The House rejected a preferential motion to lay on the table a motion to instruct House conferees, and then agreed to the motion to instruct its conference managers to insist on a provision in the House-passed bill.**

On July 9, 1970,<sup>(14)</sup> the House gave its consent to a request of Mr. Thaddeus J. Dulski, of New York, to disagree to the Senate amendments to H.R. 17070, the Postal Reform Act of 1970, and to request a conference with the Senate thereon. Mr. David N. Henderson, of North Carolina, then offered the following motion:

The Clerk read as follows:

Mr. Henderson moves that the managers on the part of the House at

13. John W. McCormack (Mass.).

14. 116 CONG. REC. 23525-28, 91st Cong. 2d Sess.

the conference on the disagreeing votes of the two Houses on the bill, H.R. 17070, be instructed to insist on the provision beginning on page 32, line 6, which reads as follows:

“(b) Each employee of the Postal Service has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right.”

MR. DULSKI: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Dulski moves to lay on the table the motion offered by Mr. Henderson.

THE SPEAKER:<sup>(15)</sup> The question is on the motion to table offered by the gentleman from New York (Mr. Dulski). . . .

The question was taken; and there were—yeas 154, nays 229, not voting 48. . . .

THE SPEAKER: The gentleman from North Carolina (Mr. Henderson) is recognized.

After a brief discussion of his motion, Mr. Henderson moved the previous question thereon.

MR. HENDERSON: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from North Carolina (Mr. Henderson). . . .

15. John W. McCormack (Mass.).

The question was taken; and there were—yeas 228, nays 158, not voting 45. . . .

So the motion was agreed to.

### *Withdrawal of Motion To Instruct*

#### § 9.14 A motion to instruct the House managers at a conference was, after debate thereon, withdrawn.

On Dec. 11, 1969,<sup>(16)</sup> Mr. Charles A. Vanik, of Ohio, offered the following motion to instruct the House conferees on H.R. 13270, the Tax Reform Act of 1969:

MR. VANIK: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Vanik moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 13270 be instructed to insist on the House provisions relating to the oil and gas depletion allowance and to provide tax relief by way of increased dependency exemptions.

After debate on the motion, it was withdrawn by Mr. Vanik:

MR. VANIK: Mr. Speaker, I want to thank my distinguished chairman.<sup>(17)</sup>

16. 115 CONG. REC. 38543-45, 91st Cong. 1st Sess.

17. Referring to Wilbur D. Mills (Ark.), Chairman of the Committee on Ways and Means, who was a conferee on H.R. 13270. During the debate on Mr.

The conferees and managers on the part of the House have our best wishes, and I ask that they speak for the average taxpayers of America who need to get some relief out of this tax program which will be before the conference.

Mr. Speaker, I withdraw my motion.

THE SPEAKER:<sup>(18)</sup> The gentleman from Ohio withdraws his preferential motion.

***Example of Several Instructions Regarding Portions of Senate Substitute***

**§ 9.15 Where the Senate had amended a continuing appropriation bill with the text of five general bills not yet enacted, the House, when appointing conferees, entertained a motion to instruct its managers to agree to certain described Senate positions on specific issues addressed in the Senate substitute.**

H.R. 3019 was a "long-term" continuing appropriation bill. As of March 21, 1996, the government was being funded under a "short-term" continuing resolution, which

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Vanik's motion, Mr. Mills indicated that at the conference he intended to insist on those items referred to in the motion.

18. John W. McCormack (Mass.).

carried funding through Apr. 3, 1996.<sup>(19)</sup> The motion to instruct carried here was offered by the ranking minority member of the Committee on Appropriations but was defeated on a roll call vote of 194-207.

One of the major impediments to wrapping up the general appropriation bill for the Departments of Labor and Health, Education and Welfare was an amendment offered by Mr. Ernest J. Istook, Jr., of Oklahoma, relating to family planning. Because of the special interest surrounding this bill, the Speaker appointed the subcommittee chairs and ranking members on all parts of the bill except for the Istook amendment, where only managers from the Labor, HHS subcommittee were named. The pertinent proceedings of Mar. 21, 1996,<sup>(20)</sup> are carried below.

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19. H.J. Res. 165, passed by both the House and the Senate on Mar. 21, 1996, carried the funding for those appropriation accounts not yet enacted into law until Apr. 3, 1996. This was the seventh in a series of nine joint resolutions passed by the House continuing appropriations for fiscal 1996.

20. 142 CONG. REC. 6028, 6030, 104th Cong. 2d Sess.

APPOINTMENT OF CONFEREES ON H.R. 3019, BALANCED BUDGET DOWNPAYMENT ACT, II

MR. [ROBERT] LIVINGSTON [of Louisiana]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> Is there objection to the request of the gentleman from Louisiana?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion to instruct.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Obey moves that the managers on the part of the House at the conference of the disagreeing votes of the two Houses on the amendment of the Senate to the bill, H.R. 3019, be instructed to:

(a) agree to the position in the Senate amendment increasing funding above the levels in the House bill for programs of the Department of Education;

(b) agree to the position in the Senate amendment increasing funding above the levels in the House bill for programs of the Environmental Protection Agency;

(c) agree to the position in the Senate amendment that provides a minimum of \$975,000,000 from within the \$1,903,000,000 provided for Local Law Enforcement Block Grants within the Department of Justice for the Public Safety and Community Policing grants pursuant to title I of the Violent Crime Control and Law Enforcement Act of 1994 (COPS on the beat program);

(d) agree to the position in the Senate amendment increasing funding above the levels in the House bill for job training and worker protection programs of the Department of Labor;

(e) agree to the position in the Senate amendment deleting Title V of the House bill placing onerous new red tape requirements on Federal grantees; and

(f) agree to the position in the Senate amendment specifying a maximum grant award of \$2500 under the Pell Grant Program; and

(g) agree to the position in the Senate amendment providing fiscal year 1997 funding of \$1,000,000,000 for the Low-Income Energy Assistance Program of the Department of Health and Human Services. . . .

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees:

For consideration of the House bill (except for section 101(c)) and the Senate amendment (except for section 101(d)), and modifications committed to conference:

Messrs. Livingston, Myers of Indiana, Young of Florida, Regula, Lewis of California, Porter, Rogers, Skeen, and Wolf, Mrs. Vucanovich, and Messrs. Lightfoot, Callahan, Walsh, Obey, Yates, Stokes, Bevill, Murtha, Wilson, Dixon, Hefner, and Mollohan.

1. Joel Hefley (Colo.).

For consideration of section 101(c) of the House bill, and section 101(d) of the Senate amendment, and modifications committed to conference:

Messrs. Porter, Young of Florida, Bonilla, Istook, Miller of Florida, Dickey, Riggs, Wicker, Livingston, Obey, Stokes, and Hoyer, Ms. Pelosi, and Mrs. Lowey.

There was no objection.

### *Example of a General Motion To Instruct Conferees*

**§ 9.16 Instructions to conferees may be specific or general; and managers on the part of the House have been urged, by a motion offered under the 20-day rule, "to meet with" the Senate conferees where no conference meeting had been scheduled.**

Where the managers on the part of the House on the urgent supplemental appropriation bill for the Department of Agriculture, 1984, had been appointed for over 20 days without having a meeting with their Senate counterparts, a motion to instruct was offered under Rule XXVIII clause 1(c).

The motion, made on May 2, 1984,<sup>(2)</sup> although not adopted by the House, is carried as an exam-

2. 130 CONG. REC. 10732, 10733, 10735, 98th Cong. 2d Sess.

ple of a "general" instruction to conferees.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a preferential motion.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Conte moves that the managers on the part of the House be instructed to meet with the managers on the part of the Senate on the disagreeing votes of the two Houses on House Joint Resolution 492.

THE SPEAKER PRO TEMPORE: The gentleman from Massachusetts (Mr. Conte) is recognized for 1 hour.

MR. CONTE: . . . I now give notice that whenever I yield during consideration of this motion, I yield for purposes of debate only.

Mr. Speaker, I have offered a motion which so far as I know is unique in the history of the House of Representatives; namely, to instruct conferees simply to go to conference.

Under clause B of rule 28 of the House, after conferees have been appointed for 20 calendar days, and have failed to make a report, it is highly privileged to move to instruct conferees, or to discharge and appoint new conferees.

This clause of rule 28 was intended to be used to break a deadlock between House and the Senate conferees.

The current situation, and the motion, are unique because we do not have a deadlock. We have not even had a conference.

3. George E. Brown, Jr. (Calif.).

On March 6, the House passed House Joint Resolution 492, which appropriated \$150 million for food assistance for Africa through title II of Public Law 480, and made available another \$90 million in commodities from the stocks of the Commodity Credit Corporation, for barter or sale on a competitive bid basis.

On April 5, the Senate passed that bill with 36 amendments, appointed conferees, and requested a conference with the House.

On April 11, I asked my chairman, in a letter and in a statement on the floor, to appoint conferees and to go to conference with the Senate before the Easter recess. Later that day we did appoint conferees, 6 days after the Senate had passed the bill.

Three weeks later we have not gone to conference. . . .

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the preferential motion.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion offered by the gentleman from Massachusetts (Mr. Conte).

The question was taken; and on a division (demanded by Mr. Conte) there were—ayes 13, noes 10.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 159, nays 245, not voting 29, as follows: . . .

*Parliamentarian's Note:* General motions to instruct are rare and have been viewed with some scepticism. A ruling by Speaker Joseph W. Byrns, of Tennessee, on Aug. 1, 1935,<sup>(4)</sup> held in order a motion to instruct conferees under the 20-day rule to hold a conference under "fair conditions."

### **"General" Motions To Instruct Conferees**

**§ 9.17 Motions to instruct House conferees are sometimes phrased as "general" instructions, not addressing specific provisions in the bill and amendment committed to conference but urging conferees to work toward the achievement of broad purposes.**

Any motion to instruct must urge action which is "within the scope of conference."

In this instance,<sup>(5)</sup> a prior example of a motion urging conferees to

4. 79 CONG. REC. 12272, 74th Cong. 1st Sess.

5. 131 CONG. REC. 27366, 27367, 99th Cong. 1st Sess., Oct. 11, 1985.

“promptly report” had not been noted in recent precedents.

MOTION OFFERED BY MR. MICHEL

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Michel moves that the managers on the part of the House at the conference on the disagreeing votes on the two Houses on the joint resolution, H.J. Res. 372, be instructed to promptly report amendments to the Budget Control and Impoundment Act which provide mechanisms for deficit reductions, including specific and mandatory budget goals for achieving a balanced budget within the next 6 years.

THE SPEAKER:<sup>(6)</sup> The gentleman from Illinois [Mr. Michel] is recognized for 1 hour.

MR. MICHEL: Mr. Speaker, I would not expect to use the complete hour.

THE SPEAKER: Will the gentleman yield a half hour to the Democratic side?

MR. MICHEL: Mr. Speaker, I would like to yield 15 minutes for the moment and 15 minutes for our side and let us see where we go.

THE SPEAKER: Does the gentleman want to ask unanimous consent that the debate be 30 minutes instead of 1 hour?

MR. MICHEL: Mr. Speaker, I do not want to do anything that is going to upset some Members here, but if we can put a little bit of restraint—

THE SPEAKER: Does the gentleman intend to yield equal time to the oppo-

nents of the motion, if there is opposition?

MR. MICHEL: Mr. Speaker, I would certainly intend that the time be equally divided.

THE SPEAKER: The gentleman from Illinois [Mr. Michel] is recognized for 30 minutes and the gentleman from Illinois [Mr. Rostenkowski] is recognized for 30 minutes.

MR. MICHEL: Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. Mack].

*Parliamentarian's Note:* Another example of a “general” motion to instruct was offered to the Tax Reform Act of 1986, at the time the Speaker appointed conferees, on July 16, 1986.<sup>(7)</sup> That motion is carried here as an additional example of a nonspecific motion.

MR. [JOHN J.] DUNCAN [of Tennessee]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Duncan moves that the managers on the part of the House at the conference on the disagreeing vote of the two houses on the bill, H.R. 3838, be instructed to insist that the conference report result in:

1. A fair tax burden for all taxpayers, both corporate and individual, coupled with marginal tax rates no higher than the Senate bill.
2. Fair treatment of families in the lower and middle income groups, which requires a full \$2,000 personal exemption for both itemizers and nonitemizers.

6. Thomas P. O'Neill, Jr. (Mass.).

7. 132 CONG. REC. 16703, 99th Cong. 2d Sess.

3. Preservation of the House position with respect to individual retirement accounts to the extent consistent with preserving retirement and savings incentives for low and middle income taxpayers.

4. No net increase in Federal taxes.

### *Nature of Instructions to Conferees*

**§ 9.18 An initial motion to instruct conferees, before their appointment, has been targeted at the conference agenda, stating priorities with respect to the issues to be addressed.**

The motion to instruct, which was not challenged as to its form or content, is carried as an example of a general motion.<sup>(8)</sup>

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2072) making dire emergency supplemental appropriations and transfers, urgent supplementals, and correcting enrollment errors for the fiscal year ending September 30, 1989, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(9)</sup> Is there objection to the request of the gentleman from Mississippi?

8. 135 CONG. REC. 11572, 101st Cong. 1st Sess., June 13, 1989.

9. James C. Wright, Jr. (Tex.).

There was no objection.

MOTION OFFERED BY MR. CONTE

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Conte moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 2072 be instructed not to meet with the managers on the part of the Senate on other issues until resolution of supplemental funding for Department of Veterans Affairs Medical Care.

THE SPEAKER: The gentleman from Massachusetts [Mr. Conte] will be recognized for 30 minutes and the gentleman from Mississippi [Mr. Whitten] will be recognized for 30 minutes.

### *Forms of Motion To Instruct on Budget Resolutions*

**§ 9.19 Form of a motion to recommit a conference report with instructions general in scope: to agree to a financing mechanism "within the scope of the conference" and which will permit early enactment of the bill into law.**

On Aug. 3, 1989, the House ordered the previous question on H.R. 1278, when a motion to recommit was offered by the Major-



ity Leader. The form of the motion offered is carried below:<sup>(10)</sup>

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> Without objection, the previous question is ordered on the conference report.

There was no objection.

MOTION TO RECOMMIT OFFERED BY  
MR. MICHEL

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the bill?

MR. MICHEL: Under the rule, I am obliged to say that I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Michel of Illinois moves to recommit the Conference Report to accompany the bill, H.R. 1278, to the committee of conference with instructions that the Managers on the part of the House agree to a financing mechanism which is properly within the scope of the conference and which will allow the bill to be signed into law as quickly as possible.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. MICHEL: Mr. Speaker, I object to the vote on the ground that a quorum

is not present and make the point of order that a quorum is not present.

THE SPEAKER:<sup>(12)</sup> Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5, rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote, by electronic device, if ordered, will be taken on the question of agreeing to the conference report.

The vote was taken by electronic device, and there were—yeas 170, nays 250, answered “present” 3, not voting 8. . . .

**§ 9.20 Where a motion to instruct conferees on a budget resolution called for a reduction in budget authority and outlays and at the same time called on the conferees to insist on the “highest level of funding” for defense, it protected the motion from a possible point-of-order challenge by including the phrase that the levels had to be “within the scope of conference.”**

The construction of motions to instruct conferees on budget resolutions has become something of an art form. Some such motions are necessarily obtuse; others are specific. The inclusion of such a

10. See 135 CONG. REC. 18590, 101st Cong. 1st Sess.

11. John P. Murtha, Jr. (Pa.).

12. James C. Wright, Jr. (Tex.).

prophylactic phrase sometimes avoids an argument that the instruction cannot be effected without exceeding scope.<sup>(13)</sup>

APPOINTMENT OF CONFEREES ON  
H. CON. RES. 218, CONCURRENT  
RESOLUTION ON THE BUDGET—FISCAL  
YEAR 1995

MR. [MARTIN OLAV] SABO [of Minnesota]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 218) setting forth the congressional budget for the U.S. Government for the fiscal years 1995, 1996, 1997, 1998, and 1999, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. KASICH

Mr. Kasich moves that the managers on the part of the House to the conference on the disagreeing votes on H. Con. Res. 218, be instructed to agree to the Senate amendment reflecting a \$26 billion reduction in the deficit over five years by agreeing to reduce the total spending levels specified in section 2(2) and 2(3) of the House-passed resolution as follows:

Fiscal year 1995—\$4.4 billion in budget authority and \$1.6 billion in outlays;

Fiscal year 1996—\$4.9 billion in budget authority and \$1.5 billion in outlays;

Fiscal year 1997—\$5.8 billion in budget authority and \$4 billion in outlays;

Fiscal year 1998—\$9.9 billion in budget authority and \$7 billion in outlays; and

Fiscal year 1999—\$21.8 billion in budget authority and \$9.9 billion in outlays.

Provided further, That conferees be instructed to agree to that portion of section 50 of the Senate amendment which provides that "If the President's defense budget request is approved, since 1985 real defense spending will have been reduced by 45 percent by 1999; and President Clinton, during his State of the Union Address on January 25, 1994, promised no further cuts in defense spending" and therefore insist that no further cuts be made in defense by agreeing to the highest possible level of funding for defense (within the scope of the conference).

THE SPEAKER PRO TEMPORE: The gentleman from Ohio [Mr. Kasich] is recognized for 30 minutes.

***Senate Motion To Instruct Conferees Regarding Meeting Location***

**§ 9.21 The Senate agreed to a motion to instruct conferees to call upon the managers to meet in certain designated rooms in the Capitol, to hold the meetings at times when the Senate was in session, and that the conference be open to the public and the press.**

13. See 140 CONG. REC. 7460, 103d Cong. 2d Sess., Apr. 14, 1994.

14. Walter R. Tucker III (Calif.).

The motion to instruct conferees on H.R. 3355, amending the Omnibus Crime Control and Safe Streets Act of 1968, is carried here as an example of a motion directed toward conference procedure rather than to resolving the matters in disagreement.<sup>(15)</sup>

MOTION TO INSTRUCT CONFEREES

MR. [JOSEPH R.] BIDEN [Jr., of Delaware]: I have a unanimous-consent agreement that has to be made before 4 o'clock. It will only take 30 seconds. It relates to an agreement I made with my Republican colleague on a motion to instruct that I agreed to accept. But I am told it was never sent to the desk. It must be done by 4 o'clock.

I send a motion to instruct the conferees, a motion to instruct, submitted by Senators Hatch, Simpson, Dole, and Biden, and I ask for its immediate consideration.

THE PRESIDING OFFICER: Is there objection to setting aside the preceding motions?

Without objection, it is so ordered.

The motion to instruct conferees is as follows:

Mr. Hatch, Mr. Simpson, and Mr. Dole move that the conferees on the part of the Senate on the disagreeing votes of the two Houses on the bill H.R. 3355 be instructed to insist that the committee of conference—

(1) hold all meetings in one of the following rooms:

(A) SR 325;

(B) SH 216; or

15. See 140 CONG. REC. 11181, 103d Cong. 2d Sess., May 19, 1994.

(C) SD 106;

(2) ensure that all of the meetings of the committee are open to the public and the print and electronic media; and

(3) hold all meetings during reasonable hours at times when the Senate is in session.

MR. BIDEN: Madam President, is the motion adopted? I urge the adoption of the motion. I ask unanimous consent that the motion be agreed to.

*Form of "General" Motion To Instruct Conferees*

**§ 9.22 Illustration of a general motion to instruct conferees on an emergency supplemental appropriation bill to form a conference report which does not add to the national deficit.**

*Parliamentarian's Note:* The motion to instruct carried below<sup>(16)</sup> is an example of a motion designed to give general policy direction to the conferees.

The motion to instruct is illustrative of a very general motion but one which could be adhered to by the conferees while remaining within the differences committed to the conference.

APPOINTMENT OF CONFEREES ON H.R. 889, EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

16. See 141 CONG. REC. 9509, 104th Cong. 1st Sess., Mar. 28, 1995.

FOR THE DEPARTMENT OF DEFENSE  
FOR FISCAL YEAR 1995

MR. [ROBERT] LIVINGSTON [of Louisiana]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Is there objection to the request of the gentleman from Louisiana?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Obey moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 889, be instructed to form a conference agreement that does not add to the national deficit in the current fiscal year and cumulatively through fiscal year 1999.

***Example of Instructions to Conferees To Take Specified Actions but "Remain Within Scope of Differences"***

17. Frank D. Riggs (Calif.).

**§ 9.23 Form of a general motion to instruct conferees to resolve differences on health insurance programs, referring to a program not covered in either version of the bill in conference, but protected against a Rule XXVIII clause 3 point of order by including in the motion the prophylactic mandate to "remain within scope."**

After the House had agreed to a unanimous-consent request to send the bill H.R. 483 to conference, a motion to instruct the managers was offered as described above. The motion and some of the debate which illustrates the collateral uses of a motion to instruct are carried here.<sup>(18)</sup>

APPOINTMENT OF CONFEREES ON H.R.  
483, MEDICARE SELECT EXPANSION

MR. [THOMAS J.] BLILEY [Jr., of Virginia]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

18. 141 CONG. REC. 14413-15, 104th Cong. 1st Sess., May 25, 1995.

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> Is there objection to the request of the gentleman from Virginia?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. DOGGETT

MR. [LLOYD] DOGGETT [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Doggett moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the House bill, H.R. 483, be instructed to resolve the difference between the House's 8½-year program and the Senate's 5-year program of medicare select policies, within the scope of the conference, in light of the changes in Medicare—the program that medicare select policies supplement—to increase beneficiary cost-sharing and to limit choice of provider as contemplated in this year's budget process.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Doggett] will be recognized for 30 minutes, and the gentleman from Virginia [Mr. Biley] will be recognized for 30 minutes. . . .

MR. [WILLIAM M.] THOMAS [of California]: Mr. Speaker, I thank the gentleman for yielding time to me.

. . . What is in front of us is a motion to instruct conferees. The House passed 408 to 14 a measure to extend Medicare Select. Medicare Select is a so-called MediGap. It is one of those insurance policies available to folk to create a whole package around part A and part B Medicare. There are cur-

rently 10 MediGap insurance type policies that have been approved by the Department of Health and Human Services. Medicare select is simply an 11th offering.

. . . It is simply the 11th, the addition to 10 other small programs.

What the minority is trying to do, Mr. Speaker, is argue the entire Medicare issue on their motion to instruct. What a bizarre motion to instruct. It says that "will be instructed to resolve the differences between the House 8½-year extension and the Senate 5-year extension of Medicare Select policies." Eight and one-half years, 5 years? The House bill that was passed said extend it for 5 years. The Senate bill that was passed said extend it for 18 months. Extension in the unabridged dictionary right over here says "An additional period of time from the current time;" adding time, an extension. Where in the world the Democrats got 8½ years and 5 years as extensions is beyond me. . . .

In addition, to make this motion germane, they say the scope of the conference, but what they really want to do is talk about the large program of Medicare.

## § 10. When Instructions Are in Order

### *After Agreeing to Conference*

§ 10.1 A motion to instruct the House managers at a conference is in order after the

19. Henry Bonilla (Tex.).

**House has agreed to a conference and before the appointment of the conferees.**

On July 24, 1973,<sup>(20)</sup> Mr. William R. Poage, of Texas, offered a motion to take from the Speaker's table S. 1888, to amend and extend the Agricultural Act of 1970, with a House amendment thereto, insist on the House amendment and agree to a conference requested by the Senate.

THE SPEAKER:<sup>(1)</sup> The question is on the motion offered by the gentleman from Texas (Mr. Poage).

The motion was agreed to.

MR. [ROBERT D.] PRICE of Texas: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Price of Texas moves that the managers on the part of the House, at the disagreeing votes of the two Houses on the bill S. 1888, be instructed to insist on the provisions of paragraph (26) of section 1 of the House amendment at page 38, lines 1 through 8 which read as follows:

"(B) by adding a new section 703 as follows:

"Sec. 703. Title IV of such Act as amended by adding at the end thereof the following:

"Sec. 411. No agricultural commodities shall be sold under title I or title III or donated under title II of this Act of North Vietnam, unless by an Act of Congress enacted subsequent to July 1, 1973, assistance to

North Vietnam is specifically authorized.'" . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Price) to instruct conferees. . . .

The vote was taken by electronic device; and there were—yeas 371, nays 35, not voting 27. . . .

So the motion was agreed to.<sup>(2)</sup>

***Proper Time To Offer Motion To Instruct***

**§ 10.2 A motion to instruct conferees is in order after the request to go to conference has been agreed to and before the Speaker appoints the conferees.**

Only one motion to instruct the House managers at a conference is in order at the time a bill is sent to conference. Recognition to offer this motion is the right of a member of the minority party; and the remedy of a Member denied recognition to offer a particular motion is to vote down the previous question on whatever motion is offered by another. The scenario played

20. 119 CONG. REC. 25539-41, 93d Cong. 1st Sess.

1. Carl Albert (Okla.).

2. See also 117 CONG. REC. 22406-30, 92d Cong. 1st Sess., June 28, 1971; 115 CONG. REC. 38543-45, 91st Cong. 1st Sess., Dec. 11, 1969; and 113 CONG. REC. 34128-36, 90th Cong. 1st Sess., Nov. 29, 1967.

out on Dec. 16, 1974,<sup>(3)</sup> demonstrates the timing and use of a motion to instruct.

MR. [HAROLD T.] JOHNSON of California: Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill (S. 3934) just passed, and request a conference with the Senate.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> Is there objection to the request of the gentleman from California (Mr. Johnson)?

MR. [EDWARD J.] KOCH [of New York]: Mr. Speaker, I have a motion at the desk.

THE SPEAKER PRO TEMPORE: Does the gentleman object to the request of the gentleman from California (Mr. Johnson)?

#### PARLIAMENTARY INQUIRY

MR. KOCH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. KOCH: The motion that I have at the desk is one to instruct the managers on the part of the House—

THE SPEAKER PRO TEMPORE: The gentleman from New York reserves the right to object. For what purpose now does the gentleman request the opinion of the Chair?

MR. KOCH: I would appreciate the Chair advising me whether this is the appropriate time to move to instruct

the House conferees with respect to this bill.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that until the unanimous-consent request to send the bill to conference is granted, a motion to instruct would be premature; but if the gentleman would withdraw his reservation and if the request is granted, then a motion to instruct conferees would be in order.

MR. KOCH: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. HARSHA

MR. [WILLIAM H.] HARSHA [of Ohio]: Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

Motion offered by Mr. Harsha: Mr. Harsha moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill S. 3934, be instructed to insist upon paragraph (6) of section 102 and to insist upon section 110 of the House amendment in the nature of a substitute.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio (Mr. Harsha) is recognized for 1 hour in support of his motion.

MR. HARSHA: Mr. Speaker, I shall certainly not take 1 hour. This is a motion to instruct the conferees on the Highway Act of 1974, simply to instruct the conferees to insist upon the House provision on the so-called rural highway provision on the off-system roads.

3. 120 CONG. REC. 40174, 40175, 93d Cong. 2d Sess.

4. John J. McFall (Calif.).

MR. KOCH: Mr. Speaker, will the gentleman yield for a brief statement?

MR. HARSHA: I will yield for the purposes of debate only.

MR. KOCH: Yes. As the gentleman knows, because he and I participated a few moments ago in the debate on suspension of the rules, I advised the body that what I wanted to do was to make certain that the House did not accept the Senate provision in the Senate bill with respect to increasing the weight of trucks. I said that the scenario we would see played out on this floor would be a preemption of my motion to instruct by a member of the committee, so as to make it impossible for me to do that. My only opportunity would then be to ask the House to vote down the previous question when the gentleman from Ohio or someone on that committee would make, as the gentleman did frame, in some innocuous way, a motion to instruct.

The scenario which I suggested, I think the gentleman would agree, has in fact occurred. I will ask the House at the conclusion of the debate—hopefully, we will not go through the charade and agony for an hour—to vote down the previous question, so that then I will have an opportunity to move to instruct the House conferees to not accede to the Senate provision which would increase the weight of trucks from the existing 73,000 pounds to 80,000. . . .

MR. HARSHA: Mr. Speaker, I move the previous question on the motion.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Ohio (Mr. Harsha).

MR. KOCH: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Ohio (Mr. Harsha).

The motion was agreed to.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Wright, Kluczynski, Johnson of California, Harsha, and Cleveland.

There was no objection.

### *Before Appointment of Confer-ees*

**§ 10.3 If a motion to request a conference under Rule XX clause 1 is agreed to, a motion to instruct the managers on the part of the House is in order before the Speaker appoints the conferees.**

On May 29, 1968,<sup>(5)</sup> Mr. Emanuel Celler, of New York, sought unanimous consent to request a conference with the Senate on H.R. 5037, the Law Enforcement and Criminal Justice Assistance Act of 1967. Speaker John W. McCormack, of Massachusetts, indicated that if an objection was heard, a duly-authorized motion to request this conference would be in order. Mr.

5. 114 CONG. REC. 15499, 90th Cong. 2d Sess.



Richard H. Poff, of Virginia, then posed this parliamentary inquiry:

... [I]f that motion is made on the floor and is adopted on the floor, will it then be in order to make a motion to instruct the House conferees?

THE SPEAKER: Before the appointment of the conferees such a motion would be in order.

**§ 10.4 A motion to instruct conferees on a bill being sent to conference is after the House agrees to send the bill to conference and before the Speaker appoints the conferees.**

The proceedings associated with sending the International Financial Institutions Authorization Act (H.R. 5262) to conference on June 16, 1977,<sup>(6)</sup> were as indicated.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5262) to provide for increased participation by the United States in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank and the Asian Development Fund, and for other purposes, with Senate amendments thereto, disagree to the Senate

6. 123 CONG. REC. 19414, 19415, 95th Cong. 1st Sess.

amendments, and agree to the conference asked by the Senate. . . .

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Wisconsin? Hearing none, the Chair appoints the following conferees.

PRIVILEGED MOTION OFFERED BY MR. ROUSSELOT

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I offer a privileged motion.

The Clerk read as follows:

Mr. Rousselot of California moves that the Managers on the part of the House, at the Conference on the disagreeing votes of the two Houses on the bill H.R. 5262 be instructed to insist on the language of the House as follows:

SEC. 602. (a) The Secretary of State and the Secretary of the Treasury shall initiate a wide consultation, beginning with the industrialized democracies, designed to develop a viable standard for the meeting of basic human needs and the protection of human rights, and a mechanism for acting together to insure that the rewards of international economic cooperation are especially available to those who subscribe to such standards and are seen to be moving toward making them effective in their own systems of governance.

(b) No later than one year from the date of enactment of this Act, the Secretary of State and the Secretary of the Treasury shall report to the President of the Senate and the Speaker of the House of Representatives on the progress made in carrying out this section.

MR. REUSS: Mr. Speaker, a point of order.

7. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: Under the rules the gentleman from California is entitled to 1 hour.

The gentleman from Wisconsin will state his point of order.

MR. REUSS: Mr. Speaker, my point of order is that the motion comes prematurely. I do not believe I heard the Speaker complete his listing of the conferees.

THE SPEAKER: The motion in the opinion of the Chair is in order. The conferees have not been named so the motion is in order. The point of order is not well taken.

The gentleman from California is entitled to 1 hour. . . .

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Rousselot). The gentleman from California is entitled to 1 hour.

In view of the procedures we have been following, the Chair would entertain a unanimous-consent request to put this matter over until tomorrow. . . .

Without objection, the gentleman's motion will be the unfinished business tomorrow.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, will it be the first order of business tomorrow?

THE SPEAKER: That is right.

MR. BAUMAN: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER: Is there objection?

There was no objection.

***Motion for Conference Disposed of Before Instructions Are Considered***

**§ 10.5 A motion to instruct conferees on the part of the House is not in order until the House has voted to go to conference.**

On Mar. 3, 1970,<sup>(8)</sup> Mr. Daniel J. Flood, of Pennsylvania, offered a motion to agree to the conference requested by the Senate on H.R. 15931, the 1970 appropriations bill for the Departments of Labor and Health, Education, and Welfare. Before the House could consider Mr. Flood's motion, Mr. Durward G. Hall, of Missouri, made a point of order that a quorum was not present. A call of the House was then ordered pursuant to a motion by Mr. Carl Albert, of Oklahoma.

After this quorum call, the following occurred:

THE SPEAKER:<sup>(9)</sup> The gentleman from Pennsylvania (Mr. Flood) is recognized for 1 hour.

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. CONTE: Mr. Speaker, I have a motion at the desk, and as I was about to offer the motion the gentleman from Missouri raised the point of order that a quorum was not present, and that

8. 116 CONG. REC. 5722, 5723, 91st Cong. 2d Sess.

9. John W. McCormack (Mass.).

was the status of the House at the time that the quorum was called.

MR. FLOOD: Mr. Speaker, may I be heard? My reason for addressing the Chair was—

THE SPEAKER: The Chair will ask the gentleman from Massachusetts: Does he make a point of order that a quorum is not present?

MR. CONTE: No. The gentleman from Massachusetts states he was on his feet seeking recognition as the Clerk read the motion of the gentleman from Pennsylvania (Mr. Flood) and the gentleman from Missouri (Mr. Hall) raised the point of order that a quorum was not present. We are standing in this position at this time.

THE SPEAKER: If the gentleman has a point of order, he can state it now.

MR. CONTE: I have a motion at the desk to instruct the conferees.

THE SPEAKER: The Chair will state that is not in order at this particular moment. It will be in order later, after the motion of the gentleman from Pennsylvania (Mr. Flood) is acted on.

MR. CONTE: I want to thank the Chair.

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) is recognized for 1 hour.

### *Requests To Move To Instruct at Future Time*

§ 10.6 The House granted unanimous consent that on a future day it would be in order to make two motions to instruct the managers on the part of the House who had

**been appointed two weeks earlier.**

On Sept. 13, 1944,<sup>(10)</sup> the following occurred in the House:

MR. [ROBERT L.] DOUGHTON [of North Carolina]: Mr. Speaker, I ask unanimous consent that it may be in order on Monday next<sup>(11)</sup> for me to make two motions to instruct the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (S. 2051) entitled "An act to amend the Social Security Act, as amended, to provide a national program for war mobilization and re-conversion, and for other purposes." . . .

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from North Carolina?

There was no objection.

*Parliamentarian's Note:* In this case there appeared to be a deadlock in conference just before an adjournment to a day certain. In order to expedite the matter, the above request was made, the two motions (to instruct the conferees to insist on their disagreement to two amendments of the Senate to the amendment in the nature of a substitute of the House for the Senate bill) were later agreed

10. 90 CONG. REC. 7731, 7732, 78th Cong. 2d Sess.

11. Sept. 18, 1944.

12. Sam Rayburn (Tex.).

to,<sup>(13)</sup> the Senate conferees abided by the action of the House,<sup>(14)</sup> and the bill was finally adopted.

Since the conferees had been appointed on Aug. 31,<sup>(15)</sup> it was necessary to obtain unanimous consent to offer any motion to instruct the conferees at this time, because such motions to instruct subsequent to the appointment of conferees, made pursuant to Rule XXVIII clause 1(c), would not be in order until Sept. 20.

***Resolution Requesting Conference as Precluding Motion To Instruct***

**§ 10.7 The adoption of a resolution asking for a conference does not preclude a motion to instruct the House managers.**

On Oct. 31, 1939,<sup>(16)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. Adolph J. Sabath, of Illinois.

13. 90 CONG. REC. 7822, 7829, 7830, 7840, 78th Cong. 2d Sess., Sept. 18, 1944.

14. See the statement of the House managers at 90 CONG. REC. 8016, 78th Cong. 2d Sess., Sept. 20, 1944.

15. *Id.* at p. 7473.

16. 85 CONG. REC. 1092, 76th Cong. 2d Sess.

MR. SABATH: Mr. Speaker, I call up House Resolution 320, which I send to the desk and ask to have read.

The Clerk read as follows:

H. RES. 320

*Resolved*, That immediately upon the adoption of this resolution, the joint resolution (H.J. Res. 306), the Neutrality Act of 1939, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table to the end that the amendments of the Senate be, and the same are hereby, disagreed to and a conference is requested with the Senate on the disagreeing votes of the two Houses.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Illinois yield for a parliamentary inquiry?

MR. SABATH: Yes.

MR. RANKIN: To ask whether or not the resolution will shut off the right to offer a motion to instruct the conferees?

THE SPEAKER: It will not. The resolution now pending makes it in order to consider such matters as that propounded by the gentleman from Mississippi. If the resolution is adopted, it will in no way prohibit subsequent proceedings, or offering a motion to instruct the conferees, or amendments thereto.

***Unanimous Consent To Agree to Conference Does Not Preclude Motion To Instruct***

**§ 10.8 The granting of a unanimous-consent request**

**to disagree to the Senate amendments to a House bill and agree to a conference with the Senate does not preclude a later motion to instruct the managers on the part of the House to insist on disagreement to a particular Senate amendment.**

On Oct. 9, 1969,<sup>(17)</sup> the House granted unanimous consent to take H.R. 11612, the 1970 appropriations bill for the Department of Agriculture and related agencies, from the Speaker's table, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate. After Mr. Silvio O. Conte, of Massachusetts, offered a motion to instruct the House conferees to insist on its disagreement to a particular Senate amendment, Mr. Jamie L. Whitten, of Mississippi, rose with a point of order.

THE SPEAKER:<sup>(18)</sup> The gentleman will state his point of order.

MR. WHITTEN: The bill itself will show that the so-called Conte amendment was stricken out by the Senate on page 23 of the bill as printed by the

Senate. It is identified as amendment 37 of the Senate.

I would call the attention of the Speaker to the fact that the unanimous-consent request I asked for, and which was accepted, called on the conferees to disagree to the amendments of the Senate. So we have, by unanimous consent, just instructed the conferees to disagree to the Senate amendments, of which amendment 37 is one, so any further instruction would be superfluous and would be out of order, because we have by unanimous consent agreed that the conferees would disagree to the Senate amendments, of which the Conte amendment repeal is one.

THE SPEAKER: Does the gentleman from Massachusetts desire to be heard on the point of order?

MR. CONTE: I believe the point of order is out of order, Mr. Speaker. Certainly the gentleman is putting the cart before the horse.

The House has a right to work its will here and to instruct the conferees in any manner it pleases. The only thing we have before us now is the unanimous consent to go to conference and to appoint conferees. At this point any Member can get up to ask for instruction of conferees to go to conference and sustain and substantiate the will of the House in regard to this particular amendment.

Therefore, I feel the Chair should overrule the point of order.

THE SPEAKER: The Chair is prepared to rule.

This question has been passed upon on a number of occasions, and the Chair calls attention to previous rulings made on this same question to be found in Cannon's Procedure, page 126:

17. 115 CONG. REC. 29315, 91st Cong. 1st Sess.

18. John W. McCormack (Mass.).

Adoption of a motion to disagree or to insist on disagreement to a Senate amendment does not preclude consideration of subsequent motions instructing conferees to take other action on such amendments or parts thereof, and the question as to whether a motion to instruct is inconsistent with action previously taken is a question for the House, and not the Chair. (Cannon Precedents VIII 3237-9, 3230)

The Chair overrules the point of order.

### *Naming Conferees but Preserving a Motion To Instruct*

§ 10.9 By unanimous consent, the House reserved to the minority the right to make an initial motion to instruct conferees on a date certain a week following the Speaker's appointment of the conferees.

The purpose of this request was to accommodate the minority who had indicated a desire to instruct the managers on one portion of the measure being sent to conference.<sup>(19)</sup>

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I ask unanimous consent that notwithstanding the Speaker's appointment of conferees on H.R. 5, that one motion to instruct conferees be

<sup>19</sup>. See 134 CONG. REC. 1199, 100th Cong. 2d Sess., Feb. 8, 1988.

in order on Wednesday, February 17, 1988.

THE SPEAKER:<sup>(20)</sup> Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## § 11. Recognition To Offer; Debate

### *Minority Prerogative*

§ 11.1 Recognition to offer a motion to instruct House conferees is the prerogative of the minority, and the Speaker recognizes the ranking minority member of the committee reporting the bill when that member seeks recognition to offer the motion.

On Oct. 19, 1971,<sup>(1)</sup> after the House agreed to a motion to send H.R. 8687, the military procurement authorization bill, fiscal 1972, to conference, Speaker Carl Albert, of Oklahoma, recognized Mr. Leslie C. Arends, a Republican from Illinois.<sup>(2)</sup>

<sup>20</sup>. James C. Wright, Jr. (Tex.).

1. 117 CONG. REC. 36832-35, 92d Cong. 1st Sess.
2. See also 85 CONG. REC. 1104, 76th Cong. 2d Sess., Oct. 31, 1939.

MR. ARENDS: Mr. Speaker, I offer a motion.

MS. [BELLA] ABZUG [of New York]: Mr. Speaker, a point of order.

Mr. Speaker, I would like to ask the Chair, according to the precedents as I read them, on 784,<sup>(3)</sup> the minority have no special privileges as to asking for instructions as to the conferees. I want to know what the point of order is in recognizing the minority on this motion.

THE SPEAKER: This is under the precedents of the House, I will advise the gentlewoman, starting with Speaker Cannon and consistently so held since then.

The Clerk will report the motion offered by the gentleman from Illinois.

The Clerk read as follows:

Mr. Arends moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill H.R. 8687, are hereby instructed not to agree to any portions of the text of the Senate amendment that is not germane to the House bill, H.R. 8687.

THE SPEAKER: The gentleman from Illinois is recognized for 1 hour.

### ***Recognition for Motions To Instruct***

#### **§ 11.2 While recognition to offer an "initial" motion to**

3. Referring to 5 Hinds' Precedents § 6525, p. 784, does not support Ms. Abzug's contention, as it relates only to recognition to ask for conferences, not to recognition for motions to instruct conferees.

**instruct House conferees is the prerogative of the minority party, if two minority members of a committee having jurisdiction over a matter seek recognition to offer motions to instruct, the Speaker recognizes the more senior member of that committee.**

The Speaker had appointed conferees on H.R. 5, the School Improvement Act, several days previously, pursuant to a special order granted by the House.<sup>(4)</sup> A motion to instruct was therefore anticipated on this day, but the Speaker had hoped to defer recognition until after the one-minute period.

On an earlier occasion, when Speaker O'Neill was confronted with a conflict between a Member who wished to offer a question of privilege during the "one-minute period," he had continued to entertain one-minute requests, on the theory that even privileged motions could be delayed as long as the House granted unanimous consent for a nonprivileged speech.<sup>(5)</sup>

4. See 134 CONG. REC. 1224, 100th Cong. 2d Sess., Feb. 9, 1988.

5. See the proceedings of July 10, 1985, where Speaker Thomas P. O'Neill, Jr., of Massachusetts, ruled that un-

The proceedings, as excerpted from the *Congressional Record* of Feb. 17, 1988,<sup>(6)</sup> and carried here, illustrate not only the Speaker's power of recognition, but how it is exercised and when a Member actually is recognized and entitled to the floor.

MOTION TO INSTRUCT CONFEREES ON  
H.R. 5, SCHOOL IMPROVEMENT ACT  
OF 1987

THE SPEAKER:<sup>(7)</sup> For what purpose does the gentleman from California seek recognition?

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, I have a motion at the desk to instruct conferees.

THE SPEAKER: For what purpose does the gentleman from Illinois [Mr. Madigan] rise?

PARLIAMENTARY INQUIRIES

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MADIGAN: Mr. Speaker, it was my understanding that before any con-

der his power of recognition in Rule XIV clause 2, he could continue to entertain unanimous consent requests pending recognition for a question of privilege, since unanimous-consent requests, if granted, can waive standing rules unless Members lodge an objection.

6. 134 CONG. REC. 1583, 1584, 1589, 1590, 100th Cong. 2d Sess.

7. James C. Wright, Jr. (Tex.).

sideration would be given to a motion to instruct conferees that the Speaker was going to conclude the 1-minute speeches.

THE SPEAKER: The Chair would like to accommodate Members seeking to be heard on the 1-minute rule but under the rule a motion such as would be proposed, as the Chair understands it, to instruct conferees would take precedence if a Member sought to press that matter at this time and under the rule would be more privileged.

MR. DANNEMEYER: Mr. Speaker, that is my request.

MR. MADIGAN: Further pursuing my parliamentary inquiry, Mr. Speaker, does the Chair then as a matter of custom in the House recognize people on the basis of seniority with regard to committee assignments on matters such as this?

THE SPEAKER: The gentleman is correct. If two or more Members seek recognition for motions of equal privilege, it would be the custom of the Chair to recognize the Member most senior on the committee of jurisdiction.

MR. MADIGAN: Mr. Speaker, the Speaker has just described my situation. I am the senior member and pursuant to a previous order of the House I have a motion at the desk.

MR. DANNEMEYER: I have a further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. DANNEMEYER: Since the Speaker previously recognized this Member and this Member responded that I have a motion at the desk to instruct conferees and I choose to go forward with it at this time pursuant to a unanimous-consent request of last week, does that



not give this Member since I was recognized for that purpose priority to proceed at this time?

THE SPEAKER: Well, the gentleman is correct, the gentleman did seek recognition for the purpose of making a motion and then the gentleman from Illinois rose with a parliamentary inquiry and the Chair recognized the gentleman from Illinois for that purpose. And it is the Chair's understanding that each of the two gentlemen standing desires to offer a motion to instruct conferees. Is that correct?

MR. DANNEMEYER: That is correct, Mr. Speaker.

MR. MADIGAN: That is correct, Mr. Speaker.

THE SPEAKER: Well, the Chair, under those circumstances, following the general precedents of the House would recognize the more senior minority member of the two minority members on the committee of jurisdiction.

MR. DANNEMEYER: Mr. Speaker, I have a further parliamentary inquiry. I appreciate that the Speaker is hesitating a little with respect to his tentative decision, but this Member actually was recognized before my colleague from Illinois was recognized and I would think on that basis that this Member should have priority for making this motion.

THE SPEAKER: The gentleman's motion had not been placed before the House. The gentleman had sought recognition and the Chair had said, "For what purpose does the gentleman seek recognition?" The gentleman from California had said, "For the purpose of offering a motion to instruct conferees."

MR. DANNEMEYER: That is correct, Mr. Speaker.

THE SPEAKER: And the Chair was about to ask the Clerk to report the motion when the gentleman from Illinois stood and sought recognition. The Chair said to the gentleman from Illinois, "For what purpose does the gentleman rise?"

MR. DANNEMEYER: If I may further be heard on my inquiry, if I understand the gentleman from Illinois correctly, he achieved recognition on the basis of a parliamentary inquiry.

THE SPEAKER: The gentleman is correct.

MOTION OFFERED BY MR. MADIGAN

MR. MADIGAN: Mr. Speaker, pursuant to a previous order of the House, I offer a motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Madigan moves that the managers on the part of the House appointed for consideration of section 7003 of the Senate amendment to H.R. 5 be instructed to agree to language that offers a solution to the dial-a-porn problem.

PARLIAMENTARY INQUIRIES

MR. DANNEMEYER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DANNEMEYER: Mr. Speaker, when a motion to instruct conferees is pending, as is the situation with the gentleman from California having made such a motion, is it in order for the House to then consider another motion to instruct conferees?

THE SPEAKER: Is the gentleman asking would it be in order for him to offer an amendment to the motion?

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The Chair is advised that the gentleman from California could offer an amendment to the motion of the gentleman from Illinois but only if the previous question were voted down. If the previous question on the motion of the gentleman from Illinois should be ordered, then his motion would have to be voted upon without intervening motion.

MR. DANNEMEYER: Mr. Speaker, if I might be heard further on my parliamentary inquiry, I do not quite see how we could get to the point where we could consider the motion offered by the gentleman from Illinois to instruct conferees when, at the time the gentleman from Illinois is making his motion, there is already a motion by this gentleman from California to instruct conferees pending at the desk. And I have not withdrawn that motion.

THE SPEAKER: The motion of the gentleman from California had not been stated and was not pending before the House. The gentleman had sought recognition for the purpose of offering a motion to instruct conferees. The gentleman from Illinois asked, on a parliamentary inquiry, in a situation involving two minority Members, each seeking recognition for the purpose of offering a motion to instruct conferees, as to which of the two Members under the precedents would be recognized. The Chair replied that the senior of the two on the Committee of Jurisdiction, under the precedents, would be recog-

nized, and the gentleman from Illinois offered a motion, he being the senior of those seeking recognition for the purpose of offering a motion.

MR. DANNEMEYER: Mr. Speaker, I wonder if I could ask the indulgence of the House for the purpose of having the record read back for the purpose of determining whether this gentleman from California was recognized for the purpose of making a motion to instruct conferees.

MR. DINGELL: I would have an objection, Mr. Speaker. I would have to observe that I think that is a unanimous-consent request, and it is taking a great amount of the time of the House at a time when we have other business pending. I would have to object.

THE SPEAKER: The Chair has recognized the gentleman from Illinois, and the gentleman's motion has been read and is now pending before the House. The gentleman is entitled to 1 hour on the motion.

MR. DANNEMEYER: I have a further parliamentary inquiry, Mr. Speaker.

What happened to my motion?

MR. MADIGAN: It was never read.

MR. DANNEMEYER: Yes, it was.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, he was recognized for the purpose of offering an amendment, and the record will show that.

THE SPEAKER: The Chair will state again the situation.

The gentleman from California sought recognition. The Chair asked the purpose of his seeking recognition, and he said he sought recognition for the purpose of offering a motion to instruct conferees. The motion was not made prior to the rising of the gentle-

man from Illinois to ask by unanimous consent if it were proper to entertain such a motion before the completion of the 1-minute unanimous-consent requests. The Chair replied that the Chair would prefer to accommodate Members seeking to be heard under the 1-minute rule first and then entertain the motion, but that the motion really does have priority under the rules to a unanimous-consent request to be heard for 1 minute, and that if the gentleman insists upon offering the motion at that time, the Chair would entertain the motion.

Then the gentleman from Illinois asked if two Members, each desiring to offer such a motion, were simultaneously to seek recognition, which of two Members should be recognized under the precedents of the House, and the Chair replied: The senior of the two on the Committee of Jurisdiction.

MR. DANNEMEYER: At that point, Mr. Speaker, on the basis of the Chair's own analysis, with all due respect, when I stood for recognition, there was not someone else asking for recognition. It was not done simultaneously.

MR. DINGELL: Mr. Speaker, may I call for the regular order?

THE SPEAKER: The Chair is trying to preserve the regular order and thinks that the Members are entitled to understand exactly what is going on and are entitled to ask questions and to be accommodated to the extent of the Chair's ability to accommodate them.

The fact is that two Members sought recognition for the same kind of motion, for a motion to instruct conferees. The motions having equal precedence and priority, the question arose as to which of the two Members should be

recognized for the purpose of making a motion. The Chair replied that the precedents hold that the senior of the two or more Members seeking recognition is entitled to be recognized. The gentleman from Illinois asked then to be recognized for the purpose of offering that motion. The Chair recognized the gentleman from Illinois. The motion has been read. The motion offered by the gentleman from Illinois to instruct conferees on H.R. 5 is the pending order of business.

The gentleman from Illinois [Mr. Madigan] is recognized for 1 hour.

MR. MADIGAN: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I move the previous question on my motion to instruct.

THE SPEAKER: The question is on ordering the previous question.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. DANNEMEYER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 200, nays 179, not voting 54, as follows: . . .

So the previous question was ordered. . . .

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The question is on the motion to instruct

8. Leon E. Panetta (Calif.).

offered by the gentleman from Illinois [Mr. Madigan].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. MADIGAN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 382, nays 0, not voting 51, as follows: . . .

So the motion to instruct was agreed to.

**§ 11.3 Where two members of the committee having jurisdiction over a bill seek recognition for a motion to instruct conferees, the Speaker gives recognition to the member of the minority.**

On Oct. 31, 1939,<sup>(9)</sup> after the House agreed to a resolution to send House Joint Resolution 306, the Neutrality Act of 1939, to conference, the following proceedings occurred:

Mr. Shanley and Mr. Fish rose.<sup>(10)</sup>

MR. SHANLEY: Mr. Speaker, I send to the Clerk's desk a motion to instruct the conferees.

9. 85 CONG. REC. 1092, 1104, 76th Cong. 2d Sess.

10. Mr. James A. Shanley, a Democrat from Connecticut, and Mr. Hamilton Fish, Jr., a Republican from New York, were both members of the Committee on Foreign Affairs.

THE SPEAKER:<sup>(11)</sup> The gentleman from New York [Mr. Fish] is entitled to be recognized if he so desires.

MR. FISH: Mr. Speaker, I gladly yield to the gentleman from Connecticut [Mr. Shanley] because he has a similar motion. I yield to him to offer the motion to instruct the conferees.

***Hour Rule Applies on Debate on Motion To Instruct***

**§ 11.4 A motion to instruct the managers on the part of the House at a conference is debatable under the hour rule.**

On July 2, 1946,<sup>(12)</sup> after the House granted unanimous consent to agree to the conference requested by the Senate on H.R. 6777, the 1947 government corporations appropriation bill, Mr. Robert F. Rich, of Pennsylvania, offered a motion to instruct the House conferees. Mr. Harold D. Cooley, of North Carolina, was then recognized for the purpose of propounding a parliamentary inquiry.

MR. COOLEY: Do the rules of the House permit a discussion of the motion just made?

11. William B. Bankhead (Ala.).

12. 92 CONG. REC. 8181-92, 79th Cong. 2d Sess.

THE SPEAKER:<sup>(13)</sup> It is debatable under the 1-hour rule.<sup>(14)</sup>

***Controlling Debate Time on Motion To Instruct (Practice Prior to 1989)***

**§ 11.5 Prior to 1989, a Member recognized to offer a motion to instruct House conferees controls one hour of debate on the motion.**

On July 9, 1970,<sup>(15)</sup> after Mr. Donald W. Riegle, of Michigan, offered a motion to instruct House conferees on H.R. 15628, the Foreign Military Sales Act of 1970, the following proceedings occurred:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman will state his parliamentary inquiry.

MR. HAYS: Mr. Speaker, in the event a motion to table the motion offered by the gentleman from Michigan (Mr. Riegle) is not made, and there is an hour's debate on the motion, who will control the time?

13. Sam Rayburn (Tex.).

14. See also 95 CONG. REC. 11139-43, 81st Cong. 1st Sess., Aug. 9, 1949.

15. 116 CONG. REC. 23524, 91st Cong. 2d Sess.

16. John W. McCormack (Mass.).

THE SPEAKER: The Chair will state that the gentleman from Michigan (Mr. Riegle) will control the time.<sup>(17)</sup>

*Parliamentarian's Note:* In 1989, the House amended Rule XXVIII clause 1(b) to provide for a division of time between minority and majority parties.<sup>(18)</sup>

***Yielding Debate Time (Precedents Before 1989)***

**§ 11.6 A Member making a motion to instruct House conferees is recognized for one hour, and may yield a portion of that time to another Member.**

On Dec. 8, 1970,<sup>(19)</sup> after the House granted unanimous consent to agree to the conference requested by the Senate on H.R. 17755, the 1971 appropriations bill for the Department of Transportation and related agencies, the following occurred:

17. See also 118 CONG. REC. 7540, 92d Cong. 2d Sess., Mar. 8, 1972; 117 CONG. REC. 36832-35, 92d Cong. 1st Sess., Oct. 19, 1971; and 109 CONG. REC. 12294-96, 88th Cong. 1st Sess., July 9, 1963.

18. See *House Rules and Manual* § 909a (1997); for modern practice, see § 11.8.

19. 116 CONG. REC. 40271, 91st Cong. 2d Sess.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Yates moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 17755 be instructed to agree to Senate amendment No. 4.

THE SPEAKER:<sup>(20)</sup> The gentleman from Illinois (Mr. Yates) is recognized for 1 hour.

MR. YATES: Mr. Speaker, I yield 30 minutes to my good friend, the very able gentleman from Massachusetts (Mr. Boland) pending which I yield myself such time as I may consume.<sup>(1)</sup>

**§ 11.7 A Member who offered the motion and controlled the one hour of debate on a motion to instruct conferees yielded one half of his time to the opposition.**

On Aug. 29, 1962,<sup>(2)</sup> Mr. James E. Van Zandt, a Republican from Pennsylvania, offered a motion to instruct the House managers at the conference on H.R. 11974, authorizing appropriations relating to the Atomic Energy Act of 1954.

20. John W. McCormack (Mass.).

1. See also 95 CONG. REC. 11139-45, 81st Cong. 1st Sess., Aug. 9, 1949.
2. 108 CONG. REC. 18029, 87th Cong. 2d Sess.

THE SPEAKER:<sup>(3)</sup> The gentleman from Pennsylvania is recognized for 1 hour.

MR. VAN ZANDT: Mr. Speaker, I will yield half my time, 30 minutes, to the gentleman from California [Mr. Holifield],<sup>(4)</sup> the distinguished chairman of the Joint Committee on Atomic Energy.

***Controlling Debate Time on Motion To Instruct (Modern Practice)***

**§ 11.8 Where a motion to instruct conferees is being debated, with time divided between the majority and minority parties as provided by the rule, neither a motion for the previous question or the more preferential motion to lay on the table can be used in derogation of the Members' control of the time.**

While a motion to table a motion to instruct can be offered immediately after the motion is reported, once debate has commenced, the parties allocated time under Rule XXVIII clause 1(b)<sup>(5)</sup> are entitled to use their time. The proceedings of Mar. 18, 1992,<sup>(6)</sup> are illustrative.

3. John W. McCormack (Mass.).

4. Mr. Holifield was a Democrat.

5. See *House Rules and Manual* § 909a (1997).

6. 138 CONG. REC. 6018, 6022-24, 102d Cong. 2d Sess.

APPOINTMENT OF CONFEREES ON H.R. 4210, TAX FAIRNESS AND ECONOMIC GROWTH ACCELERATION ACT OF 1992

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4210) to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Is there objection to the request of the gentleman from Illinois?

There was no objection.

MOTION OFFERED BY MR. ARCHER

MR. [BILL] ARCHER [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Archer moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 4210 be instructed not to agree to either those provisions in section 3001 of the Senate amendments which would impose a new tax rate of 36 percent on individuals, or those provisions in sections 3001 and 3002 of the House bill which would impose a new tax rate of 35 percent on individuals and increase the alternative minimum tax rate for individuals, as those provisions are committed to conference.

THE SPEAKER: The gentleman from Texas [Mr. Archer] will be recognized for 30 minutes, and the gentleman

from Illinois [Mr. Rostenkowski] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. Archer].

MR. ARCHER: Mr. Speaker, I yield myself such time as I may consume. . . .

PREFERENTIAL MOTION OFFERED BY  
MR. WALKER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer privileged motion.

The Clerk read as follows:

Mr. Walker moves to lay on the table the motion offered by the gentleman from Texas [Mr. Archer].

THE SPEAKER PRO TEMPORE: That is a preferential motion, but it is not in order until debate has been concluded.

Who yields time?

MR. ARCHER: Mr. Speaker, at this time I have no further requests for time, and I move the previous question.

MR. WALKER: Mr. Speaker, I renew my privileged motion.

MR. ROSTENKOWSKI: Mr. Speaker, how much time do I have remaining?

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Archer] yields back the balance of his time.

MR. ROSTENKOWSKI: Mr. Speaker, how much time does this gentleman from Illinois have?

THE SPEAKER PRO TEMPORE: The gentleman from Illinois [Mr. Rostenkowski] has 21 minutes remaining.

MR. ARCHER: Mr. Speaker, I did not yield back the balance of my time. I said I have no further requests for time and I move the previous question.

THE SPEAKER PRO TEMPORE: The gentleman cannot move the previous

7. Michael R. McNulty (N.Y.).

question while the gentleman from Illinois still has time.

MR. ARCHER: In that event, then, Mr. Speaker, I reserve the balance of my time.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Archer] reserves the balance of his time, which happens to be 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Rostenkowski]. . . .

MR. ARCHER: Mr. Speaker, may I ask if the gentleman from Illinois [Mr. Rostenkowski] has further requests for time?

MR. ROSTENKOWSKI: Mr. Speaker, I have no further requests for time.

MR. ARCHER: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I yield back the balance of my time.

MR. ROSTENKOWSKI: Mr. Speaker, I, too, yield back the balance of my time.

MR. WALKER: Mr. Speaker, I renew my preferential motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Walker moves to lay on the table the motion to instruct offered by the gentleman from Texas [Mr. Archer].

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Pennsylvania [Mr. Walker] to lay on the table the motion to instruct offered by the gentleman from Texas [Mr. Archer]. . . .

So the motion to table the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *Three-way Allocation of Debate Time on Motion To Instruct*

**§ 11.9 Where both the manager of the bill and the proponent of a motion to instruct conferees are in favor of the motion, the Chair allocates the time equally between three persons, the proponent of the motion, the Member handling the bill in the other party, and a Member who rises in opposition to the motion; and it is the proponent who has the right to close the debate.**

Rule XXVIII clause 1(b)<sup>(8)</sup> dictates the division of time to be applied to debate on a motion to instruct conferees. This was the allocation applied on Aug. 1, 1994,<sup>(9)</sup> when a motion to instruct was offered to H.R. 4506, the energy and water appropriations bill for fiscal year 1995.

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I offer a motion to instruct.

8. *House Rules and Manual* § 909a (1997).

9. 140 CONG. REC. 18860, 18866, 103d Cong. 2d Sess.



THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Myers of Indiana moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 4506 be instructed to insist upon the provisions contained in the House bill under the heading "General Science and Research Activities" that provide \$279,399,000 for high energy physics facility operating expenses.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana [Mr. Myers] will be recognized for 30 minutes.

For what purpose does the gentleman from Indiana [Mr. Sharp] rise?

MR. [PHILIP R.] SHARP [of Indiana]: Mr. Speaker, I rise in opposition to the motion.

THE SPEAKER PRO TEMPORE: Is the gentleman from Alabama [Mr. Bevill] in opposition to the motion?

MR. [TOM] BEVILL [of Alabama]: No, Mr. Speaker, I am supportive of the motion.

THE SPEAKER PRO TEMPORE: The Chair will divide the time in thirds, each Member receiving 20 minutes, one-third of the time.

The gentleman from Indiana [Mr. Myers] is recognized for 20 minutes.

MR. MYERS of Indiana: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I am going to use the 4 minutes I have remaining in order to close. I reserve the balance of my time.

10. Benjamin L. Cardin (Md.).

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The gentleman from Indiana [Mr. Myers] has the right to close.

MR. SHARP: Mr. Speaker, I yield 1 minute to the distinguished gentleman from Ohio [Mr. Fingerhut].

MR. [ERIC D.] FINGERHUT [of Ohio]: I thank the gentleman for yielding this time to me. . . .

### ***Right To Close Debate, Motion To Instruct***

**§ 11.10 The proponent of a motion to instruct conferees has the right to close debate thereon where debate is divided between the parties as provided in Rule XXVIII clause 1(b).**

The pertinent clause in Rule XXVIII<sup>(12)</sup> was adopted in the 101st Congress.<sup>(13)</sup> Before this amendment was included in the rule, debate on a motion to instruct was under the hour rule, controlled by the proponent.<sup>(14)</sup>

APPOINTMENT OF CONFEREES TO HOUSE AMENDMENTS TO SENATE AMENDMENT TO H.R. 3355

11. Alcee L. Hastings (Fla.).
12. Clause 1(b), *House Rules and Manual* § 909a (1997).
13. See H. Res. 5 at 135 CONG. REC. 72, 101st Cong. 1st Sess., Jan. 3, 1989.
14. See the proceedings at 140 CONG. REC. 8197, 8199, 103d Cong. 2d Sess., Apr. 21, 1994.

MR. [JACK] BROOKS [of Texas]: Madam Speaker, pursuant to House Resolution 401, I offer a motion.

The Clerk read as follows:

Mr. Brooks moves that the House insist on its amendments to the Senate amendment to the bill H.R. 3355 and request a conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The question is on the motion offered by the gentleman from Texas [Mr. Brooks].

The motion was agreed to.

MOTION TO INSTRUCT CONFEREES

MR. [BILL] MCCOLLUM [of Florida]: Madam Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. McCollum moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 3355 be instructed to insist on the provision of the House amendment that authorizes \$10.5 billion for grants for State prison construction and operation and agree to the provisions of the Senate that requires States to change their laws to require that defendants serve at least 85 percent of the sentence ordered.

THE SPEAKER PRO TEMPORE: The gentleman from Florida [Mr. McCollum] will be recognized for 30 minutes, and the gentleman from Texas [Mr. Brooks] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. McCollum].

15. Barbara B. Kennelly (Conn.).

MR. MCCOLLUM: Madam Speaker, I yield myself such time as I may consume.

PARLIAMENTARY INQUIRY

MR. MCCOLLUM: Madam Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MCCOLLUM: Madam Speaker, do I as the proponent of this motion have the right to close debate?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

*Debate on Motions To Instruct;  
Right To Close*

**§ 11.11 Where debate on a motion to instruct conferees is equally divided between the majority and the minority parties, the proponent of the motion has the right to close.**

When a motion to instruct conferees is offered in the House, the division of time is governed by Rule XXVIII clause 1(b).<sup>(16)</sup> While the rule does not address which Member has the right to close, the standard practice in the House is that the proponent of the motion has that right, as indicated by the

16. See *House Rules and Manual* § 909a (1997).

proceedings of Nov. 21, 1991,<sup>(17)</sup> shown in the following excerpt:

MOTION TO INSTRUCT CONFEREES  
OFFERED BY MR. SENSENBRENNER

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Sensenbrenner moves that the managers on the part of the House at the conference on the disagreeing vote of the two Houses on the bill H.R. 3371, be instructed to accept the Senate position on certain firearms provisions in the Senate-passed crime bill, S. 1241, namely sections 207 and 1213 of that bill.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman from Wisconsin [Mr. Sensenbrenner] will be recognized for 30 minutes, and the gentleman from California [Mr. Edwards] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. Sensenbrenner].

MR. SENSENBRENNER: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, am I correct that I have the right to close?

THE SPEAKER PRO TEMPORE: The gentleman from Wisconsin does have the right to close.

**§ 11.12 The proponent of a motion to instruct conferees has the right to close the debate on the motion.**

17. 137 CONG. REC. 33344, 33346, 102d Cong. 1st Sess.

18. Romano L. Mazzoli (Ky.).

On July 28, 1994,<sup>(19)</sup> immediately after the request to go to conference was agreed to, a motion to instruct the conferees to insist on a certain House provision submitted to conference was offered by a minority Member.<sup>(20)</sup> After the Chair<sup>(1)</sup> had announced the division of time between the proponent of the motion and the chairman of the House Subcommittee on District of Columbia Appropriations,<sup>(2)</sup> Mr. Walsh inquired of the Chair about the right to close the debate. Proceedings were as follows:

APPOINTMENT OF CONFEREES ON H.R. 4649, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1995; AND DISTRICT OF COLUMBIA SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT, 1994

MR. DIXON: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate

19. See 140 CONG. REC. 18405, 103d Cong. 2d Sess. (H.R. 4649).

20. James T. Walsh (N.Y.).

1. Ted Strickland (Ohio).

2. Julian C. Dixon (Calif.).

amendments, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. WALSH

MR. WALSH: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Walsh of New York moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4649, be instructed to insist on the House position on amendment numbered 16, reducing the D.C. budget by \$150 million.

THE SPEAKER PRO TEMPORE: The gentleman from New York [Mr. Walsh] will be recognized for 30 minutes, and the gentleman from California [Mr. Dixon] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York [Mr. Walsh].

PARLIAMENTARY INQUIRY

MR. WALSH: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALSH: Mr. Speaker, do we have the right to close debate?

THE SPEAKER PRO TEMPORE: The proponents of the motion will have the right to close the debate.

MR. WALSH: Mr. Speaker, I yield myself such time as I may consume.

### *Yielding for Amendment*

### § 11.13 A Member controlling the time for debate on his motion to instruct House managers at a conference loses the floor if he yields for an amendment.

On Feb. 8, 1965,<sup>(3)</sup> the following occurred after Mr. Robert H. Michel, of Illinois, offered a motion to instruct the House conferees on House Joint Resolution 234, which made supplemental appropriations for the Department of Agriculture:

MR. MICHEL: Mr. Speaker, I yield 5 minutes to another member of the subcommittee, the gentleman from Minnesota [Mr. Langen].

THE SPEAKER:<sup>(4)</sup> The gentleman from Minnesota is recognized for 5 minutes.

MR. [ODIN] LANGEN: Mr. Speaker, I offer an amendment.

THE SPEAKER: Does the gentleman from Illinois yield to the gentleman from Minnesota for the purpose of offering an amendment?

MR. MICHEL: If that is his desire, yes.

THE SPEAKER: The Chair will state that the gentleman from Illinois will lose the floor when he yields for that purpose.

MR. MICHEL: Then, I do not yield to the gentleman for that purpose.

THE SPEAKER: The gentleman from Illinois declines to yield to the gentleman from Minnesota for the purpose of offering an amendment.

3. 111 CONG. REC. 2092-99, 89th Cong. 1st Sess.

4. John W. McCormack (Mass.).

### *Effect of Defeat of Previous Question*

§ 11.14 If the previous question is voted down on a motion to instruct the managers on the part of the House, the motion is open to amendment and the Speaker may recognize a Member opposed to ordering the previous question to control the time and offer an amendment.

On May 29, 1968,<sup>(5)</sup> Mr. James A. Burke, of Massachusetts, offered a motion to instruct the House conferees on H.R. 15414, the Revenue and Expenditure Act of 1968. After the previous question had been ordered on this motion, Mr. Joe D. Waggoner, Jr., of Louisiana, raised this parliamentary inquiry:

MR. WAGGONER: Mr. Speaker, should the previous question be voted down would the motion be open to a preferential motion to amend and would of necessity the time be controlled by those in opposition to the previous question?

THE SPEAKER:<sup>(6)</sup> The previous question has already been ordered. If it had not been ordered and voted down, the answer to the parliamentary inquiry of

5. 114 CONG. REC. 15499, 15511, 90th Cong. 2d Sess.

6. John W. McCormack (Mass.).

the gentleman from Louisiana would be in the affirmative.

### *Control of Debate on Amendment to Motion To Instruct*

§ 11.15 Although the control of time for debate on a motion to instruct conferees is divided pursuant to Rule XXVIII clause 1(b),<sup>(7)</sup> if the previous question is not ordered at the conclusion of that debate, another Member may be recognized to offer an amendment to the original motion and is entitled to control and to allocate time for an undivided hour.

Pending the appointment of conferees on H.R. 4210, the Economic Growth Acceleration Act, a measure reported from the Committee on Ways and Means, a motion to instruct was offered by Mr. Bill Archer, of Texas, a member of the committee. After debate, a motion to lay the instruction on the table was rejected.

The chairman of the Committee on Ways and Means, who had controlled 30 minutes of debate time on the original motion to instruct, then offered an amend-

7. See *House Rules and Manual* § 909a (1997).

ment. The relevant proceedings of Mar. 18, 1992,<sup>(8)</sup> are shown below.

So the motion to table the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AMENDMENT OFFERED BY MR. ROSTENKOWSKI TO THE MOTION TO INSTRUCT OFFERED BY MR. ARCHER

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I offer an amendment to the motion to instruct.

The Clerk read as follows:

Amendment by Mr. Rostenkowski to the motion to instruct offered by Mr. Archer: In the motion offered by the gentleman from Texas strike all after "be instructed" and insert in lieu thereof "to include in the conference report, within the scope of conference, provisions to provide significant middle-class tax relief."

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> The gentleman from Illinois [Mr. Rostenkowski] is recognized for 1 hour. . . .

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. ARCHER: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 206, nays 200, not voting 28, as follows: . . .

So the amendment to the motion to instruct was agreed to. . . .

8. 138 CONG. REC. 6024, 6025, 102d Cong. 2d Sess.

9. Michael R. McNulty (N.Y.).

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct, as amended, offered by the gentleman from Texas [Mr. Archer].

The motion to instruct, as amended, was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER:<sup>(10)</sup> The Chair appoints the following conferees, and, without objection, reserves the authority to make additional appointments of conferees and to specify particular portions of the House bill and Senate amendment as the subject of various appointments: . . .

Conferees on H.R. 4210—Tax Fairness and Economic Growth Act: Messrs. Rostenkowski, Gibbons, Pickle, Rangel, Stark, Archer, Vander Jagt, and Crane.

There was no objection.

### *Debate Time on Amendment to Motion To Instruct*

**§ 11.16 The division of time for debate on a motion to instruct conferees (Rule XXVIII clause 1(b)) does not extend to debate on an amendment to such motion offered after the rejection of the previous question; for the proponent of the amendment to the motion is entitled to an hour under Rule XIV clause 2, the general hour rule of the House.**

10. Thomas S. Foley (Wash.).

The proceedings of Oct. 3, 1989,<sup>(11)</sup> show the control of debate on a motion to instruct and on an amendment to that motion.

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3026) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1990, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Is there objections to the request of the gentleman from California?

There was no objection.

MOTION OFFERED BY MR. GREEN

MR. [S. WILLIAM] GREEN [of New York]: Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

Mr. Green moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill H.R. 3026, be instructed to agree to the amendment of the Senate numbered 3.

THE SPEAKER PRO TEMPORE: The gentleman from New York [Mr. Green] is recognized for 30 minutes in support of his motion. . . .

11. 135 CONG. REC. 22859, 22862, 22863, 101st Cong. 1st Sess.

12. William J. Hughes (N.J.).

MR. GREEN: Mr. Speaker, I move the previous question on the motion to instruct. . . .

THE SPEAKER PRO TEMPORE: The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it. . . .

The vote was taken by electronic device, and there were—yeas 193, nays 222, not voting 17. . . .

PARLIAMENTARY INQUIRY

MR. DIXON: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DIXON: Mr. Speaker, I understand now that the gentleman from California [Mr. Dannemeyer] intends to offer an amendment to the motion offered by the gentleman from New York [Mr. Green].

My question is: Under the offering will I receive part of the time?

THE SPEAKER PRO TEMPORE: The Chair would state to the gentleman from California [Mr. Dixon] that 1 hour would be allotted to the gentleman from California [Mr. Dannemeyer]. He would have to yield time to the gentleman from California [Mr. Dixon].

MR. DIXON: Mr. Speaker, if I understand, it all goes to the gentleman from California [Mr. Dannemeyer], and he can yield opponents time. . . .

The Clerk read as follows:

Amendment offered by Mr. Dannemeyer to the motion to instruct: At the end of the pending motion, strike the period, insert a semicolon, and add the following language: “; *Provided further* that the conferees be

instructed to agree to the provisions contained in Senate amendment numbered 22.”

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Dannemeyer] is recognized for 1 hour.

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, I yield one-half of the time to the gentleman from California [Mr. Dixon], for purposes of debate only.

PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DANNEMEYER: Mr. Speaker, if this motion to instruct now pending before the House is adopted, would it have the effect of amending the previous motion to instruct that was being considered and offered by the gentleman from New York [Mr. Green] so that, if this motion offered by the gentleman from California at this time is adopted, the House would then be voting on the contents of the motion offered by the gentleman from New York [Mr. Green]?

THE SPEAKER PRO TEMPORE: The gentleman from California [Mr. Dannemeyer] is correct. The vote would then be on the motion to instruct offered by the gentleman from New York [Mr. Green], as amended.

MR. DANNEMEYER: Mr. Speaker, on that I reserve the balance of my time, and I ask for an aye vote on my amendment to the motion to instruct.

**§ 11.17 Although control of time for debate on a motion**

**to instruct conferees is divided equally between majority and minority parties pursuant to Rule XXVIII, where the previous question is not ordered on the motion to instruct, an ensuing hour is under the undivided control of a Member recognized by the Chair as leading the opposition to ordering the previous question, and that Member may then offer an amendment to the original motion to instruct.**

The original motion to instruct conferees on the Omnibus Budget Reconciliation Act of 1994 was offered by the ranking member of the Budget Committee, Mr. John R. Kasich, of Ohio. When the previous question on that motion failed to gain a majority, the following proceedings ensued, as shown in the Record of July 14, 1993.<sup>(13)</sup>

So the previous question was not ordered.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRIES

MR. KASICH: Mr. Speaker, I have a parliamentary inquiry.

13. 139 CONG. REC. 15668-70, 103d Cong. 1st Sess.



THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The gentleman will state it.

MR. KASICH: Mr. Speaker, since the motion on the previous question was defeated, then the gentleman would be allocated how much time and would I be able to receive part of that time, since he is amending my motion?

THE SPEAKER PRO TEMPORE: The gentleman would be entitled to 1 hour and the yielding of time would be at his discretion. The gentleman from Ohio would not automatically be entitled to time.

MR. [MARTIN O.] SABO [of Minnesota]: Mr. Speaker, I will yield to the gentleman from Ohio more time than we take.

MR. KASICH: Mr. Speaker, would the gentleman from Minnesota yield me an equal amount of time in order to present the case against his amending my motion?

THE SPEAKER PRO TEMPORE: That is not a parliamentary inquiry.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, in the case of the previous debate just completed, the 1 hour of time, how was the time allocated?

THE SPEAKER PRO TEMPORE: It was allocated 30 minutes on each side.

MR. WALKER: Was that done by virtue of the amendment?

THE SPEAKER PRO TEMPORE: It was done pursuant to the rules of the House. Under clause 1(b) of rule

XXVIII, the time for debate on the original motion was equally divided. Recognition after the rejection of the motion for the previous question, however, is under the hour rule, and the Member recognized for that hour may yield time at his discretion.

MR. WALKER: So it would have to be a matter of courtesy to this side for him to give us an equal amount of time; is that correct?

THE SPEAKER PRO TEMPORE: The Chair has stated what the rules are.

AMENDMENT OFFERED BY MR. SABO AS A SUBSTITUTE FOR THE MOTION TO INSTRUCT OFFERED BY MR. KASICH

MR. SABO: Mr. Speaker, I offer an amendment as a substitute for the motion to instruct.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Sabo as a substitute for the motion to instruct offered by Mr. Kasich:

In lieu of the instructions in the motion offered by Representative Kasich, insert the following:

"I move that the Managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to H.R. 2264 be instructed to accept the higher thresholds on the treatment of Social Security benefits in section 8215 of the Senate amendment."

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota [Mr. Sabo] is recognized for 1 hour. . . .

PARLIAMENTARY INQUIRY

MR. WALKER: Mr. Speaker, I have a parliamentary inquiry.

14. Michael R. McNulty (N.Y.).

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, it is very difficult to hear in the House right now. Do I understand the substance of the amendment before us is to strike the language of Kasich and then replace half the language of Kasich by amendment?

THE SPEAKER PRO TEMPORE: The motion was just reported to the House.

MR. WALKER: Mr. Speaker, it was very difficult to hear it.

THE SPEAKER PRO TEMPORE: Without objection, the Clerk will report the motion.

The Clerk reread the motion.

THE SPEAKER PRO TEMPORE: The Chair will not further characterize it.

MR. WALKER: Mr. Speaker, so the effect of the amendment is to strike the spending increase portions of the Kasich budget?

THE SPEAKER PRO TEMPORE: The Chair will not further characterize the motion.

The gentleman from Minnesota [Mr. Sabo] is recognized for 1 hour. . . .

MR. SABO: Mr. Speaker, I yield back the balance of my time and move the previous question on the amendment and on the motion to instruct.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the amendment offered by the gentleman from Minnesota [Mr. Sabo] as a substitute for the motion to instruct offered by the gentleman from Ohio [Mr. Kasich]. . . .

So the amendment offered as a substitute for the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct offered by the gentleman from Ohio [Mr. Kasich], as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

#### RECORDED VOTE

MR. WALKER: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 415, noes 0, not voting 19. . . .

### *Effect of Rejecting Previous Question on Motion To Instruct*

**§ 11.18 After rejection of a motion for the previous question on a motion to instruct conferees, the Member who led the opposition to the ordering of the previous question, as determined by the Speaker, is recognized for a full hour.**

The original motion to instruct conferees had been to insist on certain House provisions under the heading "General Science and Research Activities." Mr. Philip R. Sharp, of Indiana, had argued for a motion to instruct which preserved another House provision which terminated funding for certain projects—the Advanced

Liquid Metal Reactor Program—among others. His amendment to the original motion did not eliminate the Myers' instruction but added further instructions at the end thereof. Proceedings showing the recognition which followed rejection of the previous question are carried here.<sup>(15)</sup>

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion to instruct. . . .

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it. . . .

The vote was taken by electronic device, and there were—yeas 171, nays 209, not voting 54. . . .

So the previous question was not ordered.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. SHARP TO THE MOTION TO INSTRUCT OFFERED BY MR. MYERS OF INDIANA

MR. SHARP: Mr. Speaker, I offer an amendment to the motion to instruct.

THE SPEAKER PRO TEMPORE: The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Sharp to the motion to instruct offered by

15. See 140 CONG. REC. 18868, 18869, 103d Cong. 2d Sess., Aug. 1, 1994.

16. Alcee L. Hastings (Fla.).

Mr. Myers of Indiana: Insert before the period at the end of the following: and to insist upon the provisions contained in the House bill that provide funds for the Advanced Liquid Metal Reactor, the Integral Fast Reactor, and the Actinide Recycle Program only for purposes of program termination.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana [Mr. Sharp] is recognized.

MR. SHARP: Mr. Speaker, let me clarify for Members of the House, we do not plan to take any more time on the debate of the issue. We had an hour debate on this. The distinguished chairman of the committee and the ranking minority member agrees that we will not further debate the issue this evening, but proceed to the vote.

Mr. Speaker, this is the motion to instruct that the House stay with its position to terminate the advanced liquid metal reactor that it adopted in the regular order of business.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the amendment and on the motion to instruct.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the amendment offered by the gentleman from Indiana [Mr. Sharp] to the motion to instruct offered by the gentleman from Indiana [Mr. Myers].

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

MR. SHARP: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: All those in favor of taking the vote by the

yeas and nays will rise and remain standing.

MR. SHARP: Mr. Speaker, I withdraw my demand for the yeas and nays.

The amendment was agreed to.

## § 12. Binding Effect and Scope of Instructions; Violation of Instructions

### *Application to Senate Conferrees*

#### § 12.1 Instructions of the House apply only to the conferees on the part of the House and do not apply to the conferees of the Senate.

On July 12, 1946,<sup>(17)</sup> Mr. Francis H. Case, of South Dakota, made a point of order in regard to the conference report on H.R. 6777, the 1947 government corporations appropriation bill.

MR. CASE of South Dakota: Mr. Speaker, it is my recollection that at the time this conference report was before the House previously a motion was made by the gentleman from Pennsylvania [Mr. Rich] instructing the conferees to disagree to the Senate amendment and insist upon our position. I have been told inferentially that at the conference no attempt was made

17. 92 CONG. REC. 8809, 8810, 79th Cong. 2d Sess.

to have the other body vote upon the disagreement. At least I have found no record of a vote by the other body. Under the precedents of the House, when one body proposes an amendment and it subsequently is taken to the other body and there is disagreed to, in comity the body proposing the matter should at least take a vote upon the proposition or recede from its position. It seems reasonable that the other body would do so, if the conferees were to follow the instructions given them. Consequently, I make the point of order that the conferees have disregarded their instructions and exceeded their authority in bringing the matter back to the House for a vote before it has been considered by the other body.

THE SPEAKER:<sup>(18)</sup> Of course, the instructions of the House could apply only to the conferees on the part of the House. They could not apply to the conferees on the part of the Senate. The Chair overrules the point of order.<sup>(19)</sup>

### *Advisory Nature of Instructions*

#### § 12.2 Motions to instruct conferees are in the nature of advisory instructions to the managers on the part of the House; they are not binding in a strict sense, since the House, by independent action, cannot compel specific

18. Sam Rayburn (Tex.).

19. See also 79 CONG. REC. 12272, 74th Cong. 1st Sess., Aug. 1, 1935.

**performance on the part of Senate conferees.**

On May 29, 1968,<sup>(20)</sup> after Mr. Emanuel Celler, of New York, asked unanimous consent to send H.R. 5037, the Law Enforcement and Criminal Justice Assistance Act of 1967, to conference, Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard H. Poff, of Virginia, for the purpose of posing a parliamentary inquiry.

MR. POFF: If the motion to instruct the conferees is adopted, is that instruction binding upon the House conferees, or is it in the nature of an advisory instruction only?

THE SPEAKER: The construction is that it is in the nature of an advisory instruction, because the House cannot instruct the managers on the part of the Senate.

***Motion To Instruct Conferees Is "Advisory"***

**§ 12.3 The motion to instruct conferees is advisory only, and failure of the House managers at the conference to adhere to instructions of the House does not render the report subject to a point of order; and the Chair does**

20. 114 CONG. REC. 15499, 90th Cong. 2d Sess.

**not respond to a parliamentary inquiry whether a hypothetical motion would be "within the scope of conference."**

After conferees had been appointed for more than 20 calendar days of the Department of Defense Authorization Act of 1982, a motion to instruct was offered under Rule XXVIII clause 1(c).<sup>(1)</sup> A motion to table having been defeated, several parliamentary inquiries were directed to Speaker Pro Tempore James C. Wright, Jr., of Texas.<sup>(2)</sup>

MRS. [PATRICIA] SCHROEDER [of Colorado]: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mrs. Schroeder moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendments to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

1. *House Rules and Manual* § 910 (1997).

2. 127 CONG. REC. 26046, 26049, 97th Cong. 1st Sess., Oct. 29, 1981.

MOTION TO TABLE OFFERED BY  
MR. DICKINSON

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, I offer a motion to table.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Dickinson moves to lay on the table the motion of the gentlewoman from Colorado.

THE SPEAKER PRO TEMPORE: The motion is not debatable.

The question is on the motion to table offered by the gentleman from Alabama (Mr. Dickinson).

The question was taken; and on a division (demanded by Mr. Dickinson) there were—yeas 28, nays 18.

MRS. SCHROEDER: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present. . . .

So the motion to table was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The gentlewoman from Colorado (Mrs. Schroeder) is recognized for 1 hour.

MRS. SCHROEDER: Mr. Speaker, I yield myself such time as I may consume.

#### PARLIAMENTARY INQUIRY

MR. DICKINSON: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, I would like to ask if my understanding of the parliamentary procedure is correct.

The gentlewoman from Colorado has succeeded against the motion to table, in which case she has a privileged motion now pending. It is my understanding she will have 1 hour to debate the motion now pending, and is in control of that entire time. Is this correct?

THE SPEAKER PRO TEMPORE: The gentleman stated the issue correctly. . . .

MR. [SAMUEL S.] STRATTON [of New York]: Mr. Speaker, the motion offered by Mrs. Schroeder was that the managers on the part of the House at the conference of the disagreeing votes of the two Houses to the bill S. 815 be instructed to agree to the provisions contained in section 922 of the Senate bill.

My inquiry is to what extent does that motion allow the House conferees to deviate in any way from the specific provisions of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair advises the gentleman that no point of order would lie against the conference report if the House conferees do not follow the instructions of the House, should the House agree to the motion of the gentlewoman from Colorado.

MR. STRATTON: In other words, we could accept a provision on limiting cost growth that does not follow the precise wording of section 922 of the Senate bill?

THE SPEAKER PRO TEMPORE: The Chair is not going to rule on what will be in the scope of the conference. The

Chair is advising only as to the effect of the motion.

MR. STRATTON: Does this mean, Mr. Speaker, that if the gentleman from Alabama and I, who have been working on a substitute for the Nunn amendment, come up with something that does not have one or two of the provisions of the Nunn amendment in it, we are not in violation of the motion offered by the gentlewoman from Colorado?

THE SPEAKER PRO TEMPORE: The Chair would restate the parliamentary situation; that no point of order would lie for the reason that the conferees have not followed the instructions should the House adopt the motion of the gentlewoman from Colorado.

The motion to instruct is advisory.

**§ 12.4 Instructions by the House to its conferees are advisory in nature and are not binding as a limitation on their authority, and there is no rule of the House requiring conferees to seek further instructions if they are unable to comply with instructions suggested to them.**

On June 8, 1972,<sup>(3)</sup> Mr. Joe D. Waggonner, Jr., of Louisiana, made a point of order against the conference report on S. 659, the Education Amendments of 1972.

3. 118 CONG. REC. 20282, 92d Cong. 2d Sess.

MR. WAGGONNER: Mr. Speaker, this point of order is quite simple. On two occasions the House of Representatives has by overwhelming votes instructed and given a mandate to the conferees from the House of Representatives on this particular legislation. I submit without any further explanation that they have violated the instructions of the House of Representatives, and therefore have violated, Mr. Speaker, the rules of the House of Representatives.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, will the gentleman yield?

MR. WAGGONNER: I am happy to yield to the gentleman from Missouri.

MR. HALL: Is it not the fact that it is stated in Jefferson's Manual when the rules of instructions are exceeded by the managers on the part of this body that the remedy lies in returning to the body for instruction, and thus another violation, as clearly set forth in the report, has been approved?

MR. WAGGONNER: The gentleman is exactly right.

THE SPEAKER:<sup>(4)</sup> The Chair is ready to rule.

The gentleman from Louisiana (Mr. Waggonner) makes a point of order against the conference report on the bill S. 659 on the ground that the managers on the part of the House have not adhered to the instructions imposed upon them by the House on March 8, 1972, and again on May 11, 1972.

The Chair has examined the precedents on this question and they consistently indicate, although conferees dis-

4. Carl Albert (Okla.).

regard the instructions of the House, the Speaker cannot for that reason rule the conference report out of order. The Chair would suggest that the gentleman examine Hinds' Precedents, volume V, 6395 and Cannon's Precedents, volume VIII, 3246.

For this reason, the Chair overrules the point of order. . . .

MR. WAGGONNER: Do not the rules of the House of Representatives provide that when the House has given instructions to its conferees on any legislative proposal, if they cannot comply with those instructions, they are required to come back to the House of Representatives for further instruction?

THE SPEAKER: The Chair knows of no rule that makes such provision.

***Instructions Neither Binding  
Nor Restrictive on Conferees***

**§ 12.5 Instructions in a motion to recommit a conference report are not binding, nor do they limit the issues which can be revisited in the conference: therefore all matters committed to conference are open to further negotiation when the conferees of the House and Senate meet pursuant to the recommittal motion.**

On Apr. 21, 1988,<sup>(5)</sup> the motion to recommit, offered by Mr. Robert

5. 134 CONG. REC. 8198, 100th Cong. 2d Sess.

H. Michel, of Illinois, pursuant to the rule adopted earlier that day, evoked the following parliamentary inquiry by Mr. William D. Ford, of Michigan, with respect to the authority of the conferees if the motion were to be agreed to.

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I move the previous question on the conference report.

MOTION TO RECOMMIT OFFERED BY  
MR. MICHEL

MR. MICHEL: Mr. Speaker, pursuant to the rule, I offer a motion to recommit with instructions.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Michel moves to recommit the conference report to accompany the bill, H.R. 3, to the Committee of Conference with instructions that the managers on the part of the House promptly report the conference report back to the House without the provisions of subtitle E of title VI (sec. 6401-6410) entitled Advance Notification of Plant Closings and Mass Layoffs.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. MICHEL: I am, in its present form, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 430, the gentleman from Illinois [Mr. Michel] will be recognized for 10 minutes and the

6. John P. Murtha (Pa.).



gentleman from Michigan [Mr. Ford], a Member opposed, will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Michel].

PARLIAMENTARY INQUIRY

MR. FORD of Michigan: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FORD of Michigan: Mr. Speaker, I would like to pose a parliamentary inquiry. I would like to understand, because in my 24 years in the House I have never seen a motion to recommit a conference report with instructions to pass.

So I am trying to grasp what the rules provide.

Am I correct, Mr. Speaker, that our parliamentary situation is that if a motion with any instructions is passed, that the instruction is a nonbinding suggestion, not to this body, not to this House or to the chairman of the committee of original jurisdiction, Mr. Rostenkowski, but to the conference of the House and Senate and that would then automatically commit the entire bill to the conference between the House and the Senate which could either disregard or adopt the conference instruction or indeed consider any other matter that would then be before that conference to change the conference report as it comes to us now.

THE SPEAKER PRO TEMPORE: The whole matter would go back to conference.

MR. FORD of Michigan: I thank the Speaker.

*Conference Reports in Violation of Instructions*

**§ 12.6 The Speaker may not rule out of order a conference report as in contravention of instructions imposed on House conferees, as it is for the House to determine by its vote on the report whether its managers have disregarded their instructions.**

On June 8, 1972,<sup>(7)</sup> the following occurred in regard to the conference report on S. 659, the education amendments of 1972:

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Speaker, this point of order is quite simple. On two occasions the House of Representatives has by overwhelming votes instructed and given a mandate to the conferees from the House of Representatives on this particular legislation. I submit without any further explanation that they have violated the instructions of the House of Representatives, and therefore have violated, Mr. Speaker, the rules of the House of Representatives. . . .

THE SPEAKER:<sup>(8)</sup> The Chair is ready to rule.

The gentleman from Louisiana (Mr. Waggonner) makes a point of order against the conference report on the

7. 118 CONG. REC. 20282, 92d Cong. 2d Sess.

8. Carl Albert (Okla.).

bill S. 659 on the ground that the managers on the part of the House have not adhered to the instructions imposed upon them by the House on March 8, 1972, and again on May 11, 1972.

The Chair has examined the precedents on this question and they consistently indicate, although conferees disregard the instructions of the House, the Speaker cannot for that reason rule the conference report out of order. The Chair would suggest that the gentleman examine Hinds' Precedents, volume V, 6395 and Cannon's Precedents, volume VIII, 3246.

For this reason, the Chair overrules the point of order.

### *Difference Between "Free" and "Instructed" Conferees*

**§ 12.7 While "instructed" conferees are not "free," they are not bound by a vote of the House to instruct and a point of order against a report which does not follow the instructions does not lie.**

The discussion which occurred on June 17, 1977,<sup>(9)</sup> following debate on a motion to instruct conferees is carried here.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I move the previous question on the motion.

9. 123 CONG. REC. 19697, 19698, 95th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Chair is going to make a further comment with regard to the parliamentary inquiry that was directed to the Chair by the gentleman from Iowa (Mr. Harkin). If the gentleman from California will withhold the motion for the previous question, the Chair wishes to clarify one apparent misconception.

Subsequent to the Chair's reply to the gentleman from Iowa, the gentleman made reference to the conferees as being free conferees. The Chair would point out there is, indeed, a distinction between free conferees and instructed conferees. If the motion to instruct should prevail, the conferees would not be in the purest sense free conferees. They would be instructed conferees. But notwithstanding the fact that were such conferees, as conferees have in the past, to report back a conference report not completely in conformity with those instructions, the conferees' report would not, for that reason, be subject to a point of order.

MR. [TOM] HARKIN [of Iowa]: If I understand correctly, the Chair is saying that, if the motion carries, that the conferees, while not being free, while they are instructed, still if they reach language which is different than that contained in the motion offered by the gentleman from California and bring this back as part of the conference report to the floor of the House, that a point of order cannot be sustained against that because the language is different.

THE SPEAKER PRO TEMPORE: That is correct. The Chair is simply saying that there is a distinction between free con-

10. James C. Wright, Jr. (Tex.).

feres and instructed conferees. The Chair is further saying that, under the precedents, the conference committee report would not be subject to a point of order and to be ruled out of order simply on the ground that it had varied from the instructions given. The House, under such circumstances, could perhaps recommit or reject a conference report.

MR. HARKIN: Under other circumstances, if I might inquire further of the Chair; if, in fact, this motion carries and it contains an instruction to the conferees to insist on this language, that it does not in any way clamp them in irons. I wish to make this distinction.

THE SPEAKER PRO TEMPORE: The Chair would not desire to respond in the sense of interpreting or monitoring the individual consciences of individual conferees, nor their individual concepts of their responsibilities to carry out instructions given by the House. That is beyond the purview of the Chair.

#### PARLIAMENTARY INQUIRY

MR. [J. WILLIAM] STANTON [of Ohio]: Mr. Speaker, a parliamentary inquiry in regard to the ruling or observations the Chair just made.

I want to make it clear to the gentleman from Iowa, sometimes I get the impression we want to back the motion and do not want to back the motion to lock the conferees.

MR. ROUSSELOT: That is not a parliamentary inquiry.

MR. STANTON: I am asking it now, if the gentleman will wait just a minute.

I want to know, Mr. Speaker, under the ruling the Chair just made, whether or not the gentleman from

Maryland (Mr. Bauman) was not right that in his experience in the House that more or less, on a motion to instruct given the conferees, there is a strong moral obligation to stick with it word for word. I mean, it may be a personal opinion, but the few times that this has ever come up in the past, you definitely tie one hand behind you.

MR. ROUSSELOT: That is not a parliamentary inquiry. There are no hands tied behind your back.

THE SPEAKER PRO TEMPORE: The Chair will respond. It is not the prerogative of the Chair to interpret the moral responsibilities of Members of Congress. They would have their individual responsibilities. They would be instructed conferees, provided instructions by a vote of the House, and would be under some obligation to consider that instruction.

The Chair simply responded to the question propounded by the gentleman from Iowa to the effect that a conference report, though it might vary from those instructions, would not for that reason alone be subject to a point of order.

MR. HARKIN: I thank the Chair.

MR. ROUSSELOT: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct.

### *Instructions Dealing With Specific Paragraphs of Amendment*

#### **§ 12.8 The House may instruct its conferees to insist upon a portion of a House amend-**

**ment to a Senate bill sent to conference.**

On July 24, 1973,<sup>(11)</sup> after the House agreed to a motion to send S. 1888, the Agriculture and Consumer Protection Act of 1973, to conference, Mr. Robert D. Price, of Texas, offered a motion to instruct the House conferees.

MR. PRICE of Texas: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Price of Texas moves that the managers on the part of the House, at the disagreeing votes of the two Houses on the bill S. 1888, be instructed to insist on the provisions of paragraph (26) of section 1 of the House amendment at page 38, lines 1 through 8 which read as follows:

“(B) by adding a new section 703 as follows:

“Sec. 703. Title IV of such Act as amended by adding at the end thereof the following:

“Sec. 411. No agricultural commodities shall be sold under title I or title III or donated under title II of this Act of North Vietnam, unless by an Act of Congress enacted subsequent to July 1, 1973, assistance to North Vietnam is specifically authorized.” . . .

THE SPEAKER:<sup>(12)</sup> The question is on the motion offered by the gentleman from Texas (Mr. Price) to instruct conferees. . . .

The vote was taken by electronic device; and there were—yeas 371, nays 35, not voting 27. . . .

So the motion was agreed to.

***Motion To Instruct Conferees To Retreat From House Position***

**§ 12.9 Form of motion to instruct conferees under Rule XXVIII clause 1(c) to retreat from a House position submitted to conference.**

H.R. 3355, the Omnibus Crime Control and Safe Streets Act of 1994 had been “in conference” since May 19, 1994,<sup>(13)</sup> the date the Senate disagreed to the House amendments to a Senate amendment and agreed to the House’s request for a conference. Mr. McCollum’s motion to instruct under the “20-day rule” was thus timely.<sup>(14)</sup>

MOTION TO INSTRUCT CONFEREES ON  
H.R. 3355, VIOLENT CRIME CONTROL  
AND LAW ENFORCEMENT ACT OF 1994

MR. [BILL] MCCOLLUM [of Florida]: Mr. Speaker, as I announced yesterday, I offer a privileged motion to instruct conferees on the bill (H.R. 3355) to amend the Omnibus Crime Control and

11. 119 CONG. REC. 25539–41, 93d Cong. 1st Sess.

12. Carl Albert (Okla.).

13. See 140 CONG. REC. 11102, 103d Cong. 2d Sess.

14. See 140 CONG. REC. 13208, 103d Cong. 2d Sess., June 16, 1994.

Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. McCollum moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the bill H.R. 3355 be instructed not to agree to Title IX, relating to racially discriminatory sentencing, of the House amendment or to any similar provision.

***Form of Motion To Instruct Regarding Specific Numbered Instructions Regarding Amendments to General Appropriation Bill***

**§ 12.10 An example of a motion to instruct conferees on a general appropriation bill to:**  
**(1) insist on disagreement to any Senate amendment adding new or increased rates of user fees to the bill; and (2) to insist on three specified Senate amendments.**

On Aug. 16, 1994,<sup>(16)</sup> H.R. 4539, the Treasury and Post Office ap-

15. Robert E. Wise, Jr. (W. Va.).

16. 140 CONG. REC. 22565, 103d Cong. 2d Sess.

propriations bill for fiscal 1995, had been "blue-slipped" when the House first received the Senate amendments and its request for conference. The Senate had modified one of its amendments and again insisted and asked a conference. Certain of the remaining Senate amendments were argued by some to violate the Constitutional prerogative of the House to originate revenue measures. As to several of the amendments, the Committee on Ways and Means saw no problem. Rather than invoking the constitutional prerogative a second time, the House opted to send the measure to conference, voicing its opposition to the offending amendments by the motion to instruct conferees.

The motion to instruct and a portion of debate on the motion are carried here.

MR. [STENY H.] HOYER [of Maryland]:  
 Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4539) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. LIGHTFOOT

MR. [JIM] LIGHTFOOT [of Iowa]: Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

Mr. Lightfoot moves that the managers on the part of the House, at the conference of the disagreeing votes on the bill, H.R. 4539, be instructed to insist on disagreement to provisions contained in any Senate amendment regarding the imposition of new or increased user fees, collections or taxes which may be established by the Secretary of the Treasury and which are authorized by law, to insist on disagreement to the amendment to the last proviso set forth in Senate amendment numbered 16, to insist on disagreement to the Senate amendment numbered 26, and to insist on disagreement to the Senate amendment numbered 29. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Lightfoot] will be recognized for 30 minutes, and the gentleman from Maryland [Mr. Hoyer] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Iowa [Mr. Lightfoot].

MR. LIGHTFOOT: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have a motion to instruct conferees on items which have been considered by the subcommittee, the full Committee on Appropriations,

and the House. I think the motion is very straightforward. It instructs conferees to reject new user fees proposed by the Treasury Department. Our subcommittee chose to reject the proposed user fees, totaling some \$258 million. They include: a \$20 fee for tax filers entering into an installment agreement with IRS to pay taxes owed over time; a \$12 fee charged to those persons who request photocopies of tax returns from the IRS; an \$8 fee imposed to transmitters of electronic returns; and an increase in the merchandise processing fee and the special occupational tax assessed by the Customs Service and the Bureau of Alcohol, Tobacco and Firearms.

Frankly, many of us feel more user fees are not the answer—they are, quite simply, a roundabout way to increase taxes.

The Senate, however, has included language permitting Treasury to retain the proposed user fees if they are increased. While the language doesn't authorize any new fees, it gives the IRS clear incentive to raise and implement fees on taxpayers.

### *Instructions Permitting Closed Sessions*

**§ 12.11 A motion to instruct the managers on the part of the House under Rule XXVIII clause 1(c) may include instructions to insist upon holding conference in executive session if so desired.**

17. Ronald D. Coleman (Tex.).

On Aug. 1, 1935,<sup>(18)</sup> Mr. George Huddleston, of Alabama, offered a motion to instruct the House conferees on S. 2796, the Public Utilities Act of 1935.

MR. HUDDLESTON: Mr. Speaker, I offer the following motion.

The Clerk read as follows:

Motion to instruct conferees by Mr. Huddleston: Moved that managers on the part of the House appointed upon request of the Senate for a conference upon the disagreeing votes of the House and the Senate on the amendment adopted by the House to S. 2796 be, and they are hereby, instructed as follows:

That it is the will of the House that its managers insist upon a conference being held under just and fair conditions, such as will insure careful, calm, and deliberate consideration and will tend to promote an agreement by the conference, and that in the performance of their duties as such managers it is and shall remain the right and privilege of the managers on the part of the House, if in their judgment it is desirable in promoting the aforesaid ends, that such conference be held without the presence thereat of any person not a manager upon the part of either House or Senate.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that the resolution is out of order; that any resolution that would impugn the motives of the Senate conferees as being unfair is out of order. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I make the further

point of order that the House is authorized to instruct conferees only on the matters in disagreement between the two bodies, and this is an attempt to go beyond that and regulate the conduct of the conferees on the part of the Senate. For that reason it is not in order and not privileged. . . .

THE SPEAKER:<sup>(19)</sup> The Chair is ready to rule. The gentleman from Alabama [Mr. Huddleston] has offered a motion to instruct the conferees on the part of the House at the conference on the bill S. 2796, which has been read at the desk. To that motion the gentleman from Texas [Mr. Blanton] and the gentleman from Mississippi [Mr. Rankin] raised points of order. The question as to whether the conferees shall be instructed in the manner proposed is a matter which must appeal to each individual Member of the House. The conferees are the agents of the House, and under this rule, as the Chair construes it, they are subject to its authority after 20 days have elapsed, so far as the matter of instruction or a motion to discharge and appoint new conferees are concerned. There is nothing in this motion, as the Chair reads it, which refers to the Senate conferees. Of course, this House has nothing to do with the Senate conferees, and this motion does not seek to interfere with their method or with what they do. It simply applies to the agents of the House, those who have been appointed managers on the part of the House to represent the House in the deliberations in the conference on the bill S. 2796. The Chair calls attention of the

18. 79 CONG. REC. 12272, 74th Cong. 1st Sess.

19. Joseph W. Byrns (Tenn.).

House to the fact that the motion is drawn so as to provide that in the performance of their duties as managers—

It is and shall remain the right and privilege of the managers on the part of the House, if in their judgment it is desirable in promoting the aforesaid ends, that such conference be held without the presence thereof of any person not a manager on the part of either House or Senate.

The Chair is not called upon, and it is not within the province of the Chair to pass upon the question of whether a motion of this kind should be adopted at this time. The Chair does hold that this House has a right to dictate to its own managers their method of procedure in the conference, which is to be subsequently held. The Chair, therefore, overrules the point of order.<sup>(20)</sup>

### *Limitations on Scope of Instructions*

#### **§ 12.12 Instructions to managers of a conference may not direct them to do that which they might not otherwise do.**

On May 9, 1955,<sup>(1)</sup> after Mr. Thomas J. Murray, of Tennessee, called up the conference report on S. 1, the Postal Field Service

20. Rule XXVIII clause 6, *House Rules and Manual* § 913d (1997), now addresses the method of closing a conference.

1. 101 CONG. REC. 5846, 5871, 84th Cong. 1st Sess.

Compensation Act of 1955, the following occurred:

MR. [EDWARD H.] REES of Kansas: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(2)</sup> Is the gentleman opposed to the conference report?

MR. REES of Kansas: I am, Mr. Speaker.

THE SPEAKER: The gentleman qualifies. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Rees of Kansas moves to recommit the bill S. 1 as amended to the committee of conference with instructions to report back an agreement which would include the provisions of H.R. 4644 as reported by the House Post Office and Civil Service Committee, with the additional provision that the 6-percent increase be retroactive to March 1, 1955.

MR. MURRAY of Tennessee: Mr. Speaker, I make a point of order against the motion to recommit. As I understand, the motion instructs the conferees to do something less than the House voted. We are bound to follow the instructions of the House in the conference. That matter is not even in conference. . . .

THE SPEAKER: The Chair is ready to rule. The Chair thinks that this question has been passed upon many times in the past. An exactly similar question was raised on September 15, 1922, when a very distinguished gentleman by the name of John N. Garner made a similar motion to recommit with instructions to the conferees to lower the

2. Sam Rayburn (Tex.).



rates contained in either the bill or in the amendment. Mr. Edward Taylor, of the State of Colorado, made the point of order. Speaker Gillette sustained the point of order, and that decision may be found in Cannon's Precedents, volume VIII, section 3244. It is exactly on all fours with this. Therefore, the Chair sustains the point of order.

***Motion To Instruct To Add Provisions Not in Conference***

**§ 12.13 A motion to instruct conferees is subject to a point of order if the instructions call for agreement to matter not committed to conference; and the Speaker sustained a point of order against a motion instructing the conferees to insist on positions not before the conferees on the Crude Oil Windfall Profit Tax Act of 1979.**

On Feb. 28, 1980,<sup>(3)</sup> where conferees on H.R. 3919, the Crude Oil Windfall Profit Tax Act of 1979 had been appointed for more than 20 legislative days without filing a report, a motion to instruct was offered by Mr. Joseph L. Fisher, of Virginia. The motion directed the House conferees to insist on a mandatory allocation of the reve-

3. 126 CONG. REC. 4304, 4305, 96th Cong. 2d Sess.

nues from the crude oil profit tax for specified purposes, some of which were not committed to conference by the Senate amendment. The point of order, a portion of the argument and the Speaker's ruling are carried here.

MOTION TO INSTRUCT CONFEREES REGARDING NET REVENUES ON SENATE AMENDMENTS TO H.R. 3919, CRUDE OIL WINDFALL PROFIT ACT OF 1979

MR. FISHER: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Fisher moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the State amendments to the bill H.R. 3919 be instructed to insist that—

As a matter of policy:

(1) 50 percent of the net revenues from the windfall profits tax shall be made available for energy research, development, production, or conservation and for transit programs, and

(2) 25 percent of the net revenues from the windfall profits tax shall be made available for energy assistance to low-income individuals, and

(3) 25 percent of the net revenues from the windfall profits tax shall be available for any purpose.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, I raise a point of order against the motion offered by the gentleman from Virginia (Mr. Fisher).

4. James C. Wright, Jr. (Tex.).

THE SPEAKER PRO TEMPORE: The gentleman from Florida will state his point of order.

MR. GIBBONS: Mr. Speaker, the motion offered by the gentleman from Virginia is an improper motion and is not in order. The motion would instruct the conferees to make a specific distribution of windfall tax receipts on a percentage basis for designate purposes. Neither the House language nor the Senate language specifically addresses the distribution of these tax receipts. Thus, the instruction is clearly beyond the scope of the conference and not a proper instruction under the rules of the House.

THE SPEAKER PRO TEMPORE: Does the gentleman from Virginia (Mr. Fisher) desire to be heard on the point of order?

MR. FISHER: I do, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Virginia is recognized.

MR. FISHER: Mr. Speaker, I will argue that the point of order should not be sustained, and these are my reasons: The House bill calls for an energy trust fund, which would include all windfall tax proceeds to be used as determined by subsequent legislation.

I would argue that my motion is within and less than the House bill provision. It simply indicates how, as a matter of policy, a portion of the total tax proceeds should be used.

The relevant House rule, I believe, is 28, at section 913a. My motion does not present an "additional topic, question, issue, or proposition not committed to the conference committee by either House," and, therefore, would be germane and within the scope.

It is not, I argue, an additional topic. We are still dealing with the proceeds

of the tax and how to use it, which is spelled out in general terms within the House bill.

Nor is my amendment, quoting from the rule—

A modification of any specific topic \* \* \* committed to the conference committee by either House—

Such that the—

modification is beyond the scope of that specific question.

Mr. Speaker, again I rest on the point that the topic is the use of the funds, and that is dealt with in great and ample scope in the House bill.

Furthermore, Mr. Speaker, the Senate bill contains numerous provisions for specific stimulation of energy production, conservation, and so on, and for energy payments to lower income persons.

The Senate bill is loaded with various provisions related to the use of the funds. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from New York (Mr. Conable) desire to be heard on the point of order?

MR. [BARBER B.] CONABLE [Jr., of New York]: I do, Mr. Speaker. . . .

I call the Speaker's attention also to the fact that this motion to instruct proposed by the distinguished gentleman from Virginia (Mr. Fisher) includes references to transit programs among the expenditures that would be permitted.

There is nothing about transit programs in the Senate version of the bill, although there is something to do with railroads. I think that also illustrates an example where this motion to in-

struct goes beyond the scope of the conference.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Florida (Mr. Gibbons).

MR. GIBBONS: Mr. Speaker, I want to repeat neither the House language nor the Senate language specifically addressed the distribution of these tax receipts.

The Senate bill has some tax credits in it, but those are not tax receipts. Those are never receipts to the Federal Government. So the gentleman's motion is clearly outside the scope of the conference. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Florida has made a point of order against the motion of the gentleman from Virginia (Mr. Fisher) to instruct the conferees on H.R. 3919, the oil windfall profit tax bill, on the grounds that the motion seeks to direct the conferees to accomplish that which they are prohibited from doing under the rules.

Clause 3 of rule XXVIII prohibits conferees from including in their report any new topic, issue, or proposition not committed to the conference committee by the House.

The motion directs the conferees to make certain distributions of the windfall tax revenues in certain percentages for designated purposes.

In section 3 of the House bill, an energy trust fund was created to consist of amounts equivalent to the revenues from the oil windfall tax; subsection 3(d) did not designate any of the purposes for which the fund would be available simply stating that—

Amounts in the trust fund shall be available, as provided by appropriation acts, for making expenditures for such purposes as may hereafter be specified by law.

Section 102(a) of the Senate amendment provided that \$1 billion of the tax receipts be reserved for improvements in the Nation's freight and passenger railroad systems, with allocations of not less than certain amounts for three designated aspects of such railroad improvements.

Section 103 of the Senate amendment also provided for the deposit in a taxpayer trust fund of amounts equivalent to increases in income tax revenues as a result of oil decontrol.

Subsection 103(d) provided that amounts in such trust fund be available as thereafter provided by law for relief from increased social security taxes effective in 1981.

Neither the House nor the Senate provision mandate expenditures from the trust funds for any purpose. And neither version mentions use of the tax receipts for energy research, development, and conservation or for energy assistance to low-income individuals.

The Chair cannot consider any distributions the conferees may have considered in their deliberations and is restricted to reviewing the text of the House bill and Senate amendment in determining whether this motion directs the conferees to include matters beyond the scope of their authority.

Clearly, the House and Senate versions left to future legislation the appropriate distribution of tax receipts and the specific purpose is suggested, but not required in the Senate amendment, which do not relate to all the

programs addressed in the motion of the gentleman from Virginia.

Accordingly, the Chair disagrees with the gentleman from Virginia (Mr. Fisher), and the Chair sustains the point of order of the gentleman from Florida.

### *Motion To Instruct Outside Scope*

**§ 12.14 A motion to instruct conferees may not direct the managers to include a provision or concept which would be beyond the issues committed to conference, and for this reason a motion to instruct the conferees on a general appropriation bill to include a new funding limitation which was not contained in the House bill or any Senate amendment was ruled out as a violation of Rule XXVIII clause 3.**

On Sept. 13, 1994, a motion to instruct was offered which called upon conferees to report a funding limitation not carried in the House appropriation bill or the Senate amendments.<sup>5</sup> After the Chair ruled the motion out of order, a second motion was in order and was offered by a minority member

5. See 140 CONG. REC. 24401, 24402, 103d Cong. 2d Sess. (H.R. 4650).

of the Committee on Appropriations. That motion was agreed to.

APPOINTMENT OF CONFEREES ON H.R. 4650, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1995

MR. [JOHN P.] MURTHA [of Pennsylvania]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4650) making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE:<sup>6</sup> Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. WALKER

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Walker moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 4650, be instructed to agree to the following language:

No funds appropriated under this Act shall be used to deploy United States Armed Forces to Haiti or otherwise support United States Armed Forces in Haiti for purposes of removing the de facto regime or for subsequent peacekeeping by United States Armed Forces without first

6. Michael A. Andrews (Tex.).

obtaining the prior approval of the Congress.

POINT OF ORDER

MR. MURTHA: Mr. Speaker, I make a point of order against the motion to instruct conferees. The motion instructs conferees to include matter outside the scope of the conferees' authority and is in violation of clause 3, rule XXVIII.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania [Mr. Walker] wish to be heard on the point of order?

MR. WALKER: Mr. Speaker, I do wish to be heard on my motion and on the point of order.

Mr. Speaker, my dear friend, the gentleman from Pennsylvania [Mr. Murtha], raises the point that the instruction that I have proposed falls outside the scope of the legislation that we have before us.

Mr. Speaker, the problem with the gentleman's point is the fact that we are about to engage, according to media reports and according to announcements from the administration, in an action in Haiti. This is not an action that was contemplated at the time the bills were being drafted either in the House or the Senate. . . .

This instruction, while it does not meet the strict interpretation of scope, is certainly within the scope of the moneys that are going to be utilized in the bill that is before us. There is no doubt that if this invasion takes place, the moneys that are going to be appropriated under this bill will be used in Haiti. . . .

So I think this is a necessary action to take and conferees would then be

authorized to place this language into the bills that come back for final action in the House. I would hope that the Chair would rule in favor of this as an entirely appropriate way for the House to engage in the issue of Haiti and assure that the Members of this House have had at least a vote on whether or not to engage in a combatant action in the nation of Haiti.

MR. MURTHA: Mr. Speaker, I ask for a ruling.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The motion offered by the gentleman includes matter not within the scope of differences on any of the Senate amendments being sent to conference. The motion is, therefore, out of order under clause 3 of rule XXVIII.

On page 715 of the Manual it is stated that a point of order may be sustained against a motion to instruct House conferees to address a matter beyond the scope of differences being committed to conference by the 215 Senate amendments. . . .

The Chair sustains the point of order.

MOTION TO INSTRUCT OFFERED BY  
MR. MCDADE

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. McDade moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4650, as they resolve Senate amendment numbered 214, relating to fiscal year 1994 funding for Rwanda, be instructed to agree to the

following provisos contained in Senate amendment 214:

*“Provided further, That no funds are available for United States participation in operations in or around Rwanda after October 7, 1994”;* and

*“Provided further, That any change in the mission from one of strict refugee relief to security, peace-enforcing, nation-building or any other substantive role, shall not be implemented without the further approval of the Congress”.*

**§ 12.15 Conferees may not include in a conference report a new topic or issue not committed to conference; and a motion which directs conferees to adopt a new provision expanding definitions beyond those in either the House or the Senate version is ruled out as in violation of this principle.**

On Sept. 29, 1994,<sup>(7)</sup> the House had under consideration the conference report on the bill S. 349, the Lobbying Disclosure Act of 1994. A motion to recommit with instructions was offered by Mr. George W. Gekas, of Pennsylvania. After the reading of the rather lengthy motion was dispensed with by unanimous consent, a point of order was made by Mr. John Bryant, of Texas, who was

7. 140 CONG. REC. 26780, 26781, 103d Cong. 2d Sess.

managing the conference report on the floor.

The motion, the point of order, and the Chair's ruling are included here.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Without objection, the previous question is ordered on the conference report.

There was no objection.

MOTION TO RECOMMIT OFFERED BY  
MR. GEKAS

MR. GEKAS: Madam Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. GEKAS: In its present form, I am, Madam Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Gekas moves to recommit the conference report on the bill (S. 349) to the committee of conference with instructions for the managers on the part of the House to carry out the following:

- (1) In the proposed section 103—
  - (A) strike out paragraph (8),
  - (B) strike out the second sentence of paragraph (9)(A), and
  - (C) strike out subparagraph (B) of paragraph (9),
- (2) Strike out paragraph (5) of section 104(b).
- (3) Strike out paragraph (6) of section 105(b).
- (4) In the proposed section 103(10)(B)(xviii), strike out the material following subclause (II).

8. Nancy Pelosi (Calif.).

(5) In the proposed section 103, insert before the period at the end of paragraph (12) the following: "or a person who spends more than \$100,000 in a 6 month period to influence decisionmaking in the executive and legislative branch."

(6) In the proposed section 106(c), strike paragraph (2).

(7) In the proposed Rule XXXV of the Standing Rules of the Senate strike out subparagraphs (a) and (c) of paragraph 2 and in clause 4 of Rule XLIII of the Rules of the House of Representatives strike out paragraphs (b) and (d) of clause 4. . . .

SEC. 112. LEGISLATIVE SERVICE ORGANIZATIONS.

(a) COVERAGE.—Any entity affiliated with a legislative service organization shall be considered a lobbyist subject to—

(1) the registration, reporting, and disclosure requirements of sections 104 and 105,

(2) the prohibition of section 106, and

(3) the amendments to the Standing Rules of the Senate and the Rules of the House of Representatives made by title II.

(b) OTHER REQUIREMENTS.—Each entity affiliated with a legislative service organization shall report to the Office of Lobbying Registration and Public Disclosure—

(1) the names and salaries of its staff,

(2) arrangements made with others to share staff and costs,

(3) relationships with other organizations in connection with lobbying activities, and

(4) any contributions, gifts, or reimbursements received. . . .

(e) DEFINITIONS.—For purposes of this section:

(1) The term "contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or

agreement, whether or not legally enforceable, to make a contribution.

(2) The term "legislative service organization" refers to a particular category of working groups or caucuses organized to provide legislative services and assistance to Members of the House of Representatives and certified by the Committee on House Administration.

(3) The term "entity affiliated" means an organization which is described in at least 2 of the following:

(A) An organization which spends at least 10 percent of its funds in any year on—

(i) travel expenses for Members of Congress or congressional staff,

(ii) meals, receptions, or other food and beverage expenses on activities attended by Members of Congress or congressional staff, and

(iii) gifts (other than educational materials) to Members of Congress or congressional staff.

(B) An organization which has a name which is like or similar to the name of an entity of the House of Representatives, including a legislative service organization or congressional member organization, or uses the word "congressional" in its official name or title. . . .

At the end of the bill, add:

Any penalty applicable to lobbyists or lobbying firms in this bill shall also apply to Members of Congress.

MR. GEKAS (during the reading): Madam Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the Record.

MR. BRYANT: Madam Speaker, reserving the right to object, I would like to ask the gentleman from Pennsylvania [Mr. Gekas] if the motion to recommit is the one that was most recently given to our side.

MR. GEKAS: Madam Speaker, will the gentleman yield?

MR. BRYANT: I yield to the gentleman from Pennsylvania.

MR. GEKAS: Yes, Madam Speaker, we believe so.

MR. BRYANT: Madam Speaker, I would ask if we could get a clear identification of which motion it is.

MR. GEKAS: Madam Speaker, if the gentleman will continue to yield, we are down to two versions, the one that is now being read, or was being read, the one concerning grassroots lobbying, GS-14's and 16's, campaign spending, campaign contributions, and a few others.

MR. BRYANT: Madam Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

#### POINT OF ORDER

MR. BRYANT: Madam Speaker, I make a point of order that the motion to recommit offered by the gentleman from Pennsylvania [Mr. Gekas] is not in order, in that it instructs the conferees to carry out instructions which exceed the scope of the matters committed to conference. Specifically, the motion to recommit contains language which expands the definition of lobbyists and expands the definition of covered executive branch officials.

Both of these expanded definitions exceed the scope of the matters committed to conference. Therefore, Madam Speaker, I insist on the point of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from Pennsylvania [Mr.

Gekas] desire to be heard on the point of order?

MR. GEKAS: . . . I have a parliamentary inquiry, Madam Speaker. If the gentleman would respond to me, I am asking if in his point of order he itemizes the campaign contributions as one of the items.

THE SPEAKER PRO TEMPORE: The Chair will control the debate. Does the gentleman from Pennsylvania [Mr. Gekas] concede the point of order?

MR. GEKAS: No, Madam Speaker, I want to speak on it, but I want to make sure that that is what I heard; that in the point of order that he made, as a parliamentary question, I would ask does the point of order that was just entered by the gentleman from Texas [Mr. Bryant] include a point of order against the campaign financing feature of my motion?

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Bryant] has made a point of order on several grounds. The Chair will entertain argument on the point of order from each Member on his own time.

MR. GEKAS: Madam Speaker, as a point of parliamentary inquiry, I simply wanted to have repeated whether or not the point of order that was made included the point on campaign financing. I could not hear the gentleman from Texas.

THE SPEAKER PRO TEMPORE: Will the gentleman from Texas repeat his point of order.

MR. BRYANT: Madam Speaker, I made a point of order that the motion to recommit offered by the gentleman is not in order in that it instructs the conferees to carry out instructions which



exceed the scope of the matters that were committed to the conference.

Specifically the motion to recommit contains language which expands the definition of lobbyists and expands the definition of covered executive branch officials, both of these expanded definitions exceed the scope of the matters committed to conference.

MR. GEKAS: Madam Speaker, I believe that the motion to recommit is in order. The important feature of the motion to recommit has to do with campaign contributions in which we feel that, as we argued in the well of the House, the big gift that we should be banning is campaign contributions by lobbyists, not just sandwiches. The question is, if the point of order is to prevail and the Chair is to rule that my campaign contribution feature is out of order, does that not return it to the status of the current law in which, then, the whole issue becomes one that cannot be a point of order if it is returned to current law? I pose that as a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: If the Chair rules this motion out of order, the gentleman may offer another motion to recommit. . . .

The gentleman from Texas has stated the point of order two times for the gentleman.

The Chair is prepared to rule. The gentleman from Texas makes a point of order against the motion to recommit offered by the gentleman from Pennsylvania.

As discussed in section 26.12, chapter 33 of Procedure in the U.S. House of Representatives, a motion to recommit a conference report may not instruct House conferees to include matter be-

yond the scope of differences committed to conference by either House.

The motion offered by the gentleman from Pennsylvania includes several instructions that violate this principle. For example, the motion instructs conferees to expand the definition of "lobbyist" as defined in both the Senate bill and House amendment to include not only persons who spend a certain period of time engaging in lobbying activities while serving a client but also those who spend more than a certain dollar amount within a fixed period to influence decisionmaking.

Another example is found in the instruction that expands the definition of "covered executive branch official" as defined in both the Senate bill and House amendment to include a position in the executive branch that is classified at or above GS-14 of the General Schedule.

The inclusion of even one of the above-described instructions provides the Chair with an adequate basis to find the entire motion out of order on the grounds the instructions exceed the scope of differences committed to conference. Accordingly, the point of order is sustained. . . .

MOTION TO RECOMMIT OFFERED BY  
MR. GEKAS

MR. GEKAS: Madam Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Gekas moves to recommit the conference report on the bill (S. 349) to the committee of conference with instructions for the managers on the

part of the House to carry out the following:

- (1) In the proposed section 103—  
(C) strike out subparagraph (B) of paragraph (9).
- (2) Strike out paragraph (5) of section 104(b).
- (3) Strike out paragraph (6) of section 105(b).

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

**§ 12.16 A motion to instruct managers to include in a conference report a provision not committed to conference by either House exceeds the scope of conference, in violation of Rule XXVIII clause 3.<sup>(9)</sup>**

In determining whether a matter is “committed to conference,” the Chair must look to the text of the bill and amendments in disagreement and not to terms or disclaimers used in the debate on that text. The Chair’s ruling on Mar. 25, 1992,<sup>(10)</sup> followed this principle.

APPOINTMENT OF CONFEREES ON S. 3,  
SENATE ELECTION ETHICS ACT OF  
1991

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I ask unanimous

9. See *House Rules and Manual* § 913a (1997).

10. 138 CONG. REC. 6843, 102d Cong. 2d Sess.

consent to take from the Speaker’s table the Senate bill (S. 3) to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

THE SPEAKER:<sup>(11)</sup> Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MOTION TO INSTRUCT OFFERED BY  
MR. THOMAS OF CALIFORNIA

MR. [WILLIAM M.] THOMAS of California: Mr. Speaker, I offer a motion to instruct.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Thomas of California moves that the managers on the part of the House at the conference on the disagreeing votes of the two houses on the amendment of the House to the bill (S. 3) be instructed:

To include provisions in the conference report that would limit the total cost of the bill to the total savings to be derived from the recommended offsets in the Senate bill and House amendment and specify the account given such costs and offsets under the terms of Section 301, Requirement of Budget Neutrality.

And to include in the conference report provisions containing the requirement that no taxpayer dollars may be used to finance congressional campaigns, such financing to include (1) any payments to reimburse the postal service for postage discounts provided to congressional campaigns

11. Thomas S. Foley (Wash.).

(2) any payments to congressional campaigns (3) any other expenditure or obligation to offset revenue losses created by tax credits or other subsidies for the purpose of financing congressional campaigns.

## POINT OF ORDER

MR. GEJDENSON: Mr. Speaker, I make a point of order that the directions of the gentleman from California [Mr. Thomas] are beyond the scope.

THE SPEAKER: Does the gentleman from California [Mr. Thomas] desire to be heard on the point of order?

MR. THOMAS of California: Yes, Mr. Speaker, I do.

It is my understanding that when the amendment to H.R. 3750 was presented to the House, the gentleman from North Carolina, the author of the amendment, indicated in an explanation of the measure that "the requirement that no taxpayer dollars may be used to finance congressional campaigns" was a portion of a substitute amendment.

In addition, on the floor during debate in the *Congressional Record*, page 34667 (11/25/91) the gentlewoman from Ohio [Ms. Oakar] said, "No taxpayers' dollars are involved." . . .

What this motion to instruct says is that no taxpayer dollars should be used to finance congressional campaigns. There are three examples of areas that financing should not be allowed, based upon the provisions that were in the bill. . . .

Therefore, Mr. Speaker, based upon all the allegations that were presented during the presentation of this bill, it seems to me that the scope of the conference certainly would find acceptable

an explanation which simply delineates more specifically where no taxpayer dollars are to be allowed.

THE SPEAKER: The Chair is prepared to rule, if there are no further arguments.

Neither the House nor the Senate version contains the provision which the second part of the instruction directs the House conferees to include in their report.

The gentleman from California [Mr. Thomas] is quoting statements on the floor made by Members supporting the bill, but neither the House nor the Senate version contains such provisions.

For this reason, the motion exceeds the scope of the matters formally committed to conference and the Chair sustains the point of order.

Does the gentleman from California [Mr. Thomas] have an additional motion?

**§ 12.17 It is not in order to instruct House conferees to exceed their authority; and where a motion directed the conferees to include in a subsequent conference report certain features of a separate bill, none of which were in the Senate bill or in the House amendments in disagreement, the motion was ruled out on a point of order.**

The second conference report on S. 3, the Campaign Spending Limit and Election Reform Act

was considered in the House on Apr. 9, 1992,<sup>(12)</sup> pursuant to a special order (H. Res. 426) waiving points of order against the report and against its consideration. The House had, on the previous day, recommitted the original conference report; but the conferees met again and filed a new report on the same legislative day, Apr. 8, 1992.

The proceedings shown below relate to the second conference report (H. Rept. 102-487).

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The question is on the conference report.

MOTION TO RECOMMIT OFFERED BY  
MR. WALSH

MR. [JAMES T.] WALSH [of New York]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report in its present form?

MR. WALSH: Mr. Speaker, I am.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Walsh moves to recommit the conference report on the bill S. 3 to the Committee of Conference with instructions to the managers on the part of the House to include in the conference report the provisions of H.R. 3770 including:

1. The requirement that a majority of a candidate's contributions come from individuals residing in the candidate's district.

2. A limit of \$1,000 on PAC contributions to candidates.

3. A total ban on soft money contributions to political parties.

And to further include the requirement that no taxpayer dollars may be used to finance congressional campaigns.

POINT OF ORDER

MR. [SAM] GEJDENSON [of Connecticut]: Mr. Speaker, I rise to a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. GEJDENSON: Mr. Speaker, I would make a point of order that the instructions exceed the scope of the conference report. It is clear that the requirement of in-district funding is beyond the scope of the conference report, and I would move that therefore the motion to recommit should be ruled out of order.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] wish to be heard in opposition to the point of order?

MR. WALSH: Mr. Speaker, I believe that this motion adds to the fairness of the conference report, and I would urge that it be added.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York [Mr. Walsh] concede the point of order?

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

THE SPEAKER PRO TEMPORE: Does anyone else wish to be heard on the point of order?

12. 138 CONG. REC. 9021-23, 102d Cong. 2d Sess.

13. Dennis E. Eckart (Ohio).

MR. [PAUL B.] HENRY [of Michigan]: Mr. Speaker, I wish to be heard on the point of order.

THE SPEAKER PRO TEMPORE: The point of order is contested. The gentleman from Michigan [Mr. Henry] is recognized on the point of order.

MR. HENRY: Mr. Speaker, I want to be sure we understand what the point of order is and what the question is and what the contest is.

Mr. Speaker, my understanding is that the gentleman from Connecticut [Mr. Gejdenson] objects to the motion to instruct because the motion contains a provision that would require that in order to get Federal taxpayer match, one would have to raise campaign funds in one's district.

Mr. Speaker, if I understand it, that is what the objection is.

MR. GEJDENSON: Mr. Speaker, the objection is because it is beyond the scope of the conference. At this stage of the game to try to rewrite the whole conference is really in fact an attempt to kill campaign finance reform, at least at this session, in my perspective. . . .

THE SPEAKER PRO TEMPORE: Does the gentleman from Iowa [Mr. Leach] wish to be heard on the point of order? . . .

MR. [JIM] LEACH [of Iowa]: Mr. Speaker, there are two issues that this Member would like to make. One is that in his belief this is thoroughly and utterly germane.

The second point is how extraordinary it is that the party of alleged reform may or may not want to block real reform.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The gentleman from Connecticut makes a point of order against the motion offered by the gentleman from New York on the ground that the instructions therein exceed the scope of the conference.

The motion offered by the gentleman from New York proposes to instruct the managers on the part of the House to include in the conference report three features of a separate bill, H.R. 3770. Each of these three initiatives falls outside the matters committed to the conference as disagreements between the Senate bill and the House amendment thereto.

Therefore, under clause 3 of rule XXVIII, a conference report may not include a matter although germane that was not committed to the conference of either House.

In the opinion of the Chair, the instructions proposed in the motion offered by the gentleman from New York exceed the scope of the differences committed to the conference, and the point of order is sustained.

MOTION TO RECOMMIT OFFERED BY  
MR. WALSH

MR. WALSH: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the bill?

MR. WALSH: In its present form, I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Walsh moves to recommit the conference report on the bill S. 3 to the committee of conference with instructions to the managers on the

part of the House to strip all sections from the bill that allow for public financing of subsidies of congressional campaigns, to wit sections providing for matching payments to candidates, voter communication vouchers, and reduced postal rate subsidies for candidates.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

MR. WALSH: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 179, nays 243, not voting 12, as follows: . . .

So the motion to recommit was rejected.

### *Senate Decision on Motion To Instruct*

**§ 12.18 Although conferees have wide discretion when a Senate amendment has stricken out certain language of a House bill, it was held in the Senate that once a measure had been adopted by that body instructions to its conferees in the nature of new legislation were not in order.**

On Feb. 1, 1939,<sup>(14)</sup> the Senate was considering the amendments reported back in disagreement

14. 84 CONG. REC. 1004-09, 76th Cong. 1st Sess.

from the conference on House Joint Resolution 83, providing additional appropriations for work relief for fiscal 1939. After Senator Joseph C. O'Mahoney, of Wyoming, offered an amendment containing new legislation to a motion to instruct Senate conferees to insist on Senate amendment No. 9, Senator Alva B. Adams, of Colorado (the proponent of the original motion) raised a point of order.

MR. ADAMS: . . . I wish to raise the point of order that the motion of the Senator from Wyoming is not in order; that it is not possible at this point to instruct the conferees to insist upon matter which is not before the conference committee. . . .

THE PRESIDENT PRO TEMPORE:<sup>(15)</sup> The question raised involves Senate amendment No. 9 in the joint resolution. The amendment of the Senate struck out the House language. The question in conference, or which will be in conference, is as to whether the language of the House provision shall be adopted by the conferees, or whether it is to be stricken out of the resolution or whether the conferees shall adopt compromise language, and report the compromise language to their respective bodies for approval or disapproval.

House Joint Resolution 83 was finally acted upon by the Senate some time last week. That final action was reported to the House, the House agreed to a conference, and conferees

15. Key Pittman (Nev.).

were appointed. The question, first, is as to the authority of the Senate in the matter, and secondly, the authority of the conferees.

The Chair feels that all opportunity for legislation in connection with the House joint resolution ended with the passage of the measure in the Senate. The Senate has often held that it has the right to instruct its conferees—to instruct them, however, as to whether they shall insist upon a Senate amendment, or whether they shall yield on the amendment. The Chair does not believe that an instruction, after a measure has been finally passed by the Senate, can be put in the nature of new legislation which was not adopted by the Senate at the time the measure was under consideration. . . .

The present occupant of the chair feels that it would be improper practice to attempt by instructions to the Senate's conferees to legislate beyond the scope of legislation by either branch of the Congress. Therefore the point of order made by the Senator from Colorado [Mr. Adams] is sustained.

***Motion To Instruct Conferees To Take an Action Which Would Not Have Been in Order in House***

**§ 12.19 While Rule XX clause 2 permits a motion to instruct House conferees to agree to a Senate amendment which would have been in violation of Rule XXI clauses 2 or 5 if offered in the House, instructions to amend such Senate**

**amendment should not be made in a manner not in order under House rules (e.g., to include unauthorized items (clause 2), to add further appropriations to a legislative bill (clause 5), or to include matter outside the scope of conferee's authority (Rule XXVIII clause 3)).**

On Nov. 13, 1973,<sup>(16)</sup> the following proceedings occurred in regard to the conference report on H.R. 8877, appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies, for fiscal 1974:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(17)</sup> Is the gentleman opposed to the bill?

MR. QUIE: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Quie moves to recommit the Conference Report on H.R. 8877 to the Committee of Conference with the following instructions to the Managers on the Part of the House:

That the House recede from its disagreement to the amendment of the Senate numbered 32 and agree to the same with an amendment, as follows:

16. 119 CONG. REC. 36835, 36847, 93d Cong. 1st Sess.

17. Carl Albert (Okla.).

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: "That the aggregate amounts made available to each State under title I-A of the Elementary and Secondary Education Act for grants to local educational agencies within that State shall not be more than 120 per centum of such amounts as were made available for that purpose for fiscal year 1973, and the amount made available to each local educational agency under said title I-A shall not be less than 90 per centum of the amount made available for that purpose for fiscal year 1973" . . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I make the point of order against the motion to recommit on the ground that it instructs the conferees to include matter in the conference report which is not otherwise in order. This provision described in the instructions we just heard is clearly legislation on an appropriation act. Therefore, it is not eligible for inclusion in a conference report under provisions of clause 2, rule 20<sup>(18)</sup> and clause 2, rule 21.<sup>(19)</sup> . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from Pennsylvania (Mr. Flood) makes a point of order that the motion to recommit with instructions is in violation of the rules of the House and is not in order.

The motion to recommit directs the House conferees to recommend that the House recede from its disagreement to Senate amendment No. 32 and concur therein with an amendment. Senate

18. *House Rules and Manual* § 829 (1997).

19. *Id.* at § 834.

amendment No. 32 was reported from conference in disagreement because, under clause 2 of rule XX, the House conferees had no authority to agree to that amendment, since it contained legislation on an appropriation bill and would have been subject to a point of order.<sup>(20)</sup> The Chair notes that on June 26, 1973, Chairman Holifield sustained a point of order against an amendment offered by the gentleman from Minnesota (Mr. Quie), on the grounds that the amendment added additional legislation to legislative language which had been permitted to remain in the bill by a resolution waiving points of order.

Under the precedents of the House, a motion to instruct conferees, or to recommit a bill to conference with instructions, may not include instructions directing House conferees to do that which would be inadmissible if offered as an amendment in the House—Cannon's Precedents, volume VIII, section 3235.

The Chair would like to point out two of the syllabi in section 3235:

Instructions to managers of a conference may not direct them to do that which they might not do otherwise.

A motion to instruct conferees may not include directions which would be inadmissible if offered as a motion in the House.

In the instant situation the Chair is of the opinion that the instructions included in the motion to recommit would, if offered in the House as an amendment to the language of the

20. 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess.



Senate amendment, add legislation thereto. As was the case in Chairman Holifield's ruling of June 26, 1973, the language would constitute a change in the allotment formula contained in the language of the Senate amendment. The Chair therefore holds that the motion to recommit is not a permissible motion within the meaning of clause 2, rule XX, and sustains the point of order.

### § 13. Extending Power of Managers

#### *Authority To Agree to Senate Amendments*

§ 13.1 **The House agreed to a special rule taking a House joint resolution making appropriations with Senate amendments from the Speaker's table, disagreeing to the amendments, agreeing to the conference requested, directing the Speaker to immediately appoint conferees without intervening motion, and giving specific authority to the conferees to agree or disagree to any Senate amendment.**

On Mar. 26, 1935,<sup>(1)</sup> Mr. John J. O'Connor, of New York, was recognized by Speaker Joseph W. Byrns, of Tennessee, for the purpose of offering the following resolution relating to House Joint Resolution 117, an appropriations measure for relief purposes:

H. RES. 174

*Resolved*, That immediately upon the adoption of this resolution the joint resolution, House Joint Resolution 117, with Senate amendments thereto, be, and the same is hereby, taken from the Speaker's table; that the Senate amendments be, and they are hereby, disagreed to by the House; that the conference requested by the Senate on the disagreeing votes of the two Houses on the said joint resolution be, and hereby is, agreed to by the House; that the Speaker shall immediately appoint managers on the part of the House without intervening motion; and that the managers on the part of the House are hereby given specific authority to agree, with or without amendment, or disagree to any amendment of the Senate to the said joint resolution notwithstanding the provisions of clause 2 of rule XX.

After considerable debate, the resolution was agreed to by the House.

1. 79 CONG. REC. 4465-77, 74th Cong. 1st Sess.

**§ 13.2 The House granted unanimous consent to take from the Speaker's table an appropriation bill with Senate amendments thereto, disagree to the Senate amendments, agree to the conference asked by the Senate, authorize the managers on the part of the House to agree to the amendments of the Senate with amendments, notwithstanding the provisions of Rule XX clause 2, and permit the conference report to be considered at any time.**

On July 2, 1947,<sup>(2)</sup> the following occurred in the House:

MR. [JOHN] TABER [of New York]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4031) making appropriations to meet emergencies for the fiscal year ending June 30, 1948, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate; and that the managers on the part of the House have authority to agree to the amendments of the Senate with amendments, notwithstanding the provisions of clause 2 of rule XX, and that the conference report may be considered at any time.

2. 93 CONG. REC. 8131, 80th Cong. 1st Sess.

THE SPEAKER:<sup>(3)</sup> Is there objection to the request of the gentleman from New York? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. Taber, Wigglesworth, Engel of Michigan, Stefan, Case of South Dakota, Keefe, Kerr, and Mahon.<sup>(4)</sup>

*Use of Concurrent Resolution To Place New Matter in Conference*

**§ 13.3 By adoption of a concurrent resolution in both Houses, conferees may be authorized to consider a matter not committed to them in the text of a bill passed by one House and amended by the other.**

On Dec. 17, 1974,<sup>(5)</sup> the House, by unanimous consent, adopted the following concurrent resolution which had been messaged from the Senate.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 124) relating to conference consideration of the bill (H.R. 17468), and ask for its immediate consideration.

3. Joseph W. Martin, Jr. (Mass.).

4. See also 80 CONG. REC. 8822, 74th Cong. 2d Sess., June 3, 1936.

5. 120 CONG. REC. 40472, 93d Cong. 2d Sess.

The Clerk read the title of the Senate concurrent resolution.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 124

*Resolved by the Senate (the House of Representatives concurring), That, due to an inadvertent omission in the Senate reported version of H.R. 17468, entitled "An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1975, and for other purposes", in resolving the difference between the Senate and the House on such bill, it shall be deemed that the Senate agreed to an amendment (No. 6) striking from the House-passed bill the following section 111, and the conferees are authorized to consider the same:*

SEC. 111. Notwithstanding any other provision of law, funds available to the Department of Defense during the current fiscal year for the construction of family housing units may be used to purchase sole interest in privately owned and Federal Housing Commissioner held family housing units if the Secretary of Defense determines it is in the best interests of the Government to do so. . . .

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

Other examples of enlarging the scope of conference can be found in

6. Carl Albert (Okla.).

5 Hinds' Precedents, §§ 6437-6439.

## § 14. When Conferees Fail To Act

### *Failure To Report Within 20 Days*

**§ 14.1 Where conferees have been appointed for 20 calendar days and have failed to file a report, a motion to instruct the House managers at the conference is in order, and is privileged under Rule XXVIII clause 1(c).**

On Aug. 1, 1935,<sup>(7)</sup> Mr. Sam Rayburn, of Texas, submitted the following resolution to instruct the House conferees on S. 2796, the Public Utilities Act of 1935:

*Resolved, That the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill of the Senate, S. 2796, be, and they are hereby, instructed to agree to the provisions of section 11 of the Senate bill.*

Mr. John J. O'Connor, of New York, interposed a point of order against the resolution offered by

7. 79 CONG. REC. 12265, 12266, 74th Cong. 1st Sess.

Mr. Rayburn on the ground that it was not privileged under Rule XXVIII clause 1½a.<sup>(8)</sup> Mr. O'Connor argued that the rule applied only to recalcitrant conferees. Since the conferees were appointed in this instance without instructions,<sup>(9)</sup> he contended that they could not be considered recalcitrant.

THE SPEAKER:<sup>(10)</sup> The gentleman from Texas [Mr. Rayburn] has presented a motion to instruct the conferees on the part of the House at the conference on the disagreeing votes of the two Houses on Senate bill 2796 to agree to the provisions of section 11 of the Senate bill. He does so under the provisions of rule XXVIII, which has been referred to and read several times to the House in the past 2 or 3 days, and with which all Members are familiar.

The gentleman from New York makes the point of order that the motion is not a privileged motion.

The Chair has had occasion in the past several days to give considerable thought and study to this rule. The Chair has heretofore stated that in the opinion of the Chair the whole object and purpose of the rule was to enable the House to preserve some control over conferees after they had been appointed. Up until the time clause 1½(a) of rule XXVIII was adopted the House

had no authority over conferees after their appointment. Under the rules and practices preceding the adoption of this rule it was necessary for the House to instruct the conferees before they were appointed or the House lost entire control unless the conferees made a report either of disagreement or agreement.

The Chair has heretofore stated that in the opinion of the Chair the House in adopting the rule and providing that 20 days should elapse before a motion of this kind was in order intended to give what it considered at that time full opportunity to the conferees to come to such agreement. Under the present situation, with reference to the conferees on this particular bill, the Chair finds that the conferees were appointed more than 20 days ago.

As stated, the gentleman from Texas is offering this motion under the provisions of this rule. The Chair does not think it is a question of recalcitrancy on the part of the conferees or that that is necessary to make this motion in order, because the Chair repeats that in his opinion the moving purpose of the House in adopting the rule was to maintain control by the House over its conferees upon any bill which had been committed to them. . . .

The Chair does not think there is any ambiguity in the language employed in this rule. It provides for two motions, one of which is to discharge and appoint new conferees, and the other to instruct the conferees already appointed.

The gentleman from Texas has made the latter motion. The Chair thinks it is clearly authorized under the plain

8. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

9. See 79 CONG. REC. 11095, 74th Cong. 1st Sess., July 12, 1935.

10. Joseph W. Byrns (Tenn.).

language of the rule and therefore overrules the point of order.<sup>(11)</sup>

**§ 14.2 After House conferees have been appointed for 20 calendar days and have failed to make a report, a motion to discharge said conferees is of high privilege.**

On Sept. 12, 1940,<sup>(12)</sup> Mr. Harry P. Beam, of Illinois, alluding to the fact that House managers on S. 326 (relating to the payment of awards to citizens of the United States under the General Claims Convention of Sept. 8, 1923, between the United States and Mexico) had been appointed on July 11,<sup>(13)</sup> of that year, stated:

Mr. Speaker, I rise to make a privileged motion. . . .

Mr. Speaker, under rule 28 of the rules of the House of Representatives, paragraph 1½(a),<sup>(14)</sup> section 910, the following appears:

After House conferees on any bill or resolution in conference between the House and Senate shall have been appointed for 20 calendar days and shall have failed to make a report, it is hereby declared to be a motion of the highest privilege to move

11. See also 118 CONG. REC. 16838-42, 92d Cong. 2d Sess., May 11, 1972.

12. 86 CONG. REC. 12052, 76th Cong. 3d Sess.

13. *Id.* at pp. 9515, 9516.

14. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

to discharge said House conferees and to appoint new conferees, or to instruct said House conferees; and, further, during the last 6 days of any session of Congress, it shall be a privileged motion to move to discharge, appoint, or instruct House conferees after House conferees shall have been appointed 36 hours without having made a report.

Mr. Speaker, in conformity with the above-stated rule, I hereby move to discharge the conferees appointed on the bill S. 326.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The gentleman will send his motion to the desk, and the Clerk will report the motion.

The Clerk read as follows:

Mr. Beam moves to discharge the House conferees on the bill of the Senate S. 326.<sup>(16)</sup>

**§ 14.3 After conferees have been appointed in both bodies for more than 20 calendar days, and have failed to report, a motion in the House to instruct the House conferees is highly privileged.**

A motion to instruct may be directed to a portion of a Senate amendment, in this instance the motion urged acceptance by the House managers of one non-germane section of the Senate amendment in the nature of a

15. Jere Cooper (Tenn.).

16. See also 95 CONG. REC. 11398, 81st Cong. 1st Sess., Aug. 12, 1949.

substitute to H.R. 31, amending the Truth in Lending Act. The form of the motion, as excerpted from the proceedings of May 20, 1981,<sup>(17)</sup> is carried here.

MOTION TO INSTRUCT CONFEREES TO AGREE TO SECTION 303 OF SENATE AMENDMENT TO H.R. 31, THE CASH DISCOUNT ACT

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Madigan moves that the managers on the part of the House at the committee of conference on the bill H.R. 31 be instructed to agree to section 303 of the Senate amendment which removes the age restriction for appointment to the Surgeon Generalship.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Madigan) is recognized for 1 hour.

MR. MADIGAN: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to urge my colleagues to support my motion to instruct House conferees on nongermane provisions found in H.R. 31, the Cash Discount Act.

As some of my colleagues may not be aware of the situation on this bill, I will give a brief recap:

H.R. 31, the Cash Discount Act, was reported by the House Banking Com-

mittee and passed the House. It was amended on the floor of the other body with the insertion of nongermane language relating to the Public Health Service Act. When returned to this body, the Speaker referred the nongermane portion of the amended bill to the Subcommittee on Health and the Environment of the Energy and Commerce Committee. Our distinguished chairman, the gentleman from California, called one day of hearings at which we discussed this and ancillary issues. The subcommittee and full committee took no further action. Some 6 weeks ago, the House appointed conferees on this bill. Three weeks ago, the other house did likewise. Conferees have unsuccessfully attempted to meet on two occasions.

This then is the situation today: A worthwhile piece of legislation has been blocked due to nongermane language. In addition, unrelated concerns have intruded upon the central issue of the amending language found in the bill.

*Parliamentarian's Note:* The 20-day rule has consistently been interpreted, in modern usage, to become privileged only after the conferees have been named in both bodies for the 20-day period required by the rule. Further, the rule has been interpreted to permit the privilege to attach to the motion only after the 20 days have completely run, not on the 20th day.

17. 127 CONG. REC. 10319, 97th Cong. 1st Sess.

18. Leon E. Panetta (Calif.).

Note, too, that the “notice requirement” in Rule XXVIII clause 1(c)<sup>(19)</sup> was not added to the rule until the 101st Congress.<sup>(20)</sup>

***Privilege of the House Not Alternative to 20-day Motion***

**§ 14.4 Where a rule of the House provides a specific method of proceeding against a dilatory or recalcitrant conference committee by a motion to discharge or instruct such committee, it is not in order to anticipate action under that rule by seeking to bring the matter before the House under the guise of a question of a privilege of the House.**

On July 29, 1935,<sup>(1)</sup> Mr. George Huddleston, of Alabama, offered House Resolution 311, to instruct House conferees on S. 2796, the Public Utility Holding Company Act, to insist that any conference on that bill be held without the presence thereat of anyone who was not a manager for either the House or the Senate. The resolu-

19. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

20. See H. Res. 5, 135 CONG. REC. 72, 101st Cong. 1st Sess., Jan. 3, 1989.

1. 79 CONG. REC. 12007–13, 74th Cong. 1st Sess.

tion contended that the refusal of the Senate managers to confer with their House counterparts unless the former were accompanied by certain advisors, constituted a question of a privilege of the House. Mr. John E. Rankin, of Mississippi, and Mr. Thomas L. Blanton, of Texas, raised points of order against the resolution.

MR. BLANTON: I make the point of order that under rule XXVIII of the House of Representatives, after the Speaker appoints conferees, until the conferees make a report and file their report and statement here and have it printed, or unless 20 days have elapsed, and a proper motion is made under rule XXVIII<sup>(2)</sup> to discharge the conferees, the House loses jurisdiction entirely over the conferees until one of those two events happen.

Speaker Joseph W. Byrns, of Tennessee, gave the following ruling:

The Chair is ready to rule. The gentleman from Alabama [Mr. Huddleston] has presented a resolution in which there are recitations of various statements of facts, and which is designed to instruct the conferees now having charge of the utility bill on the part of the House to further insist on said conferences being held—

Under free, fair, and just conditions and to insist that all persons

2. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

who are not managers for either House or Senate be excluded from such conference.

The gentleman from Mississippi [Mr. Rankin] and the gentleman from Texas [Mr. Blanton] have raised a point of order and insisted that this resolution does not present a matter of privilege of the House. . . .

With the limited opportunity the Chair has had to give consideration to this important matter, it appears that up until a short time ago, to be exact, the Seventy-second Congress, when a rule was adopted bearing on the subject, there was no way by which the House, after formal appointment of conferees, could instruct conferees, in the absence of a report of an agreement or a disagreement, except by unanimous consent. In the Seventy-second Congress the House, evidently realizing that situation, adopted a rule which the Chair will read to the House. It is section 1½a of rule XXVIII. . . .

That clause was adopted on December 8, 1931, in the first session of the Seventy-second Congress. Of course, the House had an object in adopting that rule. It was to preserve to the House the right to exercise authority, as the Chair construes it, in a matter pending between the House and Senate, insofar as its own conferees were concerned. As the Chair stated, up until that rule was adopted, the House had absolutely no authority, except by unanimous consent, to exercise any authority over the conferees theretofore appointed, except in those cases where the conferees had reported either an agreement or a disagreement. . . .

As the Chair stated, from all the consideration he has given to this point of order in the limited time he has had to do so, he becomes more clearly convinced that in adopting this rule the House intended to cure a situation which, for some reason unexplained, had existed up until that time, because it was rather unusual that during all the years the House had never reserved to itself the right to tell conferees what they must do after they were appointed.

The Chair thinks that if this resolution was held in order at this time it would prove to be a bad precedent, for a similar question might be raised for one reason or another in every conference ordered by the House. . . .

Now, there were two courses which the conferees could have pursued: One was to report to disagreement, which has not been done. The other was to wait for 20 days, under this rule, and then to proceed under its provisions as a matter of the highest privilege. If the conferees had reported a disagreement, it would be in order for the House to take such action as it pleased, either with reference to instructions or to sending them back for further consideration.

The Chair does not wish to be understood as passing on the merits of the question, because that is not within the province of the Chair. . . . The Chair thinks that that is a matter of procedure that should be determined by the conferees. In the event that the conferees are unable to agree, it seems to the Chair that the remedy is provided in rule XXVIII. The Chair does not believe that under the facts stated a question



of privilege is involved. The Chair, therefore, sustains the point of order.

### ***Instruction To Agree With an Amendment***

**§ 14.5 The managers on the part of the House at a conference, having failed to make a report within 20 calendar days, were instructed to agree to a Senate amendment with an amendment.**

On May 9, 1946,<sup>(3)</sup> the following proceedings occurred in the House:

MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, the Members of the conference committee on the bill (H.R. 4761) to amend the National Housing Act by adding thereto a new title relating to the prevention of speculation and excessive profits in the sale of housing, and to insure the availability of real estate for housing purposes at fair and reasonable prices, and for other purposes, having been appointed for more than 20 days and failing to file a report, I desire to make a motion under paragraph 1½a of rule XXVIII of the House,<sup>(4)</sup> which motion is at the Clerk's desk. . . .

THE SPEAKER:<sup>(5)</sup> The gentleman from Kentucky [Mr. Spence] offers a motion which the Clerk will report.

The Clerk read as follows:

3. 92 CONG. REC. 4750, 4766, 79th Cong. 2d Sess.
4. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).
5. Sam Rayburn (Tex.).

Mr. Spence moves to instruct the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4761 to agree to section 11(a) of the Senate amendment, with an amendment, as follows: Strike out "\$600,000,000" as it appears therein, and insert in lieu thereof "\$400,000,000."

After considerable debate, the House agreed to the motion.

### ***Including Argument in Motion***

**§ 14.6 It is not within the province of the Chair to rule out a motion to instruct conferees under Rule XXVIII clause 1(c) on the ground that it contains argument.**

On May 26, 1936,<sup>(6)</sup> Mr. Thomas L. Blanton, of Texas, offered a motion pursuant to Rule XXVIII clause 1½a,<sup>(7)</sup> to instruct House conferees on H.R. 11581, the District of Columbia appropriation bill for fiscal 1937. Mr. Bertrand H. Snell, of New York, made a point of order against the motion on the ground that it contained argument. Although Mr. Blanton subsequently withdrew his motion and asked that another motion be considered in its place, Mr. Snell

6. 80 CONG. REC. 7939, 7945, 74th Cong. 2d Sess.

7. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

urged the Speaker, Joseph W. Byrns, of Tennessee, to rule on his point of order.

MR. SNELL: Mr. Speaker, I think it is important to have a ruling on this proposition. I made the point of order earlier that the argumentative part of the original proposition was not in order and I think for the future precedents of the House we should have a ruling on that question. . . .

THE SPEAKER: . . . The rule to which the Chair has referred<sup>(8)</sup> provides only for a motion, but the Chair does not believe that any presiding officer ought to put himself in the position of dictating to a Member just how his motion should be made. If the Chair should hold that the motion carries argument, then it would be up to the Chair to delete from the motion such portions as occurred to the Chair to be argumentative, and if that were the practice the Chair at some time might delete portions of the motion in exercising that privilege.

The Chair thinks this is a matter for the House to decide, and the Chair is unwilling, out of a spirit of fairness, to undertake to dictate to the Members just how they shall draw their motions.

***Recommittal to Existing Conference; Does Not Break Time Under 20-day Vote***

**§ 14.7 Where the Senate is first to act on a conference report**

8. The Chair had previously referred to Rule XXVIII clause 1½a.

**and determines to recommit it to the committee of conference, the conferees are not at that point discharged; the same managers resume their negotiations, and a motion to instruct the managers on the part of the House under the "20-day rule" would still be permissible in the House if those conferees in fact have been appointed for more than the 20 days.**

On May 24, 1990, the House had amended, insisted on its amendment, and asked for a conference on the bill S. 933, the Americans with Disabilities Act.

The Senate under the normal progression of the official papers would act first on the report and in fact did so. As indicated by the comments of Mr. Steve Bartlett, of Texas, there had been some thought to letting the House act first. The inquiry by Mr. William E. Dannemeyer, of California, and the Chair's response shows that the continuity of the appointment of conferees is not broken if the report is recommitted by the first body to act. The proceedings of June 28, 1990,<sup>(9)</sup> were as follows:

9. 136 CONG. REC. 16156, 16157, 101st Cong. 2d Sess.

CONSIDERATION OF THE AMERICANS  
WITH DISABILITIES ACT

(Mr. Hoyer asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

MR. [STENY H.] HOYER [of Maryland]: . . . I regret to inform the Members that it does not appear that the U.S. Senate is prepared to transfer the papers back to the House of Representatives this afternoon. As a result, I regret to inform the Members that we will not be considering the Americans With Disabilities Act this afternoon and, therefore, will not be considering it until after we return. . . .

MR. BARTLETT: I thank the gentleman for yielding. . . .

Mr. Speaker, I want to commend the gentleman for that decision, on two bases. First of all, on process: It seems to me that the rules of the House which say that the other body needs to act first, in fact, rule No. 555, states rather explicitly that in all cases of conference asked after votes of disagreement the conferees of the House making it are to leave the papers with the conferees of the other.

We have had disputes informally during the course of the day as to whether those papers could somehow be transferred back to this House even though the other body is required under the House rules to act first.

It seems to me that had that happened, it would have been disruptive to the process and Members would not have had sufficient, adequate notification as to which body was going to act first. . . .

PARLIAMENTARY INQUIRY

MR. DANNEMEYER: Mr. Speaker, I would like, if I may, to ask a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The gentleman will state it.

MR. DANNEMEYER: Mr. Speaker, if the Senate, when it takes up the conference report, would consider a motion to recommit the bill to conference because of the failure of the conferees to adopt the provision of both Houses on the Chapman amendment and that motion to recommit would be successful, would it then be in order, since the conferees are still in existence and in business, for the House to then consider a motion to instruct conferees on the Chapman amendment?

THE SPEAKER PRO TEMPORE: The gentleman's conclusion is correct.

MR. DANNEMEYER: I thank my colleague for yielding me this time. . . .

*Giving Notice of Intent To Offer Motion To Instruct*

**§ 14.8 A Member announced to the House that it was his intention to offer a motion to instruct the House managers at a conference, the conferees having been appointed for over 20 days without having filed a report.**

<sup>10</sup>. Dale E. Kildee (Mich.).

On May 22, 1968,<sup>(11)</sup> Speaker John W. McCormack, of Massachusetts, granted Mr. James A. Burke, of Massachusetts, permission to address the House.

MR. BURKE of Massachusetts: Mr. Speaker, I have taken this time to advise the House that on next Wednesday, May 29, I propose to offer a motion to instruct the managers on the part of the House at the conference on the bill, H.R. 15414, the tax bill, to insist on an expenditure reduction for fiscal year 1969 of \$4 billion, instead of a \$6 billion cut.<sup>(12)</sup>

### *Form of Notice of Intention To Instruct Conferees*

**§ 14.9 Under Rule XXVIII clause 1 (as amended in 1989) a Member must give one day's notice of his intention to offer a motion to instruct conferees who have been appointed for 20 days without filing a report.**

The amendment to Rule XXVIII, requiring notice of an intention to

11. 114 CONG. REC. 14433, 90th Cong. 2d Sess.

12. *Parliamentarian's Note*: The conferees had reached agreement but had not yet filed their report. Under these conditions, a motion to instruct the managers on the part of the House, under Rule XXVIII clause 1(b) (clause 1(c) in 1997), was in order.

offer a motion to instruct conferees under the "20-day rule" (see clause 1(c)) was adopted in 1989;<sup>(13)</sup> the application of the new rule was illustrated during the proceedings of Nov. 13, 1989.<sup>(14)</sup>

#### NOTICE OF MOTION TO INSTRUCT CONFEREES ON H.R. 3299

(Mr. Tauke asked and was given permission to address the House for 1 minute.)

MR. [THOMAS J.] TAUKE [of Iowa]: Mr. Speaker, I would like to serve notice that I am going to propose a motion to instruct conferees on H.R. 3299, the conference committee having been constituted over 20 days. My motion will be to instruct the conferees to substitute, in lieu of title III of the Education and Labor Committee section, those provisions of the Ways and Means Committee section to expand the title XX block grant and the earned-income tax credit.

*Parliamentarian's Note*: The proposed motion to instruct can be described in general terms but the exact form of the motion must be included in the Record to constitute the adequate "notice" required by the rule. In the example carried here, the motion was never

13. See H. Res. 5, 135 CONG. REC. 72, 101st Cong. 1st Sess. The rule is currently carried in § 910, *House Rules and Manual* (1997).

14. 135 CONG. REC. 28559, 101st Cong. 1st Sess.

placed in the Record in its precise form, and perhaps because of this deficiency, was never called up.

***Procedure for Giving Notice of Intention To Instruct Under 20-day Rule***

**§ 14.10 The required notice under Rule XXVIII clause 1(c)<sup>(15)</sup> that a Member intends to offer a motion to instruct conferees under the 20-day rule has been fulfilled by a statement during special orders, since giving such notice is not considered “business” which would be inappropriate during such proceedings.**

It has long been the policy of the Speaker not to permit the conduct of business after the House has begun special-order speeches at the end of a legislative day. The announcement of an intent to offer a motion to instruct does not require the consent of the House and has thus been permitted after the conclusion of legislative business. Such a request is shown here.<sup>(16)</sup>

15. *House Rules and Manual* § 910 (1997).

16. See 140 CONG. REC. 26341, 26347, 103d Cong. 2d Sess., Sept. 28, 1994.

SPECIAL ORDERS

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Under the Speaker’s announced policy of February 11, 1994, and June 10, 1994, and under a previous order of the House, the following Members are recognized for 5 minutes each. . . .

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT ON H.R. 820, NATIONAL COMPETITIVENESS ACT

MR. [DANA] ROHRABACHER [of California]: Mr. Speaker, pursuant to clause 1(c) of rule 28, I announce to the House that tomorrow I intend to offer a motion to instruct conferees on H.R. 820. I had previously expected to offer this motion today. The form of the motion is as follows:

Mr. Rohrabacher moves that the managers on the part of the House at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill, H.R. 820, be instructed to insist on the provisions contained in section 506 of the House bill, entitled “Prohibitions”, the text of which is as follows: “None of the funds made available in this Act may be used to provide any direct Federal financial benefit to any person who is not (1) a citizen or national of the United States; (2) an alien lawfully admitted for permanent residence; or (3) an alien granted legal status as a parolee, asylee, or refugee.”.

***Divisibility of Motion To Instruct Offered After 20 Days***

**§ 14.11 A motion to instruct conferees under Rule XXVIII**

17. Robert C. (Bobby) Scott (Va.).

**to agree to a Senate amendment with an amendment may not be divided for the purpose of permitting a vote on the Senate amendment itself.**

On May 9, 1946,<sup>(18)</sup> the following occurred in the House:

MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, the Members of the conference committee on the bill (H.R. 4761) to amend the National Housing Act by adding thereto a new title relating to the prevention of speculation and excessive profits in the sale of housing, and to insure the availability of real estate for housing purposes at fair and reasonable prices, and for other purposes, having been appointed for more than 20 days and failing to file a report, I desire to make a motion under paragraph 1½a of rule XXVIII of the House,<sup>(19)</sup> which motion is at the Clerk's desk. . . .

THE SPEAKER:<sup>(20)</sup> The gentleman from Kentucky [Mr. Spence] offers a motion which the Clerk will report.

The Clerk read as follows:

Mr. Spence moves to instruct the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 4761 to agree to section 11(a) of the Senate amendment, with an amendment, as follows: Strike out "\$600,000,000" as it appears there-

in, and insert in lieu thereof "\$400,000,000." . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: As I understand the motion filed by the gentleman from Kentucky, it provides for agreeing to the Senate amendment with an amendment. Is it possible to have the motion divided so that a vote may be taken on the Senate amendment itself?

THE SPEAKER: It is one proposition, it is not divisible.

**§ 14.12 A motion to instruct conferees under Rule XXVIII clause 1(c) is divisible if it contains two or more substantive propositions.**

On May 26, 1936,<sup>(1)</sup> Mr. Thomas L. Blanton, of Texas, pursuant to a clause in Rule XXVIII<sup>(2)</sup> offered a motion to instruct House conferees on H.R. 11581, the District of Columbia appropriations bill for fiscal 1937. The motion contained three separate instructions. After the Clerk read the motion and after the previous question was

18. 92 CONG. REC. 4750, 4751, 79th Cong. 2d Sess.

19. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

20. Sam Rayburn (Tex.).

1. 80 CONG. REC. 7945, 7951, 74th Cong. 2d Sess.

2. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1973). In 1936, the pertinent clause was numbered 1½a.

ordered, Mr. Bertrand H. Snell, of New York, rose.

MR. SNELL: Mr. Speaker, I ask for a division of the resolution.

THE SPEAKER:<sup>(3)</sup> The Chair thinks the resolution is divisible, and the Clerk will report the first portion of the resolution.

***Motion To Instruct as Unfinished Business***

**§ 14.13 A motion to discharge conferees which is pending when the House adjourns becomes the unfinished business the next day.**

On Sept. 12, 1940,<sup>(4)</sup> after Mr. Harry P. Beam, of Illinois, offered a motion to discharge the House conferees on S. 326, the following occurred:

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The gentleman will state it.

MR. RAYBURN: Mr. Speaker, if the House should adjourn now and a conference report is not filed by 12 o'clock noon tomorrow, would the motion of the gentleman from Illinois [Mr. Beam] be pending and still in order?

THE SPEAKER PRO TEMPORE: It would be the unfinished business of the House and the first thing in order tomorrow.

***Number of Motions***

**§ 14.14 It has been held that the rule authorizing a motion to instruct conferees after the expiration of 20 calendar days is not restricted to one such motion.**

On Aug. 22, 1935,<sup>(6)</sup> Mr. Sam Rayburn, of Texas, offered a privileged motion to instruct the House conferees on S. 2796 (the Public Utility Holding Company Act), who had been appointed more than 20 days prior and had not filed a report. Mr. George Huddleston, of Alabama, then rose.

MR. HUDDLESTON: Mr. Speaker, I make the point of order that the resolution is not privileged. . . .

Mr. Speaker, this motion, if privileged at all, is privileged under House Rule 1-A,<sup>(7)</sup> the 20-day rule. It will be remembered that some days ago, 20 days having elapsed after the appointment of conferees under the rule, this matter was brought up and a motion was made by the gentleman from Texas [Mr. Rayburn] to instruct conferees.

3. Joseph W. Byrns (Tenn.).

4. 86 CONG. REC. 12053, 76th Cong. 3d Sess.

5. Jere Cooper (Tenn.).

6. 79 CONG. REC. 14162-64, 74th Cong. 1st Sess.

7. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).

That motion was rejected. Thereupon, another motion was made to instruct the conferees and the motion was agreed to.

The view which I present is that by that action the force of the 20-day rule was exhausted. The bolt was shot—its force and effect is spent—and no motion can be again made under that rule.

Mr. Speaker, it is obvious that if this motion can be made today it could have been made at any time since the prior action by the House. Also, that if this motion can be made now, it being the second motion to instruct after a motion to instruct has been passed by the House, an unlimited number of motions to instruct can be made. In short, if this motion is privileged, a motion can be made every day to instruct conferees; it can be made every hour in every day. Manifestly, in the adoption of the rule it was never contemplated that any such multiplicity of motions should be made. Therefore, we are driven to the conclusion that only a single motion, when it is passed, can be made within the 20-day rule. . . .

THE SPEAKER:<sup>(8)</sup> The Chair is ready to rule. The gentleman from Texas [Mr. Rayburn] has submitted a motion to instruct the conferees on the so-called "utility bill," which motion has already been read from the Clerk's desk. The gentleman from Alabama [Mr. Huddleston] makes the point of order that the motion is not privileged under the rules of the House. The Chair again reads the rule upon which the gentleman from Texas has predicated his

motion: Section 1½(a) of rule XXVIII reads in part as follows:

After House conferees on any bill or resolution in conference between the House and Senate shall have been appointed for 20 calendar days and shall have failed to make a report, it is hereby declared to be a motion of the highest privilege to move to discharge said House conferees and to appoint new conferees, or to instruct said House conferees.

It will be noted that the rule itself does not undertake to place any limitations upon the number of motions that may be made. The Chair has heretofore stated that, in his opinion, this rule was adopted in the Seventy-second Congress with the sole object and purpose on the part of the House of retaining control over the conferees after they had been appointed to consider differences between the House and the Senate.

Prior to that time, as we all know, after the appointment of the conferees, the House lost control. In fact, if the Chair may repeat, this rule was adopted to bring back to the House control over its own agents, or conferees, after giving them 20 days in which to come to some agreement with the representatives of the other body. To say that control is exhausted after the making of one motion it seems to the Chair is not justified by the rule or by the evident intent of the House when it adopted the rule. Certainly the House did not adopt this rule with the idea of retaining control of its own agents and then immediately after a motion was made, whatever might be the subject of the motion, again surrendering for all

8. Joseph W. Byrns (Tenn.).



time to come control of those agents or those conferees. . . .

. . . The Chair thinks it clear that if the House had intended that only one motion should be made under this rule, it would have said so when the rule was adopted. Certainly the Chair has no authority to limit the number of motions made under the plain reading of this rule.

The Chair, therefore, overrules the point of order and the gentleman from Texas is recognized.

**§ 14.15 Where conferees have not reported within 20 days following their appointment, motions to instruct can be offered; and defeat of one such motion does not prohibit the later submission of an identical motion.**

Rule XXVIII clause 1(c) provides an opportunity for numerous motions to instruct House managers after they have been in conference for 20 calendar days or more and have not filed a report.<sup>(9)</sup>

9. Rule XXVIII clause 1(c), permitting the 20-day motion to instruct, has been part of the rules since Dec. 9, 1931 (8 Cannon's Precedents § 3225). An amendment to the rule in the 101st Congress put in place a one-day notice requirement before the motion can be privileged. After notice is given, the Speaker then sets a time and/or place in the legislative schedule on the next legislative day for

The following discussion of the repetition of motions to instruct under this rule occurred on July 22, 1974.<sup>(10)</sup>

MOTION TO FURTHER INSTRUCT CONFEREES ON H.R. 69, EXTENDING THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

PREFERENTIAL MOTION OFFERED BY  
MR. WAGGONNER

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Speaker, under clause 1, rule XXVIII, I offer a preferential motion.

The Clerk read as follows:

Mr. Waggonner moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 69, be instructed to insist upon the provisions of the House relating to limitations on the transportation of students embodied in title II of the House bill.

POINT OF ORDER

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I make a point of order against the preferential motion.

THE SPEAKER:<sup>(11)</sup> The gentleman will state it.

MR. STEIGER of Wisconsin: Mr. Speaker, I make a point of order against the preferential motion to instruct the conferees on the basis that

consideration of the motion. See *House Rules and Manual* § 910 (1997).

10. 120 CONG. REC. 24448, 24449, 93d Cong. 2d Sess.

11. Carl Albert (Okla.).

on two previous occasions the House has already instructed conferees on H.R. 69 on identical language.

If I can be heard on the point of order, Mr. Speaker, I recognize that without the benefit of precedents other than those contained in Cannon's, it is difficult for the Members of the House to understand fully all of the precedents of the Rules of the House of Representatives, but let us review the history.

Prior to the appointment of conferees, the gentleman from Michigan offered a motion to instruct conferees on the so-called Esch amendment on school busing that was agreed to by the House. After 20 days had elapsed, the gentleman from Louisiana offered a subsequent motion to further instruct the conferees on exactly the same question, the busing of children under title II of the House bill. The gentlewoman from Hawaii offered a motion to instruct conferees, and I did not on a timely basis raise a point of order against her motion to instruct conferees at that point.

Let me go back to what Champ Clark said in volume 8, page 726 of Cannon's Precedents.

It says in the ruling at 3236, that:

One motion to instruct having been considered and disposed of, a further motion to instruct was not admissible.

The Speaker at that time said:

The motion to instruct is analogous to a motion to recommit, and there can be but one motion to recommit that is in order, and it is amendable; . . . there must be an end to all things sometime or other.

I make my point of order based on that appropriate ruling by Speaker Clark, on the basis that it is not wise nor timely for the House to instruct conferees time after time, whether on the same subject or on a different subject, and all things must come to an end.

I would hope that the Chair will support the point of order.

THE SPEAKER: Does the gentleman from Louisiana desire to be heard on the point of order?

MR. WAGGONER: I do desire to be heard, Mr. Speaker.

Mr. Speaker, that which some people consider wise and that which the rules provide sometimes are somewhat different, and in this instance the rules are to the contrary. The rules and the precedents speak for themselves.

Speaker Byrns, on August 22, 1935, volume 79, 74th Congress, 1st session, was called to rule upon a similar point of order. A Member of the House who later became Speaker, Mr. Rayburn, of Texas, offered a privileged resolution. Mr. Huddleston made a point of order against that privileged resolution. He said:

Mr. Speaker, I make the point of order that the resolution is not privileged.

He went further and he said:

This motion, if privileged at all, is privileged under House Rule 1-A, the 20-day rule. It will be remembered some days ago, 20 days having elapsed after the appointment of conferees under the rule, this matter was brought up and a motion was made by the gentleman from Texas (Mr. Rayburn) to instruct conferees. That motion was rejected. There-

upon, another motion was made to instruct the conferees and the motion was agreed to.

Mr. Huddleston went on to say:

The view which I present is that by that action the force of the 20-day rule was exhausted. The bolt was shot—its force and effect is spent—and no motion can be again made under that rule.

And then he went on and argued further the point.

Mr. Speaker, I think it is sufficient to quote the ruling of the Chair, Speaker Byrns, on that question, and the Chair stated it was ready to rule and the rule by the Speaker was:

The gentleman from Texas (Mr. Rayburn) has submitted a motion to instruct the conferees on the so-called "utility bill", which motion has already been read from the Clerk's desk. The gentleman from Alabama (Mr. Huddleston) makes the point of order that the motion is not privileged under the rules of the House. The Chair again reads the rule upon which the gentleman from Texas has predicated his motion: . . .

The Chair then read the rule. The Chair went on to say:

It will be noted that the rule itself does not undertake to place any limitations upon the number of motions that may be made. The Chair has heretofore stated that, in his opinion, this rule was adopted in the Seventy-second Congress with the sole object and purpose on the part of the House of retaining control over the conferees after they had been appointed to consider differences between the House and the Senate.

Prior to that time, as we all know, after the appointment of the conferees, the House lost control. In fact, if the Chair may repeat, this rule was

adopted to bring back to the House control over its own agents, or conferees, after giving them 20 days in which to come to some agreement with the representatives of the other body.

Mr. Speaker, rather than to read the rest of that opinion, let me say the Speaker concluded then by saying:

The Chair, therefore, overrules the point of order and the gentleman from Texas is recognized.

Mr. Speaker, I ask that the point of order be overruled and that I be recognized.

THE SPEAKER: The Chair is ready to rule. The general rule as stated on page 127 of Cannon's Procedures is:

Conferees failing to report within 20 days after appointment may be instructed or discharged and motions to instruct or discharge and appoint successors are of the highest privilege.

Now, the Chair would like to note that the citation that the gentleman from Wisconsin gave from Speaker Champ Clark did not refer to privileged motions under clause 1(b), rule XXVIII, where conferees have failed to report in 20 calendar days.

The Chair has examined the precedents that the gentleman from Louisiana has cited and agrees that they support the proposition that a second or any number of motions to instruct are in order. The Chair therefore overrules the point of order and recognizes the gentleman from Louisiana.

**§ 14.16 A second motion to instruct conferees was made the same day upon the same**

**matter in disagreement between the two Houses.**

On Aug. 1, 1935,<sup>(12)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. George Huddleston, of Alabama, to offer the following motion to instruct the conferees on S. 2796, the Public Utilities Act of 1935:

The Clerk read as follows:

Motion to instruct conferees by Mr. Huddleston: Moved that managers on the part of the House appointed upon request of the Senate for a conference upon the disagreeing votes of the House and the Senate on the amendment adopted by the House to S. 2796 be, and they are hereby, instructed as follows:

That it is the will of the House that its managers insist upon a conference being held under just and fair conditions, such as will insure careful, calm, and deliberate consideration and will tend to promote an agreement by the conference, and that in the performance of their duties as such managers it is and shall remain the right and privilege of the managers on the part of the House, if in their judgment it is desirable in promoting the aforesaid ends, that such conference be held without the presence thereof of any person not a manager upon the part of either House or Senate.

Earlier that day, a motion to instruct the conferees on S. 2796, offered by Mr. Sam Rayburn, of

12. 79 CONG. REC. 12272, 74th Cong. 1st Sess.

Texas, had been defeated in the House.<sup>(13)</sup>

**§ 14.17 A motion to instruct House conferees who have failed to report for 20 calendar days is in order notwithstanding the previous adoption by the House of the same motion to instruct.**

On May 11, 1972,<sup>(14)</sup> Mr. Joe D. Waggoner, Jr., of Louisiana, was recognized in regard to S. 659, the Higher Education Amendments of 1971.

MR. WAGGONNER: Mr. Speaker, I send to the desk a privileged motion under clause 1, rule XXVIII.

THE SPEAKER:<sup>(15)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Waggoner moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the House amendment to the bill S. 659 be instructed to insist upon the provisions contained in Sections 1701 and 1703(b) of the House amendment. . . .

MR. WAGGONNER: Mr. Speaker, and Members of the House, this is an effort on my part, and others, to insist upon the instructions previously given to the

13. *Id.* at pp. 12265-72.

14. 118 CONG. REC. 16838, 16842, 92d Cong. 2d Sess.

15. Carl Albert (Okla.).

House conferees to stand by the House language contained in the higher education bill which specifically, under the conditions set forth by the Broomfield amendment, the Ashbrook amendment, as amended by the Green amendment, instruct them to stand by the language of those amendments prohibiting bus- ing to overcome racial imbalance and prohibit coercion by the executive branch of Government.<sup>(16)</sup>

The motion to instruct was agreed to by the House.

***Multiple Motions To Instruct,  
20-day Rule; Notice Require-  
ment***

**§ 14.18 Pursuant to Rule XXVIII clause 1(c), as it existed in the 99th Congress, any number of proper motions to instruct the House conferees could be offered after a bill had been committed to conference for more than 20 calendar days, and such motions could be offered one after another so long as more highly privileged business did not intervene.**

16. The House had on Mar. 8, 1972, adopted a motion to instruct conferees identical to that offered by Mr. Waggoner in this instance. 118 CONG. REC. 7554-63, 92d Cong. 2d Sess.

The proceedings on July 10, 1985,<sup>(17)</sup> illustrate how motions under the 20-day rule could divert the House from scheduled business. As a result of the increased use of such motions, the House adopted a change to Rule XXVIII clause 1(c) in the 103d Congress, requiring one day's notice of a Member's intention to offer the motion.<sup>(18)</sup>

MR. [PAUL E.] KANJORSKI [of Pennsylvania]: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Kanjorski moves that, pursuant to the provisions of clause 1(b) of Rule XXVIII, the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the bill Senate Concurrent Resolution 32 be instructed to insist on the House provisions providing for full cost-of-living adjustments for Social Security recipients, federal military and civilian retirees, black lung recipients, railroad retirees, and recipients of VA compensation and pensions.

17. 131 CONG. REC. 18440, 18442, 18448, 18449, 99th Cong. 1st Sess.

18. See 135 CONG. REC. 72, 101st Cong. 1st Sess., Jan. 3, 1989 (H. Res. 5). See current text of the rule in *House Rules and Manual* § 910 (1997).

19. Thomas S. Foley (Wash.).

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania [Mr. Kanjorski] is recognized for 1 hour. . . .

PARLIAMENTARY INQUIRY

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. WALKER: Mr. Speaker, it has now been discussed on the floor that the gentleman from Ohio would be entitled to offer an amendment or to offer another motion to instruct.

Mr. Speaker, is it the intention of the Chair to allow the gentleman from Ohio to offer that motion immediately following the disposal of the motion of the gentleman from Pennsylvania?

THE SPEAKER PRO TEMPORE: Subsequent to the disposition of the motion to instruct by the gentleman from Pennsylvania [Mr. Kanjorski], the Chair could recognize another Member for the purpose of offering another privileged motion to instruct. . . .

MR. KANJORSKI: Mr. Speaker, I move the previous question on the privileged motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion to instruct, offered by the gentleman from Pennsylvania [Mr. Kanjorski].

The motion to instruct was agreed to.

A motion to reconsider was laid on the table. . . .

MR. [DELBERT L.] LATTA [of Ohio]: Mr. Speaker, I offer a privileged motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

Mr. Latta moves that the managers on the part of the House at the conference on the disagreeing votes between the two Houses on the concurrent resolution, S. Con. Res. 32, be instructed to insist on the House position on cost of living adjustments; and further in order to achieve the largest possible deficit reduction package, and to adopt a budget path that will lead the nation toward a balanced budget, the managers on the part of the House are instructed to adopt additional domestic savings to guarantee that the dollars in savings that are lost by insisting on the House position are realized through additional spending restraint.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio [Mr. Latta] is recognized for 1 hour.

***Tabling Motion To Instruct After 20 Days***

**§ 14.19 A motion to instruct House conferees is highly privileged after they have been appointed for 20 calendar days and have failed to report; but pending the demand for the previous question on the motion, the motion to table the instructions is in order.**

The motion to instruct under Rule XXVIII clause 1(c), where conferees have failed to report within 20 days following their appointment, is a "motion of the

highest privilege.”<sup>(20)</sup> On Sept. 22, 1976, this motion was subject to debate under the hour rule<sup>(1)</sup> which in the example shown, was under the control of Mr. Joe D. Waggonner, Jr., of Louisiana, who offered the motion to instruct:<sup>(2)</sup>

MR. WAGGONNER: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Pursuant to the provisions of rule XXVIII, clause 1(b), Mr. Waggonner moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 12572, to amend the U.S. Grain Standards Act to improve the grain inspection and weighing system, and for other purposes, be instructed to disagree to the Senate amendment and to insist on the language of the House bill.

MR. WAGGONNER: Mr. Speaker, my preferential motion is offered as a motion of the highest privilege pursuant to rule XXVIII, clause 1(b), which states:

After House conferees on any bill or resolution in conference between the House and Senate shall have been appointed for twenty calendar

20. *House Rules and Manual* § 910 (1997).

1. The division of debate time on a motion to instruct conferees between the majority and minority parties was added to Rule XXVIII, as a new clause (b), in the 101st Congress. See H. Res. 5, 135 CONG. REC. 72, 101st Cong. 1st Sess., Jan. 3, 1989.
2. 122 CONG. REC. 31876, 31881, 31882, 94th Cong. 2d Sess.

days and shall have failed to make a report, it is hereby declared to be a motion of the highest privilege to move to discharge said House conferees and to appoint new conferees, or to instruct said House conferees; and further, during the last six days of any session of Congress it shall be a privileged motion to move to discharge, appoint, or instruct, House conferees after House conferees shall have been appointed thirty-six hours without having made a report.

My motion applies to the House conferees on H.R. 12572, the so-called grain inspection bill. . . .

Mr. Speaker, the conferees have been meeting for 4 months. I do not believe that we should abandon the House-passed provision which was opposed by only 33 Members when we passed this bill earlier this year. . . .

Mr. Speaker, I move the previous question on the preferential motion.

MOTION TO TABLE OFFERED BY MR. BERGLAND

MR. [BOB] BERGLAND [of Minnesota]: Mr. Speaker, I move to lay the preferential motion on the table.

POINT OF ORDER

MR. WAGGONNER: Mr. Speaker, I raise a point of order.

THE SPEAKER:<sup>(3)</sup> The gentleman from Louisiana (Mr. Waggonner) will state his point of order.

MR. WAGGONNER: Mr. Speaker, under the rules of the House, in offering a preferential motion, the time belongs to the offeror. Now, for the benefit of the gentleman from Minnesota (Mr. Bergland), I can move the previous ques-

3. Carl Albert (Okla.).

tion, and the vote occurs on the previous question. The vote does not occur on a motion to table until the previous question is voted on and unless the previous question is not ordered.

THE SPEAKER: The Chair will state the gentleman's statement is not correct. If the gentleman moves the previous question, the motion to instruct conferees is first subject to being tabled.

MR. WAGGONNER: That is exactly what I am talking about, Mr. Speaker. We have to table my motion.

THE SPEAKER: The motion to table the motion to instruct is privileged over the previous question.

MR. WAGGONNER: But the previous question has to be tabled first, Mr. Speaker.

THE SPEAKER: No, that is not correct. The motion to table is being applied to the motion to instruct conferees, and not to the previous question on that motion.

#### PARLIAMENTARY INQUIRY

MR. WAGGONNER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. WAGGONNER: For my information, Mr. Speaker, will the Chair cite for me the rule which is the basis of the Chair's ruling?

THE SPEAKER: The citation is clause 4 of rule XVI.

MR. WAGGONNER: And that says what, Mr. Speaker?

THE SPEAKER: The Chair will read a portion of the rule:

When a question is under debate, no motion shall be received but to

adjourn, to lay on the table, for the previous question (which motions shall be decided without debate), to postpone to a day certain, to refer, or to amend, or postpone indefinitely; which several motions shall have precedence in the foregoing order; and no motion to postpone to a day certain, to refer, or to postpone indefinitely, being decided, shall be again allowed on the same day at the same stage of the question.

MR. WAGGONNER: Mr. Speaker, what is that preferential order?

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I call for the regular order. The regular order is on the motion to table; is it not?

THE SPEAKER: The gentleman is correct.

MR. YATES: Then, Mr. Speaker, let us have a vote.

THE SPEAKER: The question is on the motion to table offered by the gentleman from Minnesota (Mr. Bergland).

#### PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, am I correct in assuming that the gentleman from Minnesota (Mr. Bergland) has moved to table the previous question?

THE SPEAKER: The gentleman from Minnesota (Mr. Bergland) has moved to table the preferential motion to instruct conferees.

MR. BAUMAN: And that is what we will be voting on?

THE SPEAKER: Yes, and that is privileged.

MR. BAUMAN: I thank the Speaker.



## PARLIAMENTARY INQUIRY

MR. WAGGONNER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WAGGONNER: Mr. Speaker, under what rule of the House can the gentleman move to table the preferential motion without the previous question's being denied?

THE SPEAKER: The rule which the Chair has just cited and under the precedents in support thereof.

MR. WAGGONNER: Mr. Speaker, how can any vote be conducted without the previous question's being ordered?

THE SPEAKER: It is a motion to table, which must be voted on before the motion for the previous question on the matter which the gentleman refers to.

MR. YATES: Mr. Speaker, I demand the regular order.

THE SPEAKER: The regular order is demanded.

The Chair is putting the question on the motion which is before the House.

The question is on the motion offered by the gentleman from Minnesota (Mr. Bergland) to table the preferential motion offered by the gentleman from Louisiana (Mr. Waggonner).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. WAGGONNER: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 224, nays 178, not voting 28. . . .

So the motion to table the preferential motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *Discharge of Conferees by Unanimous Consent*

**§ 14.20 On one occasion the managers on the part of the House at a conference were by unanimous consent discharged and the House receded from its disagreement to the Senate amendment and concurred therein.**

On Dec. 14, 1944,<sup>(4)</sup> Mr. Francis E. Walter, of Pennsylvania, made the following request in the House:

Mr. Speaker, I ask unanimous consent that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (H.R. 3732) to repeal the prohibition against the filling of a vacancy in the office of district judge in the district of New Jersey, be discharged and that the House immediately proceed to consideration of the Senate amendment to that bill.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(5)</sup> Is there objection to the request of the gentleman from Pennsylvania? . . .

There was no objection. . . .

4. 90 CONG. REC. 9485, 78th Cong. 2d Sess.

5. Sam Rayburn (Tex.).

MR. WALTER: Mr. Speaker, I move that the House recede and concur in the Senate amendment.

The motion was agreed to.

A motion to reconsider was laid on the table.

## D. CONFERENCE REPORTS

## § 15. In General

When the House is in session the filing of a conference report is a matter of high privilege.<sup>(1)</sup> The rules provide that a conference report may always be presented (filed) in the House except when the Journal is being read, while the roll is being called, or when the House is voting on any proposition.<sup>(2)</sup> These reports may sometimes be filed when the House is not in session. The House may grant its consent that a conference report might be filed until midnight on a particular date,<sup>(3)</sup> during an adjournment of the House,<sup>(4)</sup> or during a recess of the House.<sup>(5)</sup>

A conference report must be accompanied by a joint statement explaining the effect that the agreement contained therein will have upon the measure to which it

relates. In the past separate explanatory statements were prepared and signed by each set of managers for their respective Houses. However, the rules now require that these statements be prepared and signed jointly by the conferees on the part of both Houses.<sup>(6)</sup> A point of order will not lie against the report on the ground that the explanatory statement is insufficient. This is a matter for the House to determine in its vote on the conference report itself.<sup>(7)</sup> These statements may include proposed action on amendments reported from the conference still in disagreement.<sup>(8)</sup> On one occasion, the statement incorporated by reference legislative history contained in committee reports.<sup>(9)</sup> The statement of the managers is not read if the report itself is read<sup>(10)</sup> but may by

1. § 16.1, *infra*.

Precedents included below that relate to limitations on the scope of reports are further analyzed at the beginning of § 7, *supra*.

2. Rule XXVIII clause 1(a), *House Rules and Manual* § 909 (1997).

3. § 16.7, *infra*.

4. §§ 16.9, 16.10, *infra*.

5. §§ 16.10, 16.13, *infra*.

6. Rule XXVIII clause 1(d), *House Rules and Manual* § 911 (1997). This clause was amended by H. Res. 5, 92d Cong. 1st Sess., pursuant to the Legislative Reorganization Act of 1970, 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(1) Oct. 26, 1970).

7. § 20, generally, *infra*.

8. § 20.1, *infra*.

9. See § 20.2, *infra*.

10. § 20.7, *infra*.

unanimous consent be read in lieu of the report.<sup>(11)</sup>

Minority views are not included in a conference report,<sup>(12)</sup> nor may separate minority statements accompany a report in addition to or in lieu of the joint explanatory statement.<sup>(13)</sup> However, exceptions taken by certain managers may be indicated in the explanatory statement (with the approval of the majority of the conferees),<sup>(14)</sup> or in the manner in which the conferees sign the report and statement.<sup>(15)</sup>

Conference reports are printed as reports of the House<sup>(16)</sup> and both the report and explanatory statement must be printed in the daily edition of the *Congressional Record* for the day on which they are filed.<sup>(17)</sup> This requirement does not apply during the last six days of a session,<sup>(18)</sup> and may be waived at other times by unanimous consent.<sup>(19)</sup>

11. § 20.8, *infra*.

12. §§ 15.1, 20.3, *infra*.

13. §§ 20.3, 20.4, *infra*.

14. § 20.4, *infra*.

15. §§ 18.6–18.8, *infra*.

16. Rule XXVIII clause 1(d), *House Rules and Manual* § 911 (1997).

17. Rule XXVIII clause 2(a), *House Rules and Manual* § 912 (1997).

18. *Id.* See § 22.5, *infra*.

19. § 16.3, *infra*.

Conference reports must be signed by a majority of the managers on the part of each House,<sup>(20)</sup> and the Speaker does not look behind these signatures to determine whether the report accurately reflects the conduct and results of a conference.<sup>(1)</sup>

### *Minority Views*

**§ 15.1 There is no provision in the rules whereby a minority member of a conference committee may file minority views on a conference report, although a Member may present such views unofficially by extending his remarks in the *Congressional Record*.**

On May 31, 1938,<sup>(2)</sup> after Mr. Wilburn Cartwright, of Oklahoma, asked unanimous consent to file a conference report and statement on H.R. 10140, a bill amending the Federal Aid Road Act, the following proceedings occurred:

MR. [JESSE P.] WOLCOTT [of Michigan]: I understand that one of the House conferees refused to sign the conference report and expected to file a

20. §§ 18.1, 18.2, *infra*.

1. §§ 18.2–18.4, *infra*.

2. 83 CONG. REC. 7759, 75th Cong. 3d Sess.

minority report. My parliamentary inquiry is whether a member of the conference committee may file a minority report, or whether there is any provision in the rules covering that matter.

THE SPEAKER:<sup>(3)</sup> In answer to the parliamentary inquiry of the gentleman from Michigan, the Chair will state that under the rules there is no provision whereby a minority member of a conference committee may file minority views on a conference report.

MR. WOLCOTT: A further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. WOLCOTT: May a member file a minority report as a part of the proceedings without having it printed as a part of the conference report?

THE SPEAKER: The member can extend his remarks in the Record and present his views, but not officially as a part of the conference report.<sup>(4)</sup>

***Form of Signature Sheets Showing "Exceptions" From Conference Amendment in Nature of Substitute***

**§ 15.2 Form of signatures on a conference report where managers inappropriately expressed their opposition to or exception from certain parts of the conference**

3. William B. Bankhead (Ala.).

4. See also 95 CONG. REC. 7096, 81st Cong. 1st Sess., June 1, 1949.

**agreement in the nature of a substitute.**

The signature sheets on this conference report, excerpted from the Record of Oct. 1, 1992,<sup>(5)</sup> made it clear that the three exceptions shown were attributed only to the name which immediately preceded the parenthetical comment. Since the Senate amendment to which the House disagreed and sent to conference was an amendment in the nature of a substitute, exceptions were clearly inappropriate. Managers at a conference must act on the conference report as a whole, either by signing to indicate their support or declining to sign to show opposition to any part thereof. Under precedent (see 8 Cannon's Precedents § 3302), members of a conference committee may not file separate views.

From the Committee on Armed Services, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

LES ASPIN,  
CHARLES E. BENNETT,  
G. V. MONTGOMERY. . .  
LARRY J. HOPKINS  
(except for Sec. 807  
on Mentor-Protege  
and Sec. 1364 on the  
Landmine Moratorium),

5. 138 CONG. REC. 29891, 102d Cong. 2d Sess.

BOB DAVIS,  
 DUNCAN HUNTER  
 (except for Secs. 232  
 and 234 related to  
 SDI),  
 DAVID O'B. MARTIN. . .  
 ARTHUR RAVENEL, Jr.,  
 ROBERT K. DORNAN  
 (except for Secs. 232  
 and 234 related to  
 SDI).

### *Conference Reports Not Printed in Senate*

§ 15.3 In the Senate, the requirement of the Legislative Reorganization Act of 1970 that conference reports be printed in both Houses is waived by unanimous consent; consequently, the Senate works from the House printing of such a report.

In the House, the requirement of the Legislative Reorganization Act of 1970 that conference reports be printed "as a report of the House" is incorporated in Rule XXVIII clause 1(d).<sup>(6)</sup> The official papers on a conference report still, of course, reflect the joint action and signatures of managers from both Houses.<sup>(7)</sup>

6. *House Rules and Manual* § 911 (1997).

7. 127 CONG. REC. 11, 12, 97th Cong. 1st Sess., Jan. 5, 1981.

### PRINTING OF CONFERENCE REPORTS

MR. BAKER: Mr. President, I ask unanimous consent that, notwithstanding the provisions of the Legislative Reorganization Act, conference reports and statements accompanying them not be printed as Senate reports when such conference reports and statements have been printed as a House report, unless specific request is made in the Senate in each instance to have such a report printed.

THE PRESIDENT PRO TEMPORE: Without objection, it is so ordered.

§ 15.4 Although the Senate rules require the printing of conference reports and the accompanying statements, this requirement is routinely waived, in each Congress, by a unanimous-consent request which aborts the printing requirement for the Congress in question whenever the House has printed the report.

The request, as stated and agreed to in the Senate on Jan. 5, 1993,<sup>(8)</sup> is carried here.

### PROVISIONS REGARDING CONFERENCE REPORTS AND STATEMENTS

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XXVIII, confer-

8. 139 CONG. REC. 9, 103d Cong. 1st Sess.

ence reports and statements accompanying them not be printed as Senate reports when such conference reports and statements have been printed as a House report unless specific request is made in the Senate in each instance to have such a report printed.

***Unusual Form of Conference Report To Simplify House Floor Procedure***

**§ 15.5 Form of conference report on a general appropriation bill where there were 132 Senate amendments, all wrapped inside the report as one motion to recede and concur with one nongermane amendment.**

This rather artificially constructed conference report would have been susceptible to points of order under several House rules, since it included in the agreed upon text legislative and unauthorized provisions. The motion to recede and concur in the final Senate amendment in disagreement would have been subject to attack under Rule XXVIII clause 4.<sup>(9)</sup> The procedure did have the advantage of reducing the number of debatable motions and the time

9. See *House Rules and Manual* § 913b (1997).

required to conclude consideration of the conference agreement.

The pertinent proceedings as excerpted from the Record of June 30, 1993,<sup>(10)</sup> are set out below.

CONFERENCE REPORT ON H.R. 2118,  
MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1993

Mr. [William H.] Natcher [of Kentucky] submitted the following conference report and statement on the bill (H.R. 2118) making supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes:

CONFERENCE REPORT (H. REPT. 103-165)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2118) "making supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes," having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1 through 131.

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment, as follows:

Strike all after the enacting clause and insert the following:

*That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated,*

10. 139 CONG. REC. 14935, 14936, 14942, 103d Cong. 1st Sess.

*to provide supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes, namely:*

CHAPTER I

DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES

DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION  
SERVICE

Salaries and Expenses

*For an additional amount for "Salaries and Expenses", \$4,000,000. . . .*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE . . .

Report language included by the House in the report accompanying H.R. 2118 (H. Rept. 103-91) and the report accompanying H.R. 2244 (H. Rept. 103-105) which is not changed by the report of the Senate (S. Rept. 103-54), and Senate report language which is not changed by the conference are approved by the committee of conference. The statement of the managers while repeating some report language for emphasis, is not intended to negate the language referred to above unless expressly provided herein.

Amendment Nos. 1-131: The Senate receded on amendments 1 through 131. Material in these amendments is addressed in Amendment 132.

Amendment No. 132: Deletes language proposed by the Senate and strikes all after the enacting clause and inserts substitute bill text described as follows: . . .

**A Conference Report Is Not Amendable**

**§ 15.6 A conference report under consideration is not subject to amendment; and the Chair has refused to recognize for a unanimous-consent request to strike a provision carried in such a report.**

A conference report is in the nature of a contract or agreement between the managers from the two Houses, and neither House can unilaterally alter the content where the report has been filed and is under consideration. The proceedings of Oct. 27, 1990,<sup>(11)</sup> touch on this principle.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, pursuant to the rule, I call up the conference report on the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Pursuant to House Resolution 542, the conference report is considered as having been read.

The gentleman from Illinois [Mr. Yates] will be recognized for 30 min-

11. 136 CONG. REC. 36891, 36901, 101st Cong. 2d Sess.

12. G. V. (Sonny) Montgomery (Miss.).



utes, and the gentleman from Ohio [Mr. Regula] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Yates]. . . .

MR. [STEVE] BARTLETT [of Texas]: Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I ask unanimous consent to strike from the bill the two unauthorized specially designated metal casting centers referred to in amendment No. 158 previously noted.

MR. [LES] AUCCOIN [of Oregon]: Mr. Speaker, I object.

MR. YATES: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: The Chair does not entertain that request. The Chair does not recognize for that purpose anyway.

The gentleman is out of order.

### ***Form of Conference Report Where House Recedes From Its Amendments***

#### **§ 15.7 Example of a conference report and statement where the House receded from its amendments to a Senate bill.**

Where the House recedes from its amendments to a Senate bill, the measure is passed. However, the conference report cited here, on S. 429, the Consumer Protection Against Price Fixing Act, was

rejected when called up on June 22, 1992.<sup>(13)</sup>

#### **CONFERENCE REPORT ON S. 429, CONSUMER PROTECTION AGAINST PRICE FIXING ACT OF 1991**

Mr. [Jack] Brooks [of Texas] submitted the following conference report and statement on the Senate bill (S. 429) to amend the Sherman Act regarding retail competition:

#### **CONFERENCE REPORT (H. REPT. 102-605)**

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 429), to amend the Sherman Act regarding retail competition, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses that the House recede from its amendments . . .

JACK BROOKS,  
DON EDWARDS,  
MIKE SYNAR,

*Managers on the Part of  
the House.*

JOE BIDEN,  
TED KENNEDY,  
HOWARD M. METZ-  
ENBAUM,

*Managers on the Part of  
the Senate.*

#### **JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE . . .**

For the text of S. 429 as it passed the Senate, see *Congressional Record* of October 10, 1991, page H7756.

JACK BROOKS,

13. 138 CONG. REC. 15659, 102d Cong. 2d Sess.

DON EDWARDS,  
MIKE SYNAR,  
*Managers on the Part of  
the House.*

## § 16. Privilege of Filing; When in Order

### *Filing of Report as Privileged*

§ 16.1 The filing of a conference report while the House is in session is a privileged matter and the presentation of such a report does not require unanimous consent.

On Aug. 1, 1968,<sup>(14)</sup> after Mr. Graham B. Purcell, of Texas, submitted a conference report and statement on H.R. 16363, a bill to clarify and amend the Poultry Products Inspection Act, Mr. Wiley Mayne, of Iowa, raised the following objection:

Mr. Speaker, I wish to object to the filing of the conference report on the ground that it is not in proper form. I am a conferee and I have not had an opportunity to see the report.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> That is a matter that the gentleman should take up with the gentleman from Texas.

14. 114 CONG. REC. 24806, 90th Cong. 2d Sess.

15. Chet Holifield (Calif.).

The Chair has no knowledge of the conference report except that it is being filed.

MR. MAYNE: Mr. Speaker, I wish to have the record made clear that I do object to its filing for the reason that it is not in the proper form.

THE SPEAKER PRO TEMPORE: The gentleman's statement will appear in the Record.

§ 16.2 Notwithstanding the recommittal of a conference report to a committee of conference with instructions, the subsequent conference report is filed as privileged, given a new number and otherwise treated as a new and separate report.

On May 8, 1963,<sup>(16)</sup> the House voted to recommit the conference report, House Report No. 275, on H.R. 5517, a supplemental appropriations bill. On May 14, 1963,<sup>(17)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Albert Thomas, of Texas, to call up House Report No. 290.

MR. THOMAS: Mr. Speaker, I call up the conference report on the bill (H.R. 5517) making supplemental appropriations for the fiscal year ending June 30, 1963, and for other purposes, and ask unanimous consent that the statement

16. 109 CONG. REC. 8043, 88th Cong. 1st Sess.

17. *Id.* at p. 8502.

of the managers on the part of the House be read in lieu of the report. . . .

CONFERENCE REPORT (H. REPT. NO. 290)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5517) making supplemental appropriations for the fiscal year ending June 30, 1963, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: . . .

### *Printing Report in Record*

**§ 16.3 By unanimous consent, the House waived the requirement that a conference report be printed in the Record in accordance with Rule XXVIII clause 2.<sup>(18)</sup>**

On June 26, 1959,<sup>(19)</sup> the following proceedings occurred in regard to H.R. 7523, a bill providing for a one-year extension of existing corporate taxes:

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I ask unanimous consent that the conferees may have until midnight Saturday night next to file a conference report on the bill H.R. 7523, and that rule XXVIII relating to

18. *House Rules and Manual* § 912a (1997).

19. 105 CONG. REC. 11961, 86th Cong. 1st Sess.

printing in the Record in this instance be waived.

THE SPEAKER:<sup>(20)</sup> Is there objection to the request of the gentleman from Arkansas?

There was no objection.

*Parliamentarian's Note:* The report was printed in the daily Record, however, since it was filed before the Record went to press, Mr. Mills had anticipated that the report would not be filed in time to make this deadline.

### *Printing of Conference Report in Congressional Record*

**§ 16.4 Where the House grants permission for the filing of a conference report on a day when the House will not be in session, the report and the accompanying statement are printed in the *Congressional Record*, under a special heading, if there is a Record printed on that day because of a Senate session.**

Rule XXVIII clause 2(a)<sup>(1)</sup> mandates that a conference report be printed in the *Congressional Record* before House consideration is in order. The *Congressional Rec-*

20. Sam Rayburn (Tex.).

1. *House Rules and Manual* § 912(a) (1997).

*ord* for Jan. 23, 1976,<sup>(2)</sup> provides an example of the practice described.

The House was not in session today. Its next meeting will be held on Monday, January 26, 1976, at 12 o'clock noon.

CONFERENCE REPORT ON S. 2718, RAIL SERVICES ACT OF 1975

Pursuant to an order of the House on Thursday, January 22, 1976, the conference report on the bill (S. 2718) to improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes, is herewith printed, as follows:

[Submitted by Mr. Staggers]

CONFERENCE REPORT (H. REPT. NO. 94-781)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the text of the bill (S. 2718) to improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: . . .

### *Who May File*

#### **§ 16.5 A conference report is filed by a manager on the**

2. 122 CONG. REC. 804, 94th Cong. 2d Sess.

**part of the House at the conference, and it takes unanimous consent for a Member, not a conferee, to submit the report for printing under the rule.**

On Dec. 1, 1977,<sup>(3)</sup> Mr. Richard L. Ottinger, of New York, a member of the committee which reported the measure but not named as a conferee, asked permission of the House to file a conference report on behalf of another.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 9418, HEALTH PROFESSIONS EDUCATION AMENDMENTS OF 1977

MR. OTTINGER: Mr. Speaker, I ask unanimous consent, on behalf of the chairman of the Committee on Interstate and Foreign Commerce, to file a conference report on the bill (H.R. 9418) to amend the Public Health Service Act to require increases in the enrollment of third-year medical students as a condition to medical schools receiving capitation grants under such Act, and for other purposes.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> Is there objection to the request of the gentleman from New York?

There was no objection.

CONFERENCE REPORT ON H.R. 9418, HEALTH PROFESSIONS EDUCATION AMENDMENTS OF 1977

3. 123 CONG. REC. 38271, 95th Cong. 1st Sess.
4. Sidney R. Yates (Ill.).

Mr. Ottinger (on behalf of Mr. Stagers) filed the following conference report and statement on the bill (H.R. 9418) to amend the Public Health Service Act to require increases in the enrollment of third-year medical students as a condition to medical schools receiving capitation grants under such Act.

**§ 16.6 Where conferees from two standing committees of the House were appointed to consider separate titles of a bill, their report was filed by the chairman of the committee which had originally reported the bill to the House.**

On May 12, 1970,<sup>(5)</sup> Harley O. Stagers, of West Virginia, Chairman of the Committee on Interstate and Foreign Commerce, was recognized by Speaker John W. McCormack, of Massachusetts, to submit House Report No. 91-1074. The Record carries the following entry:

Mr. Stagers submitted the following conference report and statement on the bill (H.R. 14465) to provide for the expansion and improvement of the Nation's airport and airway system, for the imposition of airport and airway user charges, and for other purposes: . . .

5. 116 CONG. REC. 15202, 15203, 91st Cong. 2d Sess.

*Parliamentarian's Note:* Managers had been appointed from the Committee on Interstate and Foreign Commerce and the Committee on Ways and Means.<sup>(6)</sup>

***Authority To File by Midnight on a Future Day***

**§ 16.7 By unanimous consent, the House took from the Speaker's table a House bill with Senate amendments thereto, disagreed with the Senate amendments, agreed to a conference, and granted the conferees until midnight the following Tuesday (four calendar days from the date of the request) to file a report.**

On June 18, 1959,<sup>(7)</sup> the following occurred in the House:

MR. [FRED] MARSHALL [of Minnesota]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7175) making appropriations for the Department of Agriculture and Farm Credit Administration for the fiscal year ending June 30, 1960, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

6. 116 CONG. REC. 5713, 91st Cong. 2d Sess., Mar. 3, 1970.

7. 105 CONG. REC. 11268, 11269, 86th Cong. 1st Sess.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Minnesota? The Chair hears none and appoints the following conferees: Messrs. Whitten, Marshall, Cannon, Andersen of Minnesota, and Taber.

MR. MARSHALL: Mr. Speaker, I ask unanimous consent that the conferees on the disagreeing votes of the two Houses on the bill H.R. 7175 may have until midnight June 22 in which to file a report.

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

There was no objection.

### *Filing Conference Report During Special Orders*

#### **§ 16.8 A conference report, which is privileged for filing under the rules, can be presented during special orders.**

Under Rule XXVIII clause 1(a): "The presentation of reports of committees of conference shall always be in order, except when the Journal is being read, while the roll is being called, or the House is dividing on any proposition."

Normally, the leadership permits no legislative business during the period set aside for "special order" speeches at the end of the day. However, the Chair does

8. Sam Rayburn (Tex.).

entertain unanimous-consent requests for late filing of reports having privilege. The following discussion, on Feb. 6, 1984,<sup>(9)</sup> shows the current practice.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Under a previous order of the House, the gentleman from Michigan (Mr. Siljander) is recognized for 60 minutes.

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, will the gentleman yield for a unanimous-consent request?

MR. [MARK] SILJANDER [of Michigan]: I yield to the gentleman from Kentucky.

MR. PERKINS: Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the Senate bill (S. 1340) to revise and extend the Rehabilitation Act of 1973 and to extend the Developmental Disability Assistance and Bill of Rights Act, and for other purposes.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kentucky?

MR. [ROBERT S.] WALKER [of Pennsylvania]: I reserve the right to object, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania reserves the right to object.

MR. WALKER: Reserving the right to object, Mr. Speaker, it is my understanding this has been cleared by the minority side and that it is possible to have it cleared.

9. 130 CONG. REC. 1902, 1903, 98th Cong. 2d Sess.

10. Harry M. Reid (Nev.).

THE SPEAKER PRO TEMPORE: The Chair's understanding is that the Speaker's statement dealt with calling up legislation, not filing a report. That is my understanding.

MR. WALKER: So we do have a precedent, then, that we can file conference reports during the special order time, that that is going to be permitted, that kind of business is going to be permitted during special order time?

THE SPEAKER PRO TEMPORE: The filing of a conference report can be done at any time as a matter of right before the House, before the House adjourns.

MR. WALKER: The gentleman from Pennsylvania is simply, under my reservation of right to object, is simply trying to find out just where we stand on all of these rulings that we had thrown at us over the last couple of weeks, and I am trying to make certain I have an understanding of how we are operating here, and that is my only concern.

On the substance of the gentleman's request, I understand that has been cleared and there is no problem. I am simply trying to clarify what we are all about here.

Is it now my understanding that filing conference reports will be one of those items of business always permitted under special orders, under the time allotted for special orders?

THE SPEAKER PRO TEMPORE: It has always been the practice of the House and is still the practice of the House.

MR. WALKER: I thank the Speaker and I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kentucky?

There was no objection.

### *During Adjournment of House*

**§ 16.9 By unanimous consent, the House may permit the managers on the part of the House to have until midnight on a certain day to file a conference report, the report to be printed in the Record even though the House is not in session on that day.**

On Aug. 3, 1961,<sup>(11)</sup> the following occurred in regard to H.R. 7445, the 1962 appropriations bill for independent offices:

MR. [ALBERT] THOMAS [of Texas]: Mr. Speaker, I ask unanimous consent that the managers on the part of the House at the conference of the two Houses on the bill H.R. 7445 may have until midnight Friday, August 4, to file a conference report thereon, and that said report may be printed in the *Congressional Record* notwithstanding the fact that the House may not be in session.

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.<sup>(13)</sup>

11. 107 CONG. REC. 14544, 87th Cong. 1st Sess.
12. Sam Rayburn (Tex.).
13. See also 108 CONG. REC. 14841, 87th Cong. 2d Sess., July 26, 1962; and 105 CONG. REC. 14742, 86th Cong. 1st Sess., July 30, 1959.

*Parliamentarian's Note:* The House adjourned from Thursday until Monday, the Senate from Friday until Monday. The conference report was printed in the Record for Friday, under a separate heading following the Senate proceedings.

**§ 16.10 The House granted permission for the filing with the Clerk of conference reports notwithstanding the adjournment or recess of the House.**

On June 5, 1936,<sup>(14)</sup> Mr. John J. O'Connor, of New York, made the following request:

Mr. Speaker, I ask unanimous consent that, notwithstanding the adjournment or recess of the House until June 15, 1936, it may be in order to file conference reports with the Clerk for printing under the rules.

THE SPEAKER:<sup>(15)</sup> Without objection, it is so ordered.

There was no objection.<sup>(16)</sup>

***Filing Conference Report on Day House Does Not Meet***

14. 80 CONG. REC. 9123, 74th Cong. 2d Sess.

15. William B. Bankhead (Ala.).

16. *Parliamentarian's Note:* The House adjourned from June 8 to June 15, 1936, pursuant to H. Con. Res. 53.

**§ 16.11 Where an order of the House permits a conference report to be filed on a day the House will not be in session, a request can be made to print a special Record for that day in which the report can be printed.**

The following unanimous-consent request illustrates the mechanism sometimes used to expedite consideration of a conference report:<sup>(17)</sup>

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, I ask unanimous consent that the conferees on the bill, H.R. 4170, the Deficit Reduction and Tax Reform Act of 1984, have until 12 noon on Saturday, June 23, 1984, to file a conference report to accompany the bill, and that there be an additional part of today's *Congressional Record* printed to contain the conference report.

*Parliamentarian's Note:* The controlling rule here is Rule XXVIII clause 2(a),<sup>(18)</sup> which specifies that a conference report can be considered on the third calendar day after filing but "only if such report and accompanying statement shall have been printed in

17. See 130 CONG. REC. 18012, 98th Cong. 2d Sess., June 22, 1984.

18. *House Rules and Manual* § 912a (1997).



the daily edition of the *Congressional Record* for the day on which . . . filed.”

**§ 16.12 A conference report was, by unanimous consent, filed on a day when the House was not in session and printed under a separate heading in the Record.**

On July 10, 1970,<sup>(19)</sup> the following appeared in the *Congressional Record*:

Pursuant to an order of the House on Thursday, July 9, 1970, the conference report on the bill (S. 3215) to amend the National Foundation on the Arts and the Humanities Act of 1965, is herewith printed, as follows:

CONFERENCE REPORT (H. REPT. NO.  
91-1292)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3215) to amend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: . . .

*Parliamentarian's Note:* The House had adjourned from July 9 until July 13.

***During Recess***

19. 116 CONG. REC. 23790-92, 91st Cong. 2d Sess.

**§ 16.13 The House stood in recess pending the preparation and filing of a conference report.**

On Oct. 21, 1965,<sup>(20)</sup> Speaker Pro Tempore Hale Boggs, of Louisiana, made the following statement:

Under the previous unanimous-consent agreement, the Chair declares a recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 21 minutes p.m.), the House stood in recess subject to the call of the Chair.

After the recess, the House received a message from the Senate transmitting the official papers and the signed conference report, which stated in part:

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate Nos. 27 and 55 to the bill (H.R. 8370), "An act making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1966, and for other purposes."

And agrees to the conference report.

20. 111 CONG. REC. 27846, 89th Cong. 1st Sess.

## § 17. Content of Report; Corrections

### *Technical Correction After Adoption of Conference Report*

§ 17.1 By unanimous consent, the House considered and agreed to a concurrent resolution authorizing the Clerk to make a technical correction in a conference report already agreed to, during the enrollment of a House bill.

On Oct. 10, 1972,<sup>(1)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. John D. Dingell, of Michigan, to offer a concurrent resolution.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 717

*Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, is authorized and directed to make the following correction:*

On page 11 of the conference report, on line 1, insert the word "of" after the word "conditions".

1. 118 CONG. REC. 34643, 92d Cong. 2d Sess.

The concurrent resolution was agreed to.<sup>(2)</sup>

### *Simultaneously Agreeing to Conference Report and Making Correction Therein*

§ 17.2 Example of a unanimous-consent request to consider a conference report considered, agreed to, and modified by the simultaneous adoption of a concurrent resolution correcting the enrollment.

A unanimous-consent request to both call up and adopt a conference report is unusual but has been utilized where a request to consider the report might result in a roll call on the question of adoption. Using the formulation of the request carried here, an objection would prohibit both consideration of the report and the correction of the enrollment. The sponsors wanted the two steps tied together in this fashion since they both favored the conference report in

2. *Parliamentarian's Note:* Although in this instance the Record is silent on this point, a concurrent resolution providing for technical corrections in a conference report which has already been agreed to is not privileged for consideration, and must be called up by unanimous consent.

the form modified by the concurrent resolution. The proceedings of Dec. 22, 1995,<sup>(3)</sup> were as follows:

CONFERENCE REPORT ON H.R. 2539,  
ICC TERMINATION ACT OF 1995

MR. [BUD] SHUSTER [of Pennsylvania]: Mr. Speaker, I ask unanimous consent to call up and adopt a conference report to accompany the bill (H.R. 2539), to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, and that Senate concurrent resolution (S. Con. Res. 37) directing the Clerk of the House of Representatives to make technical changes in the enrollment of the bill (H.R. 2539) entitled "An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes" shall be deemed to have been adopted upon adoption of such conference report.

The Clerk read the title of the bill.

The Clerk read the title of the Senate concurrent resolution.

(For conference report and statement see proceedings of the House of December 18 (legislative day of December 15), 1995, at page 37339.)

The text of Senate Concurrent Resolution 37 is as follows:

S. CON. RES. 37

*Resolved by the Senate (the House of Representatives concurring), That*

3. 141 CONG. REC. 38494, 38495, 38498, 104th Cong. 1st Sess.

the Clerk of the House of Representatives, in the enrollment of the bill (H.R. 2539) entitled "An Act to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes" shall make the following corrections:

(1) In section 11326(b) proposed to be inserted in title 49, United States Code, by section 102, strike "unless the applicant elects to provide the alternative arrangement specified in this subsection. Such alternative" and insert "except that such".

(2) In section 13902(b)(5) proposed to be inserted in title 49, United States Code, by section 103, strike "Any" and insert "Subject to section 14501(a), any".

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> Is there objection to the request of the gentleman from Pennsylvania [Mr. Shuster].

There was no objection. . . .

THE SPEAKER PRO TEMPORE: The conference report on H.R. 2539 and Senate Concurrent Resolution 37 are adopted.

A motion to reconsider was laid on the table.

***Report Incorrectly Printed in Record***

**§ 17.3 The correct text of a conference report which had been erroneously printed in the Record of a previous day was, by unanimous consent, inserted in the Record.**

4. Douglas Bereuter (Nebr.).

On Aug. 10, 1970,<sup>(5)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. John L. McMillan, of South Carolina.

MR. McMILLAN: Mr. Speaker, on August 6, 1970, I filed a conference report (H. Rept. 91-1381) on the bill (H.R. 17711) amending the District of Columbia Cooperative Association Act. The conference report was incorrectly printed in the *Congressional Record* for that day.

I therefore ask unanimous consent that the correct text of the conference report on H.R. 17711 be printed in the Record at this point.

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

There was no objection.

### ***Technical Error in Managers' Statement***

#### **§ 17.4 *Parliamentarian's Note:***

**Where a technical error appeared in the statement of the managers accompanying a conference report, the text of the statement in the permanent Record was, by unanimous consent, corrected to show the true intent of the conferees as reflected by the language in the conference report.**

5. CONG. REC. (daily ed.), 91st Cong. 2d Sess.

On July 12, 1966,<sup>(6)</sup> Mr. L. Mendel Rivers, of South Carolina, was recognized by Speaker Pro Tempore Hale Boggs, of Louisiana, to call up House Report No. 1679, the conference report on S. 2950, defense procurement appropriations, for fiscal 1967. He then made the following request:

Mr. Speaker, I ask unanimous consent that the permanent Record be corrected . . . to reflect the agreed upon language as now appears in the conference report.

THE SPEAKER PRO TEMPORE: Without objection it is so ordered.

There was no objection.

*Parliamentarian's Note:* The conference report and statement of the managers were filed on June 30, and printed in the daily edition of the *Congressional Record* for that date. Although the permanent edition of the *Congressional Record* for July 12 does not reproduce Mr. Rivers' request that the statement be changed, it does contain the corrected version of that statement.<sup>(7)</sup>

### ***Statement of the Managers, Supplemented by Unanimous Consent***

6. CONG. REC. (daily ed.), 89th Cong. 2d Sess.

7. 112 CONG. REC. 15306, 89th Cong. 2d Sess.

**§ 17.5 Instance where the House permitted insertion in the *Congressional Record* of a statement by House managers at a conference, time not having permitted the inclusion of the explanation in the official statement at the time the conference report was filed.**

Following the adoption of a conference report on a budget reconciliation bill, the House adopted a concurrent resolution directing the Clerk to make certain corrections in the enrollment, including a date change which permitted two House committees to have a longer period in which to submit an explanatory statement for the Record, "to be considered to have been filed with the conference report."

When the conference report was filed on July 29, 1981, the report contained the same provision, except that the date for filing the statement was July 31, 1981.<sup>(8)</sup> The concurrent resolution shown here permitted an extension of the time until Aug. 4, 1981.<sup>(9)</sup>

8. 127 CONG. REC. 18981, 18985, 97th Cong. 1st Sess. (H.R. 3982, the Omnibus Reconciliation Act of 1981).

9. H. Con. Res. 167.

**DIRECTING CLERK OF THE HOUSE TO MAKE CORRECTIONS IN ENROLLMENT OF H.R. 3982, OMNIBUS BUDGET RECONCILIATION ACT OF 1981**

MR. [JAMES R.] JONES [of Oklahoma]: Mr. Speaker, I ask unanimous consent for immediate consideration in the House of the concurrent resolution (H. Con. Res. 167) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 3982, to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

The Clerk read the title of the concurrent resolution.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The Clerk read the concurrent resolution, as follows:

**H. CON. RES. 167**

*Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 3982), to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for fiscal year 1982, the Clerk of the House of Representatives shall make the corrections specified in the succeeding sections of this concurrent resolution.*

SEC. 2. In title VI of the bill: . . .

SEC. 13. In section 1199A, strike out "July 31, 1981" and insert in lieu thereof "August 4, 1981".

The concurrent resolution was agreed to.

10. David E. Bonior (Mich.).

A motion to reconsider was laid on the table.

The unique provision in the Omnibus Budget Reconciliation Act of 1981, as amended by the concurrent resolution, is as follows:<sup>(11)</sup>

STATEMENT OF MANAGERS

SEC. 1199A. The managers on the part of the Senate and the House of Representatives are authorized to have printed in the *Congressional Record* at any time prior to midnight on August 4, 1981, a statement in explanation of the provisions of this title relating to matters within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce. Such statement shall be considered to have been filed at the same time and along with the conference report on the Omnibus Budget Reconciliation Act of 1981 (H.R. 3982); and shall be considered for all purposes to constitute the statement on the part of the managers with respect to such provisions.

***Insertion of Provision Allegedly Omitted***

**§ 17.6 *Parliamentarian's Note:***  
**The omission in a conference report of language allegedly agreed to in conference may be corrected following adoption of the report by the**

11. See the proceedings of Aug. 4, 1981, at 127 CONG. REC. 19500, 19520, 97th Cong. 1st Sess.

**consideration by unanimous consent of a concurrent resolution authorizing insertion of that provision in the enrollment.**

On Dec. 17, 1973,<sup>(12)</sup> after Mr. Charles C. Diggs, Jr., of Michigan, called up the conference report on S. 1435, the District of Columbia Self-Government and Government Reorganization Act, Mr. Earl F. Landgrebe, of Indiana, raised a point of order.

MR. LANDGREBE: Mr. Speaker, I want to make a point of order concerning section 738 of conference report No. 93-703, "Advisory Neighborhood Councils" for the reason that it fails to provide as the conferees stated and intended during the conference held on this legislation.

In conference, the requirement was Neighborhood Councils must first be approved by the electors in the same public referendum required for the approval of the charter. Nowhere in section 738 does that requirement appear.

If the legislation were approved, the councils would be created by operation of law, not by the affirmation of the electors as provided for by the conferees. This section is contrary to the intent of the conferees and this report must not be considered.

After a brief discussion on the point of order Mr. Joel T. Broyhill,

12. 119 CONG. REC. 42034, 42035, 93d Cong. 1st Sess.

of Virginia, made the following inquiry:

MR. BROYHILL of Virginia: Mr. Speaker, in the event the point of order is overruled, is there any way for the House at this time to insert the language into the bill and into the conference report, the language which was fully intended by the conferees to be included in the bill?

Obviously, it was a technical mistake, an error in printing, that it was not inserted in the conference report to start with.

THE SPEAKER:<sup>(13)</sup> In response to the inquiry made by the gentleman from Virginia, the Chair will state that the House could by a concurrent resolution direct the Secretary of the Senate to include the language before the bill is finally enrolled.<sup>(14)</sup>

## § 18. Signatures

### *Majority of Managers of Each House*

**§ 18.1 Conference reports must be signed by a majority of the managers on the part of each House, or the document may not be received as a report of the conference committee.**

**Where a majority of the managers on the part of the**

13. Carl Albert (Okla.).

14. See Parliamentarian's Note contained in footnote to § 17.1, supra.

**House attempted to present a document purporting to be a conference report without the signatures or consent of a majority of the managers on the part of the Senate, it was held that such document might not be received as a report of the conference committee.**

On July 31, 1935,<sup>(15)</sup> Mr. George Huddleston, of Alabama, one of the House managers appointed to confer with the Senate managers on S. 2796, the Public Utilities Act of 1935, presented to the House a report from the managers on the part of the House. Speaker Joseph W. Byrns, of Tennessee, directed the Clerk to read the report.

The Clerk read as follows:

REPORT OF HOUSE MANAGERS ON  
CONFERENCE UPON DISAGREEING  
VOTE OF THE HOUSE AND THE  
SENATE ON THE AMENDMENT  
ADOPTED BY THE HOUSE TO S. 2796

The undersigned managers upon the part of the House, appointed on July 12, 1935, upon the request of the Senate for a conference upon the disagreeing vote of the House and the Senate on the amendment adopted by the House to S. 2796, beg to report as follows: . . .

15. 79 CONG. REC. 12237-39, 74th Cong. 1st Sess.

The report explained that a conference was prevented by the Senate managers' insistence that they bring to the conference expert advisors who were not Senators, despite the objections of the House managers. The report concluded with the following paragraph and signatures:

That a conference has been prevented by the unyielding refusal of the managers on the part of the Senate to hold same under conditions consistent with the proper conduct of an executive session and free from the presence and participation of an outsider, who was not an employee of Congress and who is objectionable to the managers on the part of the House, all in derogation of the right and privilege of the managers on the part of the House and of the dignity and independence of the House.

GEORGE HUDDLESTON,  
JOHN G. COOPER,  
PEHR G. HOLMES,  
*Managers on the part of  
the House.*

Mr. Sam Rayburn, of Texas, raised a point of order against the report on the grounds that it was not a report of a conference committee since it was not signed by a majority of the Senate conferees:

Mr. Speaker, I make the point of order that the paper read is not a report of the conference committee; that a conference report or a disagreement must be signed by a majority of the Members of the House conference committee and of the Senate conference

committee and that this statement or paper has no standing in the House.

Mr. Huddleston conceded this point, and admitted that the purported report was filed to forestall action under Rule XXVIII clause 1 ½(a)<sup>(16)</sup> to instruct or discharge the conferees for failing to submit a report within 20 days of their appointment:

Mr. Speaker, this report is presented as a "report from the managers on the part of the House." The question involved is whether or not the managers on the part of the House may make a report without the cooperation and coercion of the managers on the part of the Senate—that is to say, is a report signed only by the House managers a "report" within the meaning of the rule? This is the parliamentary question involved.

The Speaker summarized the arguments presented by Mr. Rayburn and Mr. Huddleston, and then rendered a decision:

THE SPEAKER: The gentleman from Alabama [Mr. Huddleston] has presented a paper which purports to be a report signed by three of the House conferees on S. 2796, from which it appears that the conferees have not been able up to this time to reach an agreement. The gentleman from Texas [Mr. Rayburn] makes the point of order that this paper cannot be considered as a

16. See Rule XXVIII clause 1(c), *House Rules and Manual* § 910 (1997).



report, inasmuch as the Senate conferees have not affixed their signatures. The gentleman from Alabama frankly states that he has filed this statement for the purpose of forestalling any action that may be taken under rule XXVIII, which rule authorizes any Member as a matter of the highest privilege to move to discharge and appoint conferees or to instruct conferees after a period of 20 days has elapsed from the time of their appointment when they have failed to make a report on the matter committed to them. The Chair does not think that the rules of the House can be circumvented in that manner. The Chair believes that the House should adhere to forms and practice in matters of this kind. As the Chair has previously stated, this rule was adopted by the House to preserve the authority of the House to exercise control over its conferees when a sufficient time has elapsed and no report has been made by the conference committee. So far as the Chair is aware, the conferees on the part of either body have never heretofore attempted to file a formal report of disagreement without the acquiescence of a majority of the conferees of the other body. . . .

A committee of conference is a joint committee composed of managers appointed on the part of each House. The managers of each House vote the sentiment of the House which they represent. In casting their votes they do so as separate committees and nothing may be agreed upon without the concurrent action of the two committees composing this joint committee, commonly called the "conference committee."

In instant case, the gentleman from Alabama admits that this purported report which he has presented has not been agreed to by the managers on the part of the Senate. Under such circumstances, the Chair does not believe that it is a report within the meaning of our parliamentary practice, and the Chair, therefore, sustains the point of order.

### *Signatures Validate Report*

**§ 18.2 A conference report is received if signed by a majority of the managers of each House, and the Speaker will not look behind the signatures to determine whether the report has incorporated all the agreements informally made in conference.**

On Dec. 17, 1973,<sup>(17)</sup> after Mr. Charles C. Diggs, Jr., of Michigan, called up the conference report on S. 1435, the District of Columbia Self-Government and Government Reorganization Act, Mr. Earl F. Landgrebe, of Indiana, made a point of order.

MR. LANDGREBE: Mr. Speaker, I want to make a point of order concerning section 738 of conference report No. 93-703, "Advisory Neighborhood Councils" for the reason that it fails to provide as the conferees stated and intended

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17. 119 CONG. REC. 42034, 42035, 93d Cong. 1st Sess.

during the conference held on this legislation.

In conference, the requirement was Neighborhood Councils must first be approved by the electors in the same public referendum required for the approval of the charter. Nowhere in section 738 does that requirement appear.

If the legislation were approved, the councils would be created by operation of law, not by the affirmation of the electors as provided for by the conferees. This section is contrary to the intent of the conferees and this report must not be considered.

Speaker Carl Albert, of Oklahoma, gave the following ruling:

THE SPEAKER: The Chair is prepared to rule. . . .

The gentleman from Indiana has made the further point of order that the conference report is not properly before the House because a subsection of the report, allegedly agreed to in conference is not contained in the report submitted to the two Houses.

The Chair, of course, has no knowledge of how this agreement was reached. The only information the Chair has on what was agreed to in conference is derived from the conference report. The Chair does note that the subsection allegedly omitted was not contained in the Senate bill and thus the managers had the authority, under clause 3, rule XXVIII to eliminate that provision if they so desired.

Volume 5 of Hinds' Precedents section 6497, states that "A conference report is received if signed by a majority of the managers of each House." The Chair has examined the report and the

papers and finds that it is signed by 6 of the 10 managers on the part of the House and by all 7 managers on the part of the Senate. The Chair can only observe that the report is here in a legal manner.

The Chair therefore overrules the point of order.

**§ 18.3 The Chair has no knowledge of how a conference report is reached, and he cannot impeach the names of the managers on the part of the two Houses.**

On June 19, 1948,<sup>(18)</sup> after Mr. Walter G. Andrews, of New York, called up the conference report on S. 2655, the Selective Service Act of 1948, Mr. Vito Marcantonio, of New York, rose to a point of order.

MR. MARCANTONIO: Mr. Speaker, I make the point of order that the document which has just been presented is not the report of any conference. It is not the product of a full and free conference as required in Jefferson's Manual. I make my point of order based on the proposition that there has never been a valid conference—specifically, that there has never been a valid meeting on the part of the managers on the part of the House.

I would like at this time, first, to present the facts chronologically.

Yesterday the House voted, under suspension of the rules, to send the bill

18. 94 CONG. REC. 9253, 9268, 9269, 80th Cong. 2d Sess.

to conference, and the House conferees were appointed. A motion was made in the other body for the same purpose. Extended debate was held on that motion. This morning the motion to send the Senate bill to conference and disagree with the House amendments and authorizing the appointment of conferees was adopted. Immediately, before there was any time for a meeting, a physical meeting to take place between the managers on the part of the House and the managers on the part of the Senate, this document before you, Mr. Speaker, was filed and acted upon in the Senate. Physically there were some meetings. The meetings that took place yesterday, Mr. Speaker, all of the meetings that took place yesterday were prior to the adoption of the motion in the other body to send this bill to conference. How could they have been valid meetings? They could not have been valid meetings because there were no managers in existence on the part of the Senate. The Members of the other body who met with the House conferees were not managers on the part of the other body, therefore those meetings had no validity whatsoever. It is true that at those meetings the provisions of the document which we have before us were agreed upon. It is likewise true that the people who participated in those meetings on behalf of the other body were Members who were subsequently appointed as managers for the other body, but throughout those meetings they were not there as managers who had been appointed; in fact all the while they were participating in those meetings they had not as yet been authorized by the other

body to be there. They had no authority to act.

Speaker Joseph W. Martin, Jr., of Massachusetts, ruled:

The Chair is ready to rule.

On page 770, volume 5, of Hinds' Precedents, section 6497 states:

A conference report is received if signed by a majority of the managers of each House.

The Chair has examined the report and the papers and finds that it is signed by five of the managers on the part of the Senate and six of the seven managers on the part of the House.

The Chair has no knowledge, of course, how this report was reached, but the Chair cannot impeach the names of the managers on the part of the two Houses. Furthermore, the Senate having already received the report, and according to a message heretofore received by the House has officially adopted it, the Chair feels that under the circumstances the report is properly before the House for such action as the House may see fit to take. The Chair overrules the point of order.

*Parliamentarian's Note:* This precedent and the following one (§ 18.4) predated the "open conference requirement" inserted in Rule XXVIII clause 6, in 1975 (and amended in 1977 and 1979). See *House Rules and Manual* § 913d (94th Congress).

### ***Informal Conference Meetings***

**§ 18.4 The Speaker has no knowledge of informal meetings of conference committees prior to their appointment, and where a conference report before the House contained the signatures of all the managers he held that the report was properly before the House.**

On Aug. 9, 1954,<sup>(19)</sup> after Mr. John M. Vorys, of Ohio, called up the conference report on H.R. 9678, the Mutual Security Act of 1954, Mr. H. R. Gross, of Iowa, rose with a point of order.

MR. GROSS: Mr. Speaker, I make the point of order that certain Members of the House of Representatives exceeded their authority in connection with the conference report on the bill H.R. 9678; that therefore the pending conference report is improperly before the House. . . .

Mr. Speaker, I make the point of order that even before the papers were received from the other body, requesting a conference on the part of the House, before authority was given by the House for a conference, and well before the formal appointment of conferees on the part of the House, certain Members of the House of Representatives had apparently designated themselves as conferees and entered into agreement on one or more substantial

issues in disagreement in connection with the bill H.R. 9678; that such agreement or agreements were entered into even before the House of Representatives formally and officially convened at 12 o'clock noon on August 4, 1954, and gave assent to a conference. . . .

Mr. Speaker, I can find no precedent which permits Members of the House to enter into a conference without first obtaining authority from the House for so doing. The weight of all precedents governs from the initial authority for a conference, the appointment of conferees and their conduct flow therefrom. . . .

THE SPEAKER:<sup>(20)</sup> The Chair wishes to state on the gentleman's point of order that he has no cognizance of informal meetings that may have been held. As a matter of fact, he would not know what Members were doing if they met informally in a group to discuss any specific subject. All the Chair can do is to take the report that is here. All 10 signatures are on the conference report. The conference report is here in a legal manner.

Therefore, the Chair overrules the point of order.

### ***Requirement for Formal Conference Meeting***

**§ 18.5 While the Chair does not normally look behind signatures of conferees to determine the propriety of conference procedure, if proposed**

19. 100 CONG. REC. 13787, 13802, 83d Cong. 2d Sess.

20. Joseph W. Martin, Jr. (Mass.).

**conferees have signed a conference report before they have been formally appointed in both Houses and do not meet formally in open session after such appointment, the conference report is subject to automatic recommitment to conference under Rule XXVIII clause 6.**

On Dec. 20, 1982,<sup>(1)</sup> when the conference report on H.R. 5002<sup>(2)</sup> was called up for consideration, a point of order was raised against the report.

MR. [JOHN B.] BREAUX [of Louisiana]: Mr. Speaker, pursuant to the order of the House of December 17, 1982, I call up the conference report on the bill (H.R. 5002) to improve fishery conservation and management, and ask for its immediate consideration.

The Clerk read the title of the bill. . . .

POINT OF ORDER

MR. [GLENN M.] ANDERSON [of California]: Mr. Speaker, I have a point of order.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The gentleman was on his feet and will state his point of order.

- 
1. 128 CONG. REC. 32896, 97th Cong. 2d Sess.
  2. The Fishery Conservation and Management Improvement Act.
  3. Thomas S. Foley (Wash.).

MR. ANDERSON: I make a point of order against the conference report on H.R. 5002 because the Senate conferees were not formally appointed at the time the conferees met. This procedure violates House rule XXVIII, clause 6, which requires an open meeting of the conferees. In this case there was never a valid conference meeting because the Senate conferees were not appointed at the time the conference met.

According to the rules on the conference report, it should be considered as rejected.

I would also like to point out that several of the conferees signed the signature sheets of the conference report prior to the premature meeting of the House and Senate conferees. This is clearly an improper procedure, so they actually signed the report prior to a conference. It was, if not illegal, a very improper procedure because there was no conference because the Senators were not conferees at the time, it was not an existent conference, and because they were not appointed until the next day.

That is my point of order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Does the gentleman from Louisiana care to respond?

MR. BREAUX: Yes, I do, Mr. Speaker.

I would only point out that I did not have any control over the Senate procedures. I would only say to the Speaker that the House does not have any control over the speakers of the other body.

I would only note for the Speaker's consideration that the conference report, when filed in the House, was done

subsequent to the necessary action in appointing the conferees by the Senate.

MR. ANDERSON: But the Senators that we met with were not conferees. It was wholly an improper conference.

THE SPEAKER PRO TEMPORE: The Chair notes that pursuant to the Senate message of yesterday, the conferees were not named until yesterday, so the Chair is prepared to rule, unless either gentleman wishes to make a further statement.

MR. BREAUX: This Member is certainly willing to abide by the rules.

THE SPEAKER PRO TEMPORE: The Chair sustains the point of order based on the concession that a conference formally appointed by both Houses did not meet in open session following appointment.

Pursuant to clause 6(b), rule XXVIII, the conference report is considered as rejected, the House considered to have insisted upon disagreement to the Senate amendment, and the Chair is authorized to appoint conferees without intervening motion.

APPOINTMENT OF CONFEREES ON H.R.  
5002

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Biaggi, Anderson, Breaux, Studts, Snyder, McCloskey, and Pritchard.

There was no objection.

### *Taking Exception to Particular Amendment*

§ 18.6 Two House conferees (minority members) signed a conference report and ac-

**companying statement with a notation following their names that they excepted from one of the Senate amendments upon which the other conferees had reached an agreement.**

On May 8, 1963,<sup>(4)</sup> Mr. Albert Thomas, of Texas, upon being recognized by Speaker John W. McCormack, of Massachusetts, called up the conference report on H.R. 5517, supplemental appropriations, fiscal 1963. The report and explanatory statement were signed by the managers on the part of the House in the following manner:

ALBERT THOMAS,

MICHAEL J. KIRWAN,

CLARENCE CANNON,

FRANK T. BOW

(Except as to No. 47),

EARL WILSON

(Except as to No. 47),

*Managers on the Part of  
the House.*

### *Signatures on a Conference Report—Exceptions*

§ 18.7 Managers at a conference sometimes attempt to disassociate themselves from one aspect of an agreement and in one case, the state-

4. 109 CONG. REC. 8037, 88th Cong. 1st Sess.

**ment of the managers was used to express their exceptions from the total report.**

Rule XXVIII clause 1(d), requiring a joint statement by the managers of the House and the Senate became a part of the rules with the implementation of the Legislative Reorganization Act of 1970.<sup>(5)</sup>

In the 95th Congress, in an unusual case, the statement accompanying the conference report on H.R. 3474, the Energy Research and Development appropriations for fiscal year 1976, disclosed that certain of the House managers "excepted" from certain parts of the agreement. However, a majority of the managers did sign without equivocation. The form of the statement is carried here.<sup>(6)</sup>

Mr. [Olin E.] Teague [of Texas] submitted the following conference report and statement on the bill (H.R. 3474) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy

5. See 84 Stat. 1140, § 125(b) which became a part of the standing rules with the adoption of H. Res. 5 (117 CONG. REC. 144, 92d Cong. 1st Sess., Jan. 22, 1971).

6. 121 CONG. REC. 39089, 39097, 39110, 94th Cong. 1st Sess., Dec. 8, 1975.

Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes:

CONFERENCE REPORT (H. REPT.  
No. 94-696)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3474) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: . . .

And the Senate agree to the same.

OLIN TEAGUE,  
MELVIN PRICE,  
JOHN YOUNG,  
THOMAS N. DOWNING,  
KEN HECHLER,  
DON FUQUA,  
GEORGE E. BROWN, Jr. . . .  
BARRY M. GOLDWATER,  
Jr.,

MANUEL LUJAN, Jr.,  
*Managers on the Part of  
the House.*

JOHN O. PASTORE,  
HENRY M. JACKSON,  
STUART SYMINGTON . . .

*Managers on the Part of  
the Senate. . . .*

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3474), Energy Research and Development Administration Authorization Act, 1976, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report: . . .

D. OPPOSITION TO SECTIONS 102 AND  
103 BY REPRESENTATIVE KEN  
HECHLER

Representative Ken Hechler, although he signed the conference report on the part of the House, emphasized that he is strongly opposed to two sections of the conference recommendation which were not in the bill passed by the House on June 20, 1975—Sections 102 and 103. He opposes Section 102 which establishes a new program, using the public lands free of any bonus, or royalty, for the demonstration of production of oil from shale by in situ methods. He also opposes Section 103 which establishes a new \$6 billion loan guarantee program to provide financial assistance to private industry to build synthetic fuels and other commercial demonstration plants.

E. RESERVATION TO SECTIONS 102  
AND 103 BY GEORGE E. BROWN, JR.

Representative George E. Brown, Jr., although he signed the Conference Report on the part of the House, emphasized that he did so with the reservation that the House should have the opportunity to work its will by separate vote on Sections 102 and 103.

F. RESERVATION TO SECTIONS 102  
AND 103 BY BARRY M. GOLDWATER,  
JR.

Representative Barry M. Goldwater, Jr., although he signed the Conference Report on the part of the House, emphasized that he did so with reservations about enacting at this time Sections 102 and 103, the two major new sections added by the Senate, and the additional reservation that the House should be allowed to have a separate vote on each section.

MANAGERS FOR THE NONNUCLEAR  
PORTION OF THE JOINT STATEMENT

OLIN E. TEAGUE,  
KEN HECHLER . . .  
GEORGE E. BROWN, Jr. . . .  
BARRY M. GOLDWATER,  
Jr.,

*Managers on the Part of  
the House.*

HENRY M. JACKSON,  
FRANK CHURCH . . .

*Managers on the Part of  
the Senate.*

***Authority of Conferees To  
"Agree in Part"***

**§ 18.8 A majority of House conferees must, by their signatures, agree to the provisions of a conference report for it to be valid; but those not necessary to that majority sometimes indicate exceptions to certain agreements by notations on the signature sheets.**



The accepted practice in the House, and in the Senate, is for the managers to either sign a conference report, without qualification, to show that the matters in conference have been reconciled, or to refuse to sign if total agreement has not been reached.

In the instance here cited, a majority of the conferees appointed as exclusive conferees on certain issues separated by jurisdictional lines did sign, unqualifiedly. A total of 14 committees were represented in the list of conferees appointed to the conference on H.R. 3, the Trade and International Policy Act of 1987. Five conferees were appointed from the Committee on Government Operations on sections 461 through 471 of the House bill; five were named from the Committee on Science, Space and Technology on these same provisions. Of these ten, six signed in complete agreement. A minority of four indicated exception from a portion of the agreement.

The manner of indicating the exceptions is illustrated by the portion of the signature sheets

printed in the Record of Apr. 20, 1988.<sup>(7)</sup>

From the Committee on Government Operations, for consideration of sections 461 through 471 of the House bill, and sections 1030 through 1033 and 3801 through 3809 of the Senate amendment, and modifications committed to conference:

JACK BROOKS

(Except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the Conference Report),

JOHN CONYERS, Jr.,

STEVE NEAL,

FRANK HORTON

(Except for the Competitiveness Policy Council provided for in sections 461 through 471 of the House bill, sections 3801 through 3809 of the Senate amendment, and sections 5201 through 5210 of the conference report).

From the Committee on Science, Space, and Technology, for consideration of sections 461 through 471 and 904 of the House bill, and sections 2305, 3801 through 3809, and 3909 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,

DOUG WALGREN,

GEORGE E. BROWN, Jr.

7. 134 CONG. REC. 7820, 7821, 100th Cong. 2d Sess.

(Except for sections 461 through 471 of the House bill, and sections 3801 to 3809 of the Senate amendment),

MANUEL LUJAN, Jr.,

SHERWOOD BOCHLERT

(Except for sections 461 to 471 of the House bill and sections 3801 to 3809 of the Senate amendment) . . .

***Validity of Signature Where Conferee Signs "With Exceptions"***

**§ 18.9 The practice of conferees signing a conference report "with an exception" was the subject of discussion in the House.**

When the conference report was filed on H.R. 2100, the National Defense Authorization Act, fiscal 1992, 1993, on Nov. 13, 1991,<sup>(8)</sup> the *Congressional Record* incorrectly printed the signature sheets of the conferees. The error made it appear that a majority of the conferees on the part of the House had signed the report with an exception to one part of the agreement relating to the F-14 fighter program. A portion of the signature sheets is shown here.

8. 137 CONG. REC. 31803, 102d Cong. 1st Sess.

From the Committee on Armed Services, for Consideration of the entire House bill and Senate amendment, and modifications committed to conference:

LES ASPIN,

G. V. MONTGOMERY,

BEV BYRON,

NICHOLAS MAVROULES,

EARL HUTTO . . .

For all provisions of the conference report except those relating to the F-14:

OWEN PICKETT,

H. MARTIN LANCASTER,

JOHN TANNER,

For all provisions of the conference report except those relating to the F-14:

MICHAEL R. McNULTY,

GLEN BROWDER,

GENE TAYLOR,

WILLIAM L. DICKINSON,

FLOYD SPENCE,

LARRY J. HOPKINS,

BOB DAVIS . . .

The placement of the colon, for example, in the exception stated above the signature of Michael R. McNulty, of New York, made it appear that all the names which followed McNulty were also endorsing the exception. Such was not the case. There were only three signatures that did not reflect complete agreement to the totality of the report.

When the special order waiving points of order against the conference report was called up on Nov. 18, 1991, there was discussion

about the propriety of conferees signing with exceptions. While the practice has been permitted in both the House and Senate, there is no clear precedent about whether such a conditional signature can be counted when computing the number of signatures necessary to achieve a majority. A portion of the discussion on Nov. 18, 1991,<sup>(9)</sup> during the debate on H. Res. 281, which waived points of order against the conference report on H.R. 2100, is carried here.

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, let me say I would like to rise to make an important clarification with regard to the signature pages accompanying H.R. 2100, the National Defense Authorization Act for fiscal years 1992 and 1993.

Mr. Speaker, it is not unprecedented, but it is certainly unusual, to have conditional signatures on the conference report. Normally you need a majority of signatures on a conference report for it to be accepted by the conferees.

We have a listing here of the signatures to the conference report, and it lists a number of names, some of which are followed by expressions of opposition to specific provisions.

First, this kind of approach is very confusing; second, it is very unusual. And third, it is setting a very bad precedent.

9. 137 CONG. REC. 32574, 32575, 102d Cong. 1st Sess.

If I might have the attention of my chairman just to clarify a point, am I correct in my interpretation that the exceptions listed refer to all the signatures immediately above it? Is that the chairman's understanding?

MR. [LES] ASPIN [of Wisconsin]: Mr. Speaker, will the gentleman yield?

MR. DICKINSON: I yield to the gentleman from Wisconsin.

MR. ASPIN: Mr. Speaker, I do not think that is what it means. I think that the display here is not correct. I think it is only one of the Members that is listed here.

Is the gentleman looking at page 308 of the report?

MR. DICKINSON: Reclaiming my time, no, Mr. Speaker.

Mr. Speaker, I rise to make an important clarification with regards to the signature pages accompanying H.R. 2100, the fiscal year 1992 Defense authorization conference report. As you can see, three of my Democrat colleagues on the Armed Services Committee have qualified their support for the conference report by indicating, on the actual signature pages, specific conference provisions that they do not support.

The first point I wish to make is technical. When one looks at these pages, they could be misinterpreted as meaning that large groups of committee members were qualifying their support for the conference report. Adding to the confusion is the fact that when the conference report was printed in the *Congressional Record* last Thursday, November 14, the signature pages appeared differently than they do in the printed copy of the report (H.

Rept. 102-311), and appeared in a form that clearly indicated that large groups of conferees had explicitly qualified their support. Therefore, I just want to set the record straight on one point; the qualifying remarks on the F-14 and B-1B programs refer only to the Members whose name appears immediately above the comment and not to entire blocks of Members.

The second point I wish to make is process oriented. The idea of explicitly qualifying one's support for a conference report, in the report itself, is unacceptable to me and should be unacceptable to all of us—no signature is worth the precedent this action is setting. Every conferee who signed this conference report, on both sides of the aisle, objects to specific provisions in it—myself included. In addition, four of my committee Republican conferees refused to sign the conference report because of their objection to specific provisions. If we are going to start addressing Member's individual political concerns by allowing explicit qualifications, many of us, especially in the minority party, will start taking a different tact next year.

At least on the Republican side of the aisle, we have been trying unsuccessfully for years to have those Members who refuse to sign the conference report listed as such in the actual report. If the committee does not put a stop to this questionable practice of Members explicitly qualifying support, there is certainly no reason why Members should be prevented from explicitly stating their opposition directly in the conference report.

In conclusion, I hope my chairman will work with me to address this

problem in the future. Otherwise, it will not be long before the signature pages of our conference reports are many pages long with each and every Member indicating what they support and what they oppose in excruciating detail. In essence, we will have found a back door form of submitting additional and dissenting views on a conference report. This defeats the purpose of conference reports and should be stopped.

#### PARLIAMENTARY INQUIRIES

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The gentleman will state it.

MR. SOLOMON: Mr. Speaker, is it possible to resolve this in a parliamentary inquiry? I do not have any time.

MR. DICKINSON: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. DICKINSON: Mr. Speaker, I would like to know the meaning of the signatures on the conference report as set out in the conference report on H.R. 2100, where there are conditional signatures at the end of the conference report excepting some Members to a portion of it and excepting others as to different portions.

Either we have a majority of signatures on the conference report or we do not. I was asking the chairman, since I think he is probably the author, what it means.

THE SPEAKER PRO TEMPORE: The Chair understands that three of the

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10. Ronald D. Coleman (Tex.).

signators did so with a statement of exception. The form in which the signatures were printed in the Record made it appear that more than 3 Members did so.

MR. DICKINSON: Mr. Speaker, if I might proceed further in my parliamentary inquiry, it makes no sense. It does not say what the Speaker has indicated was the intent. That is not what it says here.

And there are other additional exceptions to different names following. I just want a clarification as to what this is and what the procedure is. I do not know the correct forum in which to address this.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that his point under these circumstances is not in the nature of a parliamentary inquiry.

MR. DICKINSON: May I ask, Mr. Speaker, if this is a parliamentary inquiry, would it be possible under a unanimous consent at the present time to get 5 minutes to address this particular problem so that it will not be taken off the allotted time?

THE SPEAKER PRO TEMPORE: The Chair would only advise the gentleman that the time is controlled by the gentleman from Tennessee and the gentleman from New York.

MR. SOLOMON: Mr. Speaker, would it be possible for the gentleman to yield to me for a colloquy with the manager of the rule on that side of the aisle?

THE SPEAKER PRO TEMPORE: Who yields time?

MR. [BART] GORDON [of Tennessee]: Mr. Speaker, I yield 3 minutes to the gentleman from Alabama [Mr. Dickinson].

MR. DICKINSON: Mr. Speaker, if I might take this time to ask my chairman, what does this mean?

MR. ASPIN: Mr. Speaker, will the gentleman yield?

MR. DICKINSON: I yield to the gentleman from Wisconsin.

MR. ASPIN: Mr. Speaker, this is my understanding. First of all, the rule does allow Members to sign a conference report with some proviso saying they signed with exceptions.

The second point is that there are three Members who signed with exceptions, not as one might tell by this.

The gentleman from New York [Mr. Hochbrueckner] signed for all provisions of the conference report except failure to include the F-14 program. The gentleman from Virginia, Owen Pickett "for all provisions of the conference report except those relating to the F-14," and the gentleman from New York [Mr. McNulty] "for all provisions of the conference report except those relating to the F-14." The rest of the Members signed the conference report without any reservation.

Mr. Aspin then pointed out that even with the three "exceptions," a majority of the House managers did sign the report.

Therefore, we got more signatures than we needed. But as the gentleman knows, the Members from New York, in particular the gentleman from New York [Mr. Hochbrueckner] and the gentleman from New York [Mr. McNulty], were interested in the F-14 program.

The gentleman from Virginia, who is also interested in Navy aviation, although not specifically in Grumman,

was also interested in the F-14 program.

So they signed it with this reservation which is their right under the law.

MR. DICKINSON: Mr. Speaker, reclaiming my time. If this is the procedure we are to follow in the future, I can see us having a conference report with signatures excepting every member because he does not agree to specific provisions. If a Member does not agree to everything in here, he just does what was done here, which is very unusual, pick out these things that he does not like and say, "I except that," are we going to do this next year?

MR. ASPIN: Mr. Speaker, if the gentleman will continue to yield, these three gentlemen are exercising their rights under the rule. . . .

It is not my choice that they sign with that provision. The rule allows them to do that and, as I say, I do not know what the legal standing of those signatures are. So we made sure we had more signatures even without, even if we did not count these three gentlemen, we had enough signatures to file the rule.

MR. DICKINSON: Mr. Speaker, I can see that we are creating a thicket for the future there that Brer Rabbit sure would like to be thrown in.

I thank the gentleman for such explanation as there was, and I thank the gentleman from Tennessee for his indulgence on time.

*Parliamentarian's Note:* For a conference report to be valid, a majority of all conferees must sign on all issues committed to conference and included in the report. In

the instance noted here, the Record copy of the signature sheets was printed so that it appeared the report was invalid. The record copy, showing a colon after each of the three excepting phrases, made it appear that all the conferees listed thereafter were excepting to the F-14 disposition as carried in the report, rather than just the first Member following the stated exception. The original signature sheets, which were at the desk and examined by the Chair, were unambiguous.

It has long been well established that members of a conference committee may not file separate views.<sup>(11)</sup> There are documented instances where conferees have signed a report with conditional approval or dissent.<sup>(12)</sup> In these cases, however, none of the excepted signatures were necessary for a majority, and so the question of whether such a signature could be counted has never been settled by a decisive precedent.

### *Managers From Two Committees*

11. See 8 Cannon's Precedents § 3302.

12. See 5 Hinds' Precedents §§ 6489-6496, 6538.

**§ 18.10 Managers on the part of the House, appointed from two different standing committees to confer with representatives of the Senate on a bill containing both authorization and tax features, signed both the conference report and the statement as two distinct groups, following the respective portions of the report and statement to which they had agreed.**

On May 12, 1970,<sup>(13)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Harley O. Staggers, of West Virginia, for the purpose of submitting the conference report and statement on H.R. 14465, the Airport and Airway Development and Revenue Act of 1970. These signatures of the managers from the Committee on Interstate and Foreign Commerce appeared at the end of title I of the conference report:

HARLEY O. STAGGERS,  
SAMUEL N. FRIEDEL,  
JOHN D. DINGELL,  
J. J. PICKLE,  
W. L. SPRINGER,  
SAM DEVINE,  
ALBERT WATSON,

13. 116 CONG. REC. 15202-17, 91st Cong. 2d Sess.

*Managers on the Part of  
the House.*

Title II of the report was signed by the following members from the Committee on Ways and Means:

W. D. MILLS,  
HALE BOGGS,  
JOHN C. WATTS,  
JOHN W. BYRNES,  
JACKSON E. BETTS,  
*Managers on the Part of  
the House.*

The sections of the statement on titles I and II of the bill were similarly signed by the members of the two committees.

**§ 18.11 Managers on the part of the House, appointed from two different standing committees to confer with Senate conferees on separate titles of a Senate bill and House amendment, signed both the conference report and the joint statement as two distinct groups.**

On Dec. 14, 1971,<sup>(14)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. Wayne L. Hays, of Ohio, for the purpose of submitting the conference report and statement on S. 382, the Federal Election Campaign Act of 1971. The report and the statement were signed by

14. 117 CONG. REC. 46791-801, 92d Cong. 1st Sess.

the managers on the part of the House as follows:

WAYNE L. HAYS,  
WATKINS M. ABBITT,  
KEN GRAY,  
JAMES HARVEY,  
WM. L. DICKINSON,  
*Managers on the Part of  
the House as to Ti-  
tles III, IV, and V  
of the House  
Amendment.*

HARLEY O. STAGGERS,  
TORBERT H. MACDONALD,  
LIONEL VAN DEERLIN,  
SAMUEL L. DEVINE,  
ANCHER NELSEN,  
*Managers on the Part of  
the House as to Ti-  
tles I and II of the  
House Amend-  
ment.*<sup>(15)</sup>

***Signature Sheets Must Reflect  
on Which Portions Conferees  
Participated***

**§ 18.12 Where the Speaker appoints conferees on a multi-jurisdictional bill and names some conferees with general authority but limiting the sections and titles on which other managers may confer, the signature sheets accom-**

15. Messrs. Hays, Abbitt, Gray, Harvey, and Dickinson were members of the Committee on House Administration; Messrs. Staggers, Macdonald, Van Deerlin, Devine, and Nelsen were members of the Committee on Interstate and Foreign Commerce.

**panying the conference report and statement must reflect precisely the portions of the bill on which they have conferred and agreed.**

The form of the conference report on H.R. 7765, the Omnibus Budget Reconciliation Act of 1980, along with a portion of the signature sheets is carried here.<sup>(16)</sup> The signatures in this instance were arranged so that the general conferees from the Committee on the Budget signed only once, signifying their agreement on the total bill; however, the limited conferees had to sign for each area on which they were appointed.

Mr. Giaimo submitted the following conference report and statement on the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the first concurrent resolution on the budget for the fiscal year 1981:

CONFERENCE REPORT (H. REPT. NO.  
96-1479)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7765) to provide for reconciliation pursuant to section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1981, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

16. See 126 CONG. REC. 31342, 31370, 96th Cong. 2d Sess., Dec. 1, 1980.



That the Houses recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—SHORT TITLE AND DECLARATION OF PURPOSE

SHORT TITLE

SEC. 101. This Act may be cited as the "Omnibus Reconciliation Act of 1980".

PURPOSE

SEC. 102. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives and the Senate pursuant to directions contained in section 3 of the First Concurrent Resolution on the Budget for the fiscal year 1981 (H. Con. Res. 307, 96th Congress), and pursuant to the reconciliation requirements which were imposed by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974.

TITLE II—SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS . . .

And the Senate agreed to the same.

For consideration of the entire bill (including title I through title IX of the House bill, section 1 through title IX of the Senate amendment, and the title of the bill):

ROBERT N. GIAIMO,  
THOMAS L. ASHLEY,  
WILLIAM M. BRODHEAD,  
LEON E. PANETTA,  
*Managers on the Part of  
the House.*

For consideration of the entire bill (including title I through title IX of the House bill, section 1 through title

IX of the Senate amendment, and the title of the bill):

ERNEST F. HOLLINGS,  
DANIEL PATRICK  
MOYNIHAN,  
J. JAMES EXON,  
HENRY BELLMON,  
PETE V. DOMENICI,  
*Managers on the Part of  
the Senate . . .*

For title II, subtitle A of the House bill and title I of the Senate amendment:

From the Committee on Education and Labor:

CARL D. PERKINS,  
IKE ANDREWS,  
GEORGE MILLER,  
*Managers on the Part of  
the House.*

For title II, subtitle A of the House bill and title I of the Senate amendment:

From the Committee on Agriculture, Nutrition, and Forestry:

H. E. TALMADGE,  
GEORGE MCGOVERN,  
WALTER D. HUDDLESTON,  
*Managers on the Part of  
the Senate.*

For title II, subtitle C of the House bill and title VII of the Senate amendment:

From the Committee on Education and Labor:

CARL D. PERKINS,  
WILLIAM D. FORD,  
JOHN BRADEMAs,  
MARIO BIAGGI,  
JOHN M. ASHBROOK,  
JOHN BUCHANAN,  
*Managers on the Part of  
the House.*

***Adding Signature After Filing  
and Printing***

**§ 18.13 The House agreed to a unanimous-consent request that a Senator be permitted to sign a conference report notwithstanding the filing and printing of such report.**

On Aug. 25, 1950,<sup>(17)</sup> the following occurred in the House:

MR. [KARL] STEFAN [of Nebraska]: Mr. Speaker, I ask unanimous consent that notwithstanding the filing and printing of the conference report, Senator Wherry may be permitted to sign the report on the general provisions and the general reduction sections including chapters 10(a) and 11 of the bill H.R. 7786, making appropriations for the support of the Government for the fiscal year ending June 30, 1951, and for other purposes.

THE SPEAKER:<sup>(18)</sup> Is there objection to the request of the gentleman from Nebraska?

There was no objection.

***Example of Complicated Signature Sheets Filed With Conference Report***

**§ 18.14 The signature pages on a complex conference report must show that managers of the two Houses have reached agreement on each area of disagreement; and thus re-**

**mains true where a lengthy Senate amendment in the nature of a substitute must be reconciled with an equally long House text.**

The conference report on the Omnibus Budget Reconciliation Act of 1981 was filed in the House on July 29, 1981.<sup>(19)</sup> A portion of the signature sheets, as carried in the *Congressional Record*, are presented here to show the variety of jurisdictional designations which were utilized in showing that all areas in disagreement were reconciled.

Mr. [James R.] Jones of Oklahoma submitted the following conference report and statement on the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of

17. 96 CONG. REC. 13487, 81st Cong. 2d Sess.

18. Sam Rayburn (Tex.).

19. 127 CONG. REC. 18263, 18372, 18446, 18448, 18450, 18453-55, 97th Cong. 1st Sess. (H.R. 3982).

the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1981".

#### TABLE OF CONTENTS

- Title I. Agriculture, forestry, and related programs.
- Title II. Armed services and defense-related programs.
- Title III. Banking, housing, and related programs.
- Title IV. District of Columbia. . . .
- Title XXIV. Unemployment compensation.
- Title XXV. Trade adjustment assistance.
- Title XXVI. Low-income home energy assistance.
- Title XXVII. Health professions.

#### PURPOSE

SEC. 2. It is the purpose of this Act to implement the recommendations which were made by specified committees of the House of Representatives and the Senate pursuant to directions contained in part A of title III of the first concurrent resolution on the budget for the fiscal year 1982 (H. Con. Res. 115, 97th Congress), and pursuant to the reconciliation requirements which were imposed by such concurrent resolution as provided in section 310 of the Congressional Budget Act of 1974.

#### TITLE I—AGRICULTURE, FORESTRY, AND RELATED PROGRAMS

Subtitle A—Food Stamp Program  
Reductions and Other Reductions

in Authorization for Appropriations . . .

#### STATEMENT OF MANAGERS

SEC. 1199A. The managers on the part of the Senate and the House of Representatives are authorized to have printed in the *Congressional Record* at any time prior to midnight on July 31, 1981, a statement in explanation of the provisions of this title relating to matters within the jurisdiction of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce. Such statement shall be considered to have been filed at the same time and along with the conference report on the Omnibus Budget Reconciliation Act of 1981 (H.R. 3982); and shall be considered for all purposes to constitute the statement on the part of the managers with respect to such provisions.

The signature sheets were prepared as follows:

Solely for consideration of title I of the House bill (except that portion of section 1015 entitled "International Programs, Public Law 480", and the 9th, 14th, 15th, 16th and 17th paragraphs of such section 1015), and title I (except parts D and G and section 142) of the Senate amendment.

From the Committee on  
Agriculture:

E DE LA GARZA,  
THOMAS S. FOLEY,  
ED JONES,

GEORGE E. BROWN, Jr.  
(except for sections  
1015, 1021, 1027, and  
1029 of the House bill  
and section 112 of the  
Senate amendment) . . .

TOM HARKIN (only for sections  
1001-14 and 1021  
of the House bill and

sections 151–169 of the Senate amendment) . . .

RON MARLENEE (only for section 1015 of the House bill and sections 511–13 and 516–19 of the Senate amendment),

*Managers on the Part of the House.*

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,  
S. I. HAYAKAWA,  
DICK LUGAR,  
THAD COCHRAN,  
WALTER D. HUDDLESTON,  
PATRICK LEAHY,

*Managers on the Part of the Senate. . . .*

Solely for consideration of title V, section 5001, subtitles A and B (except sections 5112, 5130, 5131, and 5133), subtitle C, chapter 1, subchapters B and C (except section 5397), subtitle C, chapter 1, subchapter E, and subtitle C, chapter 2, subchapter B of the House bill, and title XI, section 1101–8(16) through (19), part B (except section 1117(e)), and parts C, D, F, and G (except sections 1137 and 1163 and subparts 2 and 3 of part D) of the Senate amendment.

#### INDEX

*Area A:* (1) sections 5101, 5104, 5105, 5109, 5113, 5114, 5117, 5120, 5121, 5122, 5124, 5125, 5126, 5132, 5140, 5143, and 5211(2)–5211(12) of the House bill. . . .

*Area D:* (1) sections 5102, 5108, 5111, 5127, 5129, 5134, 5136, 5137, 5138, 5211(15), and 5211(16) of the House bill. . . .

From the Committee on Education and Labor:

CARL D. PERKINS,  
AUGUSTUS F. HAWKINS  
(solely for area C),

WILLIAM D. FORD (solely for areas A and D) . . .

LAWRENCE J. DENARDIS  
(solely for area D),

*Managers on the Part of the House. . . .*

Solely for consideration of title VI, subtitle D, chapter 15, subtitle E, chapter 1 (except subchapter I, and (in section 6531(a)) paragraph (1) and the first sentence following paragraph (5) of the proposed new section 17), and subtitle E, chapter 2, subchapter C of the House bill, and title IV, parts A, B, and E and sections 421, 422, and 423 of the Senate amendment.

From the Committee on Energy and Commerce:

JOHN D. DINGELL,  
RICHARD OTTINGER . . .  
CARLOS J. MOORHEAD,

*Managers on the Part of the House.*

From the Committee on Commerce, Science, and Transportation:

BOB PACKWOOD,  
BARRY GOLDWATER,  
HARRISON SCHMITT,  
HOWARD W. CANNON,  
DANIEL INOUE,

*Managers on the Part of the Senate.*

Solely for consideration of title IX, subtitle C; and title XI, subtitle B, chapter 4 of the House bill.

From the Committee on Merchant Marine and Fisheries:

WALTER B. JONES . . .

From the Committee on Public Works and Transportation:

JAMES J. HOWARD . . .

*Managers on the Part of the House.*

From the Committee on Environment and Public Works:

JAMES ABDNOR,

ROBERT T. STAFFORD,  
JOHN H. CHAFEE . . .  
*Managers on the Part of  
the Senate.*

For consideration of the entire House bill and Senate amendment (including sections 1 and 2 of the House bill and section 1 of the Senate amendment).

From the Committee on  
the Budget:

JAMES R. JONES,  
NORMAN Y. MINETA,  
STEPHEN J. SOLARZ,  
LEON E. PANETTA,  
RICHARD A. GEPHARDT,  
LES ASPIN,  
DELBERT L. LATTA,  
RALPH REGULA,  
BUD SHUSTER,  
BOBBI FIEDLER,

*Managers on the Part of  
the House.*

From the Committee on  
the Budget:

PETE V. DOMENICI,  
RUDY BOSCHWITZ,  
ERNEST F. HOLLINGS,  
LAWTON CHILES,

*Managers on the Part of  
the Senate.*

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3982) entitled, "An Act to Provide for Reconciliation Pursuant to Section 301 of the First Concurrent Resolution on the Budget for Fiscal Year 1982," submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment.

The joint statement of managers which follows was prepared by the Committees on Jurisdiction, but is arranged by title of the conference agreement. A brief overview by the Committees on the Budget appears at the beginning.

STATEMENT OF BUDGET COMMITTEE  
MANAGERS

By approving the First Budget Resolution for Fiscal Year 1982, which included reconciliation instructions, Congress continued and expanded its efforts to maintain control over Federal expenditures. Those reconciliation instructions directed fourteen Senate and fifteen House committees to report legislation achieving unprecedented reductions which impact on Federal spending during fiscal years 1981, 1982, 1983 and 1984.

The provisions of the Omnibus Budget Reconciliation Act of 1981 are the culmination of the work of the committees in complying with the reconciliation directives. Real savings have been achieved which compare favorably with the reconciliation bills as passed by the House and Senate.

The managers for the Committees on the Budget wish to acknowledge the extraordinary efforts of the conference participants, particularly the chairmen and ranking Members of the House and Senate committees, in achieving these savings.

What follows in this statement of managers is a title by title explanation of the conference agreement. This explanation has been prepared

by the committees which determined the provisions of the conference agreement which are in their separate jurisdictions.

## § 19. Limitations on Scope of Report

### *Inclusion of Provision Exceeding Managers' Authority*

#### § 19.1 A point of order will lie against a conference report on the ground that the conferees had agreed to a provision which was beyond the limits of their authority.

On Dec. 11, 1967,<sup>(20)</sup> after Mr. Thaddeus J. Dulski, of New York, called up the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967, Mr. H. R. Gross, of Iowa, raised a point of order.

MR. GROSS: Mr. Speaker, I make a point of order against the conference report on the grounds that the House managers exceeded their authority and did not confine themselves to the differences committed to them, in violation of the rules and precedents of the House of Representatives.

The House bill, in section 107(a) provided a minimum charge of 3.8 cents for bulk third-class mail effective

January 7, 1968. Section 107(a) of the Senate amendment provided a two-step minimum charge—the first of 3.6 cents effective January 7, 1968, and a second 4-cent rate effective January 1, 1969.

The differences committed to the conferees with respect to this postage rate and the effective dates for this rate were: A rate range between 3.6 cents and 4 cents; a January 7, 1968, effective date for a one-rate charge with no further rate provided; and January 7, 1968, and January 1, 1969, effective dates for any two-rate charges.

The conference report contains a two-rate charge—the first, 3.6 cents, effective January 7, 1968; the second, 4 cents, effective July 1, 1969.

The July 1, 1969, effective date for a second rate goes beyond the disagreements confided to the conferees. By agreeing to any effective date for a second rate beyond January 1, 1969, the House managers have clearly exceeded their authority. . . .

Rule 28 clause 3 of the Rules of the House<sup>(1)</sup> reads:

Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the matter in disagreement, *but their report shall not include matter not committed to the conference committee by either House.*

The Senate bill was an amendment—in the nature of a substitute for the House bill. The conference report is an

20. 113 CONG. REC. 35811, 90th Cong. 1st Sess.

1. See *House Rules and Manual* § 913(a) (1997).

additional substitute on the same subject. However, the conference report distinctly includes matter not committed to the conferees by either House, and I make the point of order on that basis. . . .

THE SPEAKER:<sup>(2)</sup> Does the gentleman from New York desire to be heard on the point of order?

MR. DULSKI: Mr. Speaker, I concede the point of order.

THE SPEAKER: The Chair sustains the point of order.

### *Determining Whether Issue Is Within Scope of Conference*

**§ 19.2 In determining whether a provision included in a conference report is within the scope of the managers' authority, the Chair examines the text of the bill and amendment sent to conference; and where one House is silent on the matter in question the state of the current law may be considered the position of that House.**

On Dec. 18, 1974,<sup>(3)</sup> when the conference report on the Federal Aid Highway Amendments of 1974 (S. 3954) was before the House, a point of order was directed at a provision, having its origins in the

Senate bill, dealing with truck weight limits. The House amendment had included no such provision and the Chair examined the existing law on the matter in determining the House position on the issue.

A portion of the conference statement, the point of order and argument thereon, are carried here to illustrate the type of examination required by the Chair in ruling on a question raised under Rule XXVIII clause 3.

[Partial text of the statement of the managers accompanying the conference report follows.<sup>(4)</sup>]

#### VEHICLE SIZES AND WEIGHTS

##### *Senate bill*

Section 106 of the Senate bill amends section 127 of title 23, United States Code, by striking out "eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds," and inserting in lieu thereof the following: "twenty thousand pounds carried on any one axle, including all enforcement tolerances; ten thousand pounds on the steering axle of any truck tractor, including all enforcement tolerances; or with a tandem axle weight in excess of

2. John W. McCormack (Mass.).

3. 120 CONG. REC. 40905, 40906, 93d Cong. 2d Sess.

4. The report and statement were carried in the Record on Dec. 17, 1974, at 120 CONG. REC. 40575, 93d Cong. 2d Sess.

thirty-four thousand pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula: . . .

*House amendment*

No comparable provision.

*Conference substitute*

The conference substitute is identical to the Senate bill except as follows:

(1) The phrase "10,000 pounds on the steering axle of any truck tractor, including all enforcement tolerances;" is deleted.

(2) Because of inclusion in the Senate passed bill of a new and additional weight limitation on any group of two or more consecutive axles of vehicles operating on the Interstate System, clarifying language was added by the Conference Committee to express the intent of the Senate as stated by the floor manager when this provision was debated on the Senate floor. The added language makes it clear that any vehicle or combination of vehicles that could lawfully operate in a State on the date of enactment of the Federal-Aid Highway Amendments of 1974 may be permitted to continue to operate on the Interstate System in such State even though the overall gross weight of any group of consecutive axles may exceed that permitted by the formula in this section.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3934) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, and ask unanimous consent that the

statement of the managers be read in lieu of the report.

POINT OF ORDER

MR. [EDWARD J.] KOCH [of New York]: Mr. Speaker, I wish to raise a point of order.

THE SPEAKER:<sup>(5)</sup> The gentleman will state it.

MR. KOCH: Mr. Speaker, I raise a point of order, pursuant to rule XXVIII, clause 3, of the House Rules, that the conference report on S. 3934 is not in order because section 106(b) contains an additional proposition not committed to the conference committee by either House and which is, therefore, nongermane.

This provision adds a major exception to the safety provision relating to allowable vehicle weights. The provision would allow States with higher weights on roads other than interstate highways at the time of enactment to permit the heavier weights on interstate highways and to be exempted from the bridge facility formula in section 106(a).

That provision was neither in the House bill nor the Senate bill.

MR. WRIGHT: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER: The gentleman from Texas will be heard.

MR. WRIGHT: . . . The language added by the conference committee is well and fully within the scope of the conference. The House, as will be recalled, had no provision whatever concerning size and weights, while the Senate bill did contain such provision. The Senate bill in

5. Carl Albert (Okla.).



effect, provided for certain increases in allowable sizes and weights on the interstate system and at the same time included certain new weight restrictions that could have been interpreted to preclude operation of vehicles that now lawfully can be operated in a State.

Floor debate in the Senate while this provision was under consideration indicates very clearly that it was not the intention of the Senate to prohibit the operation of vehicles that now can be lawfully operated and, therefore, the conference committee had language to make this clear.

Assuming for the sake of argument that the statement of intent on the floor of the Senate is not conclusive, nevertheless the additional language is well within the scope of the conference. The Senate placed limitations that would have made it illegal for certain vehicles to operate. The House did not have any such limitation. Consequently it was within the purview of the conference to reduce or ease the limitation. And that is exactly what the language in question does—no more. The Senate language declared that no vehicles which do not meet all the new qualifications may operate. The House was silent on the matter. The new language merely declares that a few vehicles that otherwise did not qualify may operate. This had the effect of compromising between the “all” in the Senate language and the silence of the House language to arrive at some compromise in the report.

And so, in sum, Mr. Speaker, whether one accepts the floor statements concerning the intent of the Senate or one does not, the language

added by the conference report is well within the scope of the matters referred to the conference.

MR. KOCH: Mr. Speaker, will the Chair hear me further on this?

THE SPEAKER: The Chair will hear the gentleman.

MR. KOCH: Mr. Speaker, the language in the bill related to a maximum of 80,000 pounds. The conference report provides for grandfathering in those States that have weights in excess of that. For example, there is one State that allows 125,000 pounds on other than State roadways in that State. This conference report allows 15 such States with weights in excess of 80,000 pounds to operate on the interstate highways.

That was not, I submit, Mr. Speaker, either in the Senate or in the House bill. It is nongermane and I believe, Mr. Speaker, it is subject to a point of order.

THE SPEAKER: The Chair has examined both the existing law and the conference report. The Chair does not see any question of germaneness involved, since the issue was raised in the Senate bill, but the Chair does find that existing law, found in section 127, title 23, highways, United States Code, grandfathered into, or excepted from, the law vehicles allowed by States that had weights different from those contemplated by the remainder of the Federal statute. As the Chair reads the language of the conference report that is exactly what it does here. The Chair has reviewed the language and does not believe that there was any intention on the part of the House or the House conferees in agreeing to this to outlaw or to eliminate the grandfa-

thering provisions in the law. That in itself, it seems to the Chair, does give validity to the argument of the gentleman from Texas that the language contained in the conference report is within the scope of the provisions contained in both versions, since the House amendment in the nature of a substitute, by remaining silent on the subject, had in effect taken the position of existing law which exempted vehicles lawfully operated under State law from the weight and width restrictions in title 23, section 127.

***Determining Whether Matter Is Committed to Conference Where One House Is Silent on Issue***

**§ 19.3 While the scope of differences committed to conference, where one House has explicitly amended existing law and the other is silent, by implication taking the position of existing law, may be measured between those extremes, the inclusion of new matter, not contained in the amending version and not demonstrably repetitive of existing law, may be ruled out as a matter not committed to conference under Rule XXVIII clause 3.**

The conference report on the bill H.R. 620, to establish an additional Assistant Secretary of Inte-

rior for Indian Affairs, was called up in the House shortly before the *sine die* adjournment of the second session of the 93d Congress.

A portion of the statement of the managers, the point of order that the managers had exceeded their authority, and the Chair's ruling excerpted from the Record of Dec. 20, 1974,<sup>(6)</sup> are carried below.

ESTABLISHING WITHIN THE DEPARTMENT OF THE INTERIOR AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The explanation of the conference section which was the focus of the point of order was as follows:

CONFERENCE REPORT (H. REPT. NO. 93-1620)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs, and for

6. 120 CONG. REC. 41849, 41850, 93d Cong. 2d Sess.

other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate with an amendment as follows:

That there shall be in the Department of the Interior, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of the Interior for Indian Affairs, who shall be appointed by the President by and with the advice and consent of the Senate, who shall be responsible for such duties as the Secretary of the Interior shall prescribe with respect to the conduct of Indian Affairs, and who shall receive compensation at the rate now or hereafter prescribed by law for Assistant Secretaries of the Interior.

SEC. 5. The Alaska Native Claims Settlement Act (85 Stat. 688) is hereby further amended by inserting at the end thereof a new section 28 as follows:

"(e) Any stock issued by a corporation under subsection (g) of section 7 of this Act to any Native who is enrolled in the thirteenth region pursuant to this section shall, upon enrollment of that Native, be canceled by the issuing corporation without liability to it or the Native whose stock is so canceled.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Washington?

POINT OF ORDER

MR. [DON] YOUNG of Alaska: Mr. Speaker, a point of order.

7. Carl Albert (Okla.).

THE SPEAKER: The gentleman will state it.

MR. YOUNG of Alaska: Mr. Speaker, I make a point of order that section 5(e) of the conference report introduces language presenting a specific topic or question that was not committed to the conference committee by either House and is not a germane modification of the matters in disagreement. The insertion of section 5(e) is a violation of clause 3 of rule XXVIII of the rules of the House.

THE SPEAKER: Does the gentleman from Washington wish to be heard on the point of order?

MR. MEEDS: I do, Mr. Speaker.

Mr. Speaker, both the conference report and the Senate bill give authority for the distribution of certain funds and provides that the 13th region, which would be created or provided by the conference bill, would be payable to these people as though the 13th region had been created in December of 1973.

Now, while the Senate bill did not mention the question of stock, that if the Senate bill had been passed it would have been necessary to do precisely what we have done in the conference report.

Therefore, the intended power of the Senate bill is covered in the language of the conference report and the conference reported bill. It is clearly within the scope, because it would absolutely be necessary to do this to carry out the Senate bill as it was enacted and it was in conference.

THE SPEAKER: The Chair is prepared to rule.

The Chair has examined the Senate amendment and finds that there was absolutely no reference in the Senate

amendment that the Chair finds to a cancellation of stock previously issued by Native corporations to Natives who are enrolled in the 13th region. Therefore the conference report is in violation of clause 3, rule XXVIII.

The Chair, therefore, sustains the point of order.

MR. MEEDS: Mr. Speaker, could I be heard?

THE SPEAKER: The gentleman may be heard, but will the gentleman indicate that there is new language in the conference report not contained in the Senate amendment.

MR. MEEDS: Mr. Speaker, I agree there is not language in the Senate bill which does this, but if the Senate bill were carried out after it were passed, what is set forth in the conference report would have to be done. It is a mechanical thing that would necessarily follow.

When the 13th region was not created, certain stock was issued to individuals who would have been members of that 13th region in other corporations. When the 13th region is created, as it is by the Senate bill and by conference, it would then be necessary to redistribute and refund that fund, so it is a necessary concomitant of either bill that this procedure be carried out, and it is simply set out in the conference reported bill.

THE SPEAKER: The Chair will read clause 3, rule XXVIII:

Whenever a disagreement to an amendment in the nature of a substitute has been committed to a conference committee it shall be in order for the Managers on the part of the House to propose a substitute which is a germane modification of the mat-

ter in disagreement, but the introduction of any language in that substitute presenting a specific additional topic, question, issue, or proposition not committed to the conference committee by either House shall not constitute a germane modification of the matter in disagreement.

If what the gentleman says is true, the addition of this language in the conference report would have been redundant. To have put it in the conference report would have been unnecessary; the Chair must conclude that a new issue has been injected which was not contained in the Senate amendment.

The Chair, much as he dislikes to do so, must sustain the point of order.

### *Senate Standard Where Conferencees Include "New Matter"*

**§ 19.4 The Senate, in determining whether a conference report is subject to a point of order because it includes "new matter," applies the following standard: If the matter is entirely irrelevant to the subject matter (of the bill and amendment) it is not in order.**

On Aug. 19, 1982,<sup>(8)</sup> a point of order was raised against the conference report on the Tax Equity and Fiscal Responsibility Act of

8. 128 CONG. REC. 22398, 22400, 97th Cong. 2d Sess.

1982, on the ground that the report contained a provision (new matter) not in either version submitted to the conference. The Chair ruled that since the managers went to conference on a complete substitute, they had maximum flexibility and had not violated the Senate rule. The Chair's decision was sustained on appeal.

MR. [JOHN P.] EAST [of North Carolina]: Mr. President, I would like to make a point of order regarding the conference report.

THE PRESIDING OFFICER:<sup>(9)</sup> Will the Senator turn on his speaker?

MR. EAST: I have it on. I think it had gotten turned off up there. I do not know.

If I may state my point of order:

Mr. President, I make the point of order that under the provisions of rule XXVIII, paragraphs 2 and 3, the conference report is out of order in that it contains material which is not a germane modification of subjects in disagreement, to wit: That the report contains a provision requiring a new set of information reporting requirements for certain businesses, and a tip allocation requirement.

I state in explanation of the point of order that the Senate struck out a similar provision from the Senate committee amendment to H.R. 4961, and that no such provision was contained in either the Senate-passed or original House-passed versions of the bill. Although the Senate-passed bill

contained a provision dealing with the deductibility of business expenses incurred for meals and beverages, that provision dealt only with the issue of deductibility of business expenses. The provision included by the committee on conference deals with the allocation and reporting of income which in no way can be considered a modification of a provision dealing with deductions.

I further state in explanation of the point of order that the provision relating to the deductibility of business expenses appears under the heading, "Reduction in Certain Deductions and Credits," in the Senate-passed version of H.R. 4961. The provision on tip reporting and tip allocation contained in the report of the Committee on Finance on H.R. 4961 appeared under the heading, "Provision Designed To Improve Taxpayer Compliance." Likewise, these matters appeared in separate titles. The tip provision appeared in the Senate committee amendment in title III. It is thus clear that the committee on conference did not confine itself to modifying a matter in disagreement. Rather, it inserted new matter that had been approved at no time by either the Senate or the House.

I accordingly state that under the provisions of rule XXVIII, paragraph 2, the conference report is out of order and must be rejected in its entirety, since the House of Representatives has already acted thereon.

MR. [ROBERT J.] DOLE [of Kansas]: Mr. President.

THE PRESIDING OFFICER: The conferees went to conference with a complete substitute, which gives them the maximum latitude allowable to conferees. The standard is that matter en-

9. Rudy Boschwitz (Minn.).

tirely irrelevant to the subject matter is not in order. That standard has not been breached. The point of order is not well taken.

The Senator from Kansas.

MR. EAST: Mr. President.

THE PRESIDING OFFICER: The Senator from Kansas has the floor.

MR. DOLE: I am happy to yield.

MR. EAST: I would like to appeal from the ruling of the Chair and I ask for the yeas and nays. . . .

THE PRESIDING OFFICER: Shall the decision of the Chair stand as the judgment of the Senate?

MR. [HOWARD H.] BAKER [Jr., of Tennessee]: A parliamentary inquiry. An "aye" vote sustains the ruling of the Chair. Is that correct?

THE PRESIDING OFFICER: The Senator is correct. . . .

Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 27. . . .

So the ruling of the Chair was sustained as the judgment of the Senate.

MR. DOLE: Mr. President, I move to reconsider the vote by which the ruling of the Chair was sustained.

MR. BAKER: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

*Parliamentarian's Note:* Section 801 of the Commerce, Justice, State, and the Judiciary Appropriations Act for fiscal year 2001 (as enacted by reference to H.R. 5548 in Pub. L. No. 106-553) provided that at the beginning of the

107th Congress the Presiding Officer of the Senate would (in a manner of speaking) turn back the clock and apply all precedents under Senate Rule XXVIII (relating to the scope of conference) as in effect at the end of the 103d Congress—notably including the above ruling of Aug. 19, 1982, to the effect that any matter "not entirely irrelevant" would be considered within scope—notwithstanding the intervening decision by the Senate on appeal from a ruling of its Presiding Officer on Oct. 3, 1996 (142 CONG. REC. S11228-30 (daily ed.), 104th Cong. 2d Sess.). On that occasion, the Senate overturned a ruling of the Chair that the inclusion in a conference report of a special labor-law provision not contained in either the House bill or the Senate amendment exceeded the scope of conference, and interpreted that result on appeal as tantamount to a change in its rules, vitiating its scope rule entirely. There the matter stood for nearly two subsequent Congresses. Before any documentation in this volume of the events in the Senate on Oct. 3, 1996, they were overtaken by the enactment of section 801 and its reinstatement of the earlier state

of Senate practice exemplified by the above ruling of Aug. 19, 1982.

***Conference as Limited to Matters in Disagreement; Inclusion of New Criteria for Waiver of Restrictions in Conference Language***

**§ 19.5 Conferees must confine themselves to the differences committed to them and may not include subjects not within the disagreements between the two Houses.**

On Aug. 19, 1937,<sup>(10)</sup> the following occurred in the House:

MR. [WILLIAM M.] WHITTINGTON [of Mississippi]: Mr. Speaker, I call up the conference report on the bill H.R. 7646, an act to amend an act entitled "An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936, and ask unanimous consent that the statement may be read in lieu of the conference report. . . .

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the report on the ground it exceeds the range of the conference. The first amendment attempts to deal with an act of June 15, 1936, while the matters in difference between the two Houses were entirely confined to the act of June 22, 1936. . . .

10. 81 CONG. REC. 9376-79, 75th Cong. 1st Sess.

THE SPEAKER:<sup>(11)</sup> The Chair is prepared to rule.

The gentleman from New York [Mr. Taber] makes the point of order that the conferees have exceeded their authority in agreeing to Senate amendment No. 1, which is in the following language:

*Provided further*, That if after investigation the President finds that any city or town is by reason of its financial condition unable to comply with the requirements of section 3 as to local cooperation he is hereby authorized to waive such requirements in whole or in part.

This was the original Senate amendment placed in the House bill. In lieu of the Senate amendment, the conferees have agreed to the following provision:

*Provided further*, That if after investigation the President finds that States, political subdivisions thereof, or other responsible local agencies are unable by reason of their financial condition to comply with the requirements as to local cooperation with respect to providing lands, easements, and rights-of-way for any projects authorized by the Flood Control Act of June 15, 1936 (Public Act No. 678, 74th Cong.), the Flood Control Act of June 22, 1936 (Public Act No. 738, 74th Cong.), and by this amending act, he is authorized to waive such requirement on any individual project not to exceed 50 percent of the estimated costs of the lands, easements, and rights-of-way.

In other words, the conferees by agreeing to the language last read by the Chair, have very largely increased the power that was not covered by the

11. William B. Bankhead (Ala.).

House provision and was not covered by the original Senate amendment to the House bill.

There is a long and consistent line of decisions and precedents holding that such powers are clearly beyond the authority of conferees and the Chair regretfully feels compelled to sustain the point of order.<sup>(12)</sup>

### *Modifying Text Not in Disagreement*

**§ 19.6 Where the Senate adopted 30 amendments to a concurrent resolution, but left much of the resolution unchanged, a conference report proposing action on all of the resolution following the resolving clause, thus including matter not in disagreement, was held not in order.**

On June 10, 1953,<sup>(13)</sup> Mr. Louis E. Graham, of Pennsylvania, called up the conference report on House Concurrent Resolution 29, favoring the granting of permanent resident status to certain aliens. After the Clerk read the report, Mr. Francis E. Walter, of Pennsylvania, raised a point of order.

12. See also 99 CONG. REC. 6354-57, 83d Cong. 1st Sess., June 10, 1953.

13. 99 CONG. REC. 6354-57, 83d Cong. 1st Sess.

MR. WALTER: Mr. Speaker, I make the point of order against the conference report that the report contains names that were not in disagreement and deletes some of the names that were in agreement, so that there was nothing before the conference to change in these instances.

MR. GRAHAM: I concede the point of order, Mr. Speaker.

THE SPEAKER:<sup>(14)</sup> The Chair notes that the Senate adopted 30 amendments to this House concurrent resolution, but a large part of the resolution, as the gentleman from Pennsylvania [Mr. Walter] states, has not been amended. The conference report proposes action on all of the concurrent resolution following the resolving clause, thus including portions which are not in disagreement. The conferees obviously have exceeded their jurisdiction, and the point of order is sustained.

### *Broadening Coverage of Provision Beyond Language in Disagreement*

**§ 19.7 Where one House strikes out of a bill of the other House all after the enacting clause and inserts a new text, House conferees, under Rule XXVIII clause 3, may not include in their report a modification of a proposition which is beyond the scope of**

14. Joseph W. Martin, Jr. (Mass.).



**that proposition as committed to conference.**

On Dec. 14, 1971,<sup>(15)</sup> Mr. Wright Patman, of Texas, called up the conference report on S. 2891, to amend and extend the Economic Stabilization Act of 1970. Mr. H. R. Gross, of Iowa, raised a point of order against the conference report.

MR. GROSS: Mr. Speaker, I make a point of order against the conference report on S. 2891 on the basis that the House managers exceeded their authority, did not confine themselves to the differences committed to them and on the basis that the managers' report contains matter clearly not germane to the matter in disagreement, all in flagrant violation of clause 3, rule XXVIII<sup>(16)</sup> and the precedents of the House of Representatives.

The Senate-passed bill contained a section 3 which in effect waives the provisions of the Federal Pay Comparability Act of 1970—Public Law 91-656—and directs the President to put into effect January 1, 1972, pay adjustments for the three statutory salary systems—General Service, Foreign Service, and Veterans' Administration Medicine and Surgery—in an amount not to exceed the pay guidelines under the Economic Stabilization Act or not

greater than the actual comparability adjustments.

The House-passed bill contained no such section 3.

The conference report, as agreed to by the conferees, contains section 3 with two significant changes that are clearly not germane to the section 3 as passed by the Senate.

First, section 3 in the conference report contains an additional provision which raises the maximum pay limitation applicable to employees of the Senate and House of Representatives from level 5 to level 4 of the Executive Salary Schedule. This is a proposition which was clearly not committed to the Conference Committee.

Second, the conference report in section 3 eliminated the Senate-passed provision which provided that no pay adjustment under the Federal Statutory Pay System could exceed comparability based on the 1971 Bureau of Labor Statistics Survey.

In essence, Mr. Speaker, the conferees not only eliminated a restriction on the amount of pay adjustment for the three statutory salary systems but they also increased rates of pay for groups of employees—those employees of the House and the Senate—who were not specifically cited in either the Senate- or House-passed bills.

Clause 3 of rule XXVIII of rules of the House reads in part as follows:

Moreover, their report shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modi-

15. 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess.

16. *House Rules and Manual* § 913(a) (1997).

fication is beyond the scope of that specific topic, question, issue, or proposition as so committed to the Conference committee.

The rule was actually strengthened and tightened up in the Legislative Reorganization Act of last year in order to make it abundantly clear that no specific topic, question, issue, or proposition could be agreed to by the conferees unless committed to the Conference Committee by either or both Houses. . . .

THE SPEAKER:<sup>(17)</sup> The Chair is ready to rule.

The gentleman from Iowa (Mr. Gross) makes a point of order against the conference report on the bill S. 2391 on the ground that the conferees on the part of the House have exceeded their authority as defined in clause 3 of rule XXVIII by including matter not submitted to conference by either House.

Specifically, the gentleman from Iowa asserts that the conferees have broadened that provision of the Senate bill which authorizes comparability adjustments in the rates of pay of each Federal statutory pay system covered by the Federal Pay Comparability Act of 1970 at a rate not in excess of 5.5 percent, effective after January 1, 1972.

The House amendment contained no comparable provision. As stated in the joint statement of the managers on page 22, the conferees have adopted the Senate provision with a "clarifying amendment" to assure that the comparability adjustments be made not only

in the "statutory pay systems" as that term is defined in 5 U.S.C. 5301(c), but also in "all other Federal pay systems" covered by the Federal Pay Comparability Act of 1970; namely, those under which rates of pay are fixed by administrative action under 5 U.S.C. 5307. This would include employees in the executive, legislative, and judicial branches and employees of the District of Columbia whose pay is disbursed by administrative action. It would also include employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House.

The Chair is compelled to hold that the conferees, by deleting the word "statutory" in the Senate bill, have broadened the coverage of the comparability adjustments beyond the scope of the Senate bill or the House amendment. The Chair therefore sustains the point of order.

*Parliamentarian's Note:* As stated in argument on the point of order, the conference report also included a provision which raised the maximum pay limitation applicable to congressional employees. This provision was not in the Senate bill or in the House amendment, and provided further grounds for sustaining the point of order.

***Point of Order on Scope; Clarifying Language in Disagreement***

17. Carl Albert (Okla.).

**§ 19.8 House conferees may not under Rule XXVIII clause 3,<sup>(18)</sup> include in a conference report a new topic or issue not committed to conference by either House, yet it is in order to include language clarifying and limiting the duties imposed on an executive official by one House's version where that modification does not expand the authority conferred in that version or contained in existing law, which may be considered the implicit position of the other House.**

The point of order raised on July 29, 1975,<sup>(19)</sup> against the conference report on the bill H.R. 3130, amending the National Environmental Policy Act to clarify the federal and state roles in the preparation of certain environmental analyses of certain federal programs, illustrates the complexity of determining questions about the "scope of conference."

Where differences in language are committed to conference, the Chair must sometimes explore not

<sup>18</sup>. *House Rules and Manual* § 913a (1997).

<sup>19</sup>. 121 CONG. REC. 25515-17, 94th Cong. 1st Sess.

only the text of the House bill and the Senate amendment but provisions of existing law on the subject to determine whether conference language is a "germane modification" of the matter in disagreement or whether it crosses the boundary and introduces matter not committed to conference by either House or is "beyond the scope" of the proposition before the conferees.

The rather detailed argument on this conference report illustrates the analysis sometimes required by the Chair to reach a decision in these matters.

MRS. [LEONOR K.] SULLIVAN [of Missouri]: Mr. Speaker, I call up the conference report on the bill (H.R. 3130) to amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to the preparation of environmental impact statements, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(20)</sup> Is there objection to the request of the gentlewoman from Missouri?

#### POINT OF ORDER

MR. [JAMES J.] HOWARD [of New Jersey]: Mr. Speaker, I make a point of order against the conference report.

<sup>20</sup>. Carl Albert (Okla.).

THE SPEAKER: The gentleman from New Jersey will state his point of order.

MR. HOWARD: Mr. Speaker, I raise a point of order against the conference report because it contains material outside the scope of the conference.

Specifically, the language that is objectionable is that requiring the responsible Federal official to provide early notification to and solicitation to the view of any other State or Federal land management entity of any action or alternative thereto which may have significant impacts upon such State or affected Federal land management entity and to assess these impacts if there is disagreement upon them. Neither the House nor Senate versions of this bill require the Federal official to take these actions. While the amendment is not clear as to what the Federal official is required to give notification of, it is clearly not within the text of the House bill or Senate amendment.

Consequently, it is outside the scope of the conference which deals only with the responsibilities of the State agency or official to prepare an impact statement and requires the responsible Federal official to furnish guidance and participation in the preparation of such statement and its independent evaluation. Any search of the Senate amendment and the House bill or the two taken together demonstrates no requirement for notification to States or Federal land management entities or the solicitation of their views. Moreover, the requirement is imposed upon the Federal official to determine if there are disagreements and to assess the impacts if there are such disagreements. Such concepts are not contained

within the House bill or State amendment.

This is further emphasized by the date which limits this new requirement to after January 1, 1976. From the period of the effective date to January 1, 1976, the requirements that are delineated by the House bill and the Senate amendment would be in effect after January 1, 1976, a completely new and additional requirement would go into effect. This limitation of data is a clear demonstration that there are two different requirements imposed by the amendment before the conference report. One that was within the framework of the earlier consideration of the Houses and another requirement that was not conceived of in either House before the conference. Consequently, it is clear that the conference report is subject to a point of order.

MRS. SULLIVAN: Mr. Speaker, I yield to the gentleman from California, the distinguished chairman of the subcommittee (Mr. Leggett) to speak on the point of order.

MR. [ROBERT L.] LEGGETT [of California]: Mr. Speaker, I rise in opposition to the point of order. Under Deschler's procedures the appropriate sections, and especially section 15 in chapter 33, obviously the conference report has to be within the scope of the disagreement between the House and the Senate. We have attempted to do that and we have done it. We have had that precisely in mind at all times. We have had the Public Works Committee jointly participating in our conference and at all times our effort has been to narrow the scope of this rather subjective language.

It was originally conceived that the proviso that is complained of that allegedly imposes these new duties might require a complete new environmental impact statement prepared by the Federal agency. We limited that. No longer are they required to submit a new Federal impact statement. They are required to make views and the views then are incorporated in the regular House version of an environmental impact statement.

The implication was that this would be too troublesome for the Federal authorities and, therefore, they would be required to make a report every time under the Senate bill; so we eliminated that and we said they only have to report at those times when they have a disagreement.

There was some confusion as to what was of major interstate significance and what was required and who is required to be notified. There was some implication we would have to notify the Sierra Club and various conservation agencies. So we said no, let us limit that to just the Federal entities that are involved, the Federal entities like the Federal Land Management Agency and the Park Service that have an interest in the conflict.

Under the provision of the Senate bill, notice would be required and reports would be required; so to spell it out, that is all we want is notification and to have them submit their views and it is well within the framework of the language the Senate had.

We did change the date, but we changed the date to make it less onerous, rather than to require a date which was some time ago.

The Senate bill actually had the June 1 change date.

To be sure, this bill is different from the House bill, but that was the purpose of the conference, to reconcile the differences between the House and the Senate. The bill we have brought here is not as broad and confusing as the Senate bill. We have some provisos that specifically limit the Senate language. We well admit that our agreement has to be within the scope. This is well within that reasonable connotation of the scope.

Mr. Speaker, I submit the point of order ought to be overruled.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the point of order is without merit. The provisions of H.R. 3130, as introduced in the House and I cite now the first words:

To amend the National Environmental Policy Act of 1969 in order to clarify the procedures therein with respect to environmental impact statements.

That, Mr. Speaker, is extremely broad language and in and of itself I would submit to the Chair is quite sufficient to cover the language of the conference report in full, including the language of the conference report complained about by the gentleman from New Jersey.

The Senate language with regard to the title says as follows:

To amend the National Environmental Policy Act of 1969 in order to clarify procedures therein with respect to the preparation of environmental impact statements.

Now, the gentleman from New Jersey, as I understand it, complains about small IV, wherein it is set out, I believe this is the language to which the gentleman addresses the complaint:

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

Mr. Speaker, if we will refer now to the language of the Senate bill, we will find at line 21 on page 2 of the Senate-passed amendment the following words:

*Provided*, That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to the action which are of major interstate significance:

The action of the conferees constricts in (iv) this undertaking which is imposed upon the Federal official involved and it requires instead that he notifies the effective State or Federal officials of actions of this character.

Coming further on down, one will see that imposed under the Senate bill is, "Provided further, the procedures set forth in this paragraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or any of the responsibilities under the act."

So, we are maintaining under the Senate bill, maintaining the responsibilities of the responsible Federal official and clearly within the responsibility of the Federal official responsible is the preparation of the impact statement, is the duty to receive the advice of effective State and Federal agencies. That is clearly contained within the provisions of section 102 of the National Environmental Policy Act.

Again, Mr. Speaker, I would point out that the action of the conferees restricts somewhat that responsibility and enumerates a specific responsibility which is imposed upon him to do specific things which are more broadly set out elsewhere in the National Environmental Policy Act, so again the action of the conferees here is clearly within the responsibilities of the conferees in meeting and in resolving differences within the periphery of the differences between the House and the Senate bills. So, for that reason, Mr. Speaker, I would point out that the point of order is not only lacking in merit, but appears to me to be clearly frivolous.

THE SPEAKER: The Chair is bothered over one point here and would like clarification if it can be given by either the proponents or those opposed to the point of order. That is, whether under the existing law or authority Federal officials have the authority or are required to consult with State officials and pertinent Federal agencies; something that the Chair does not find in either the Senate amendment or the House bill.

MR. LEGGETT: Mr. Speaker, one has to understand what the law is, and the law is made up really of the law which

we have in the appropriate sections enacted by the Congress and in the guidelines which are promulgated by the Council for Environmental Quality and in the regulations which are promulgated by the highway agency. Whenever we prepare an environmental impact statement, we have to send out notification to a large number of people and we have to solicit views, and then we have to digest those views and make up a report.

Now, what we intended to do with this language of early notification was to limit the requirements of what the existing law and regulations require in the preparation of a normal environmental EIS, or environmental impact statement. While we spell it out in the language here, which was different than what the Senate had, this is the only possible way that we could kind of split hairs and limit the activity and recognize what was going on at the present time but not require that they go as far as what would be required in the preparation of the syllabus.

THE SPEAKER: Is it the gentleman's statement that the Federal Government is either authorized by law or otherwise does have legal authority to consult with State and Federal agencies?

The Chair would like the answer of the gentleman from Michigan (Mr. Ruppe).

MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Speaker, I would like to take this opportunity of quoting existing law:

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or such

expertise with respect to any environmental impact involved. Copies of such statement and the comments and the views of the appropriate Federal, State and local agencies which are authorized to develop and enforce environmental standards shall be made available to the President, the Council on Environmental Quality and to the public.

I believe that this information is required and notification given.

THE SPEAKER: The Chair recognizes the gentleman from New Jersey.

MR. HOWARD: Mr. Speaker, the answer to the Speaker's inquiry is no.

THE SPEAKER: How does the gentleman apply that answer to the legislation cited by the gentleman from Michigan.

MR. HOWARD: I understood the Speaker to ask whether there was any Federal law requiring this, and I said no, there is no Federal law requiring this; it is in the regulations.

THE SPEAKER: The Chair said "lawful authority." It did not say "statutory law."

MR. LEGGETT: Mr. Speaker, may I be heard on one authority?

MR. RUPPE: Mr. Speaker, I was quoting a moment ago from Section 102 of the National Environmental Policy Act of 1969. That is the law. That is the act.

THE SPEAKER: The Chair seems to think that the statute that the gentleman from Michigan has read answered the question which the Chair asked.

MR. [E. G.] SHUSTER [of Pennsylvania]: Mr. Speaker, I would ask the Speaker's indulgence to listen to that again. I believe it does not say "other states," but rather it says "Copies of such statement and the comments and

views of the appropriate Federal, State, and local agencies.”

Nowhere here does it refer to “other states,” which makes a significant difference, the difference being the appropriate State is the State involved, not some adjacent State, for example.

MR. LEGGETT: Mr. Speaker, if I could be heard on one more item, the gentleman has ignored the Intergovernmental Cooperation Act, particularly OMB Regulation A95, that requires that whenever an application for a Federal grant affects a multiplicity of jurisdictions, that all jurisdictions have to receive notification.

MR. DINGELL: Mr. Speaker, there is another section of the Environmental Policy Act, and that is section 102(F), under which the responsible Federal official is found under the duty to “make available to States, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.”

THE SPEAKER: The Chair will hear from the gentleman from New Jersey, and then the Chair will be prepared to rule.

MR. HOWARD: Mr. Speaker, in reference to what the gentleman from Michigan said, I would only say “make available,” as he stated, is not “consult.”

THE SPEAKER: The Chair is prepared to rule.

The Senate amendment contained a proviso “That, in any statement on any such action prepared after June 1, 1975, the responsible Federal official shall prepare independently the analysis of any impacts of and alternatives to

the action which are of major interstate significance.”

As explained on pages 4 and 5 of the joint statement, the conferees interpreted this provision in the Senate amendment to impose a broad range of new responsibilities on the appropriate Federal official to make informed determinations of actions which have a major interstate significance.

In arriving at such determinations, it would appear that the Senate language would reasonably require the Federal official to consider the views of each affected State or Federal agency and therefore to notify the States and their appropriate agencies and to solicit their views in order to determine major interstate significance.

As indicated on page 5 of the joint statement, the conferees have sought to eliminate the possibility of too broad an interpretation of the impacts referred to in the Senate proviso, and have thus added language which replaces the term “major interstate significance” with provisions which, though stated differently, appear to restrict or limit the meaning of the Senate language and which do not at the same time add new requirements for consultation not already authorized by law.

The Chair feels that such a clarification is within the permissible limits of clause 3, rule XXVIII, so long as it can be shown to be a restrictive clarification and limitation of, and not an expansion upon, the authorities conferred in either the House or Senate version thereof.

The Chair has listened to the arguments on the point of order and the responses to his inquiries and believes that the language placed in the confer-



ence report meets this test. The Chair therefore overrules the point of order.

***Points of Order Relating to the Scope of the Matter Committed to Conference***

**§ 19.9 Where one House has passed a bill of the other with an amendment in the nature of a substitute, the House rule prohibits the inclusion in a conference report of additional topics not committed to conference, or a provision "beyond the scope" of the differences between the two versions; and precedents predating the 1971 amendment to Rule XXVIII clause 3, may not be applicable when analyzing a point of order raised under the new rule.**

When the conference report on H.R. 12168, the Natural Gas Pipeline Safety Act Amendments of 1976, was called up for consideration, a point of order was raised by one of the House managers against the report. The basis of the point of order was that while the Senate amendment authorized certain civil suits to enforce provisions of the law, and the House bill contained no provision (relying on the existing law which did not

permit such civil actions), the addition in the conference version of new authority for state officials to preempt such actions was ruled to be an "additional topic" not committed to conference.

The proceedings and a portion of the argument on the point of order are included here:<sup>(1)</sup>

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 12168) to amend the Natural Gas Pipeline Safety Act of 1968 to authorize additional appropriations, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I make a point of order against the conference report on H.R. 12168 on the grounds that it violates clause 3 of rule 28 of the House of Representatives in that it contains a modification beyond the scope of issues committed to the conference committee. . . .

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> Will the gentleman from Ohio (Mr. Brown) advise the Chair specifically as to what language in the conference report he objects to. The Chair has the conference report before it.

1. 122 CONG. REC. 32719, 32720, 94th Cong. 2d Sess., Sept. 27, 1976.
2. John J. McFall (Calif.).

MR. BROWN of Ohio: Yes, Mr. Speaker. It is in the conference report on page 4, approximately the seventh line. The language to which I object says, "(or to the applicable State agency in the case of a State which has been certified under section 5(a) . . ."

MR. [JOHN D.] DINGELL [Jr., of Michigan]: Mr. Speaker, if the gentleman will yield, will the gentleman restate that, please. I am looking for it, and I do not find it.

MR. BROWN of Ohio: It is under subparagraph (b), in paragraph (1) on page 4, about the seventh line; it says as follows:

Prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 5(a).

Then, Mr. Speaker, parenthetical matter has been added in subsection (b)(2), beneath that, which says as follows:

If the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) . . .

Mr. Speaker, none of those parentheticals were in the Senate bill. They were added in the language at the conference; and therefore, I suggest they are beyond the scope of the conference and do add to the State consideration matters which were neither in the Senate bill nor in the House bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from Michigan (Mr. Dingell) wish to be heard on the point of order?

MR. DINGELL: Yes, Mr. Speaker. I rise in opposition to the point of order.

I first cite several sections of Canon's Procedures, most specifically section 3265, section 3266 and section 3267.

Mr. Speaker, section 3265 states:

Where all of a bill after the enacting clause is stricken out, the conference report may include any germane provision.

Section 3266 says:

Where an entire bill has been stricken out and a new text inserted, the conferees exercise broad authority and may discard language appearing both in the bill and the substitute. . . .

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule.

The Chair has listened to the arguments and read the statement of the managers and would state that the precedents cited by the gentleman from Michigan (Mr. Dingell) have since 1970 been somewhat outmoded by the new rule which the Chair will cite.

The last portion of the language cited by the gentleman from Ohio in parentheses is in the opinion of the Chair new language which conceptually was in neither the House bill nor the Senate amendment, is not within the scope of the conference, and is a violation of rule XXVIII, clause 3, which states:

. . . nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific topic, question, issue, or proposition as so committed to the conference committee.

While the Chair agrees with the gentleman from Michigan that notification to the relevant State agency is contemplated by existing law and is within the scope of conference, that provision added by the conferees which would prohibit citizens' suits if a State attorney general has commenced judicial proceedings appears to the Chair to inject a new exception from the citizens civil action authority which was not contemplated in the Senate version or in existing law.

The Chair on that one basis sustains the point of order.

***Scope Where Conferees Report an Amendment in the Nature of a Substitute***

**§ 19.10 In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees it is in order for the conferees to report a substitute on the same subject matter, but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of the subjects in disagreement.**

On Oct. 5, 1951,<sup>(3)</sup> Mr. James P. Richards, of South Carolina, called up the conference report on H.R. 5113, the Mutual Security Act of 1951. Mr. Brent Spence, of Kentucky, made a point of order against the report, arguing that

It amends the Export-Import Bank Act, and provides that the Director for Mutual Security shall be a member of the Board of Directors of the Export-Import Bank. Therefore, Mr. Speaker, I ask that the point of order be sustained. The conferees went beyond the scope of their authority in placing this provision in the conference report, a provision which had not been considered by either the House or the other body, and which provision amends an act which was not under consideration. . . .

THE SPEAKER:<sup>(4)</sup> Does the gentleman from South Carolina desire to be heard?

MR. RICHARDS: Mr. Speaker, may I be heard briefly on the point of order?

When this bill went to conference, the situation confronting the conferees was this: The Senate in its consideration of the bill as an amendment struck out all after the enacting clause and inserted a new bill. According to some of the old precedents, and to a rule in force at one time, it was my understanding that this type of parliamentary situation would open the bill wide with the sky as the limit. It will be re-

3. 97 CONG. REC. 12693, 12702-04, 82d Cong. 1st Sess.

4. Sam Rayburn (Tex.).

membered that under the Reorganization Act of 1946, the rule was changed to provide that any conference report must be confined to the subject matter committed to the conference or to germane modifications of it. In this particular case we had in practical effect two bills before the conferees. . . .

THE SPEAKER: The Chair is ready to rule. . . .

The jurisdiction of conferees with reference to amendments in the nature of a substitute, as we have before us, is covered by section 135(a) of part 3 of the Legislative Reorganization Act of 1946. This provision, which appears as section 947 of the House Rules and Manual,<sup>5</sup> does not change the precedents, but merely codifies the long-standing practice of the House.

The provision is as follows:

Sec. 135. (a) In any case in which a disagreement to an amendment in the nature of a substitute has been referred to conferees, it shall be in order for the conferees to report a substitute on the same subject matter; but they may not include in the report matter not committed to them by either House. They may, however, include in their report in any such case matter which is a germane modification of the subjects in disagreement.

5. This reference is, of course, to the 1951 edition of the *House Rules and Manual*. The provision referred to was made part of the standing rules of the House in the following Congress, appearing in this form for the first time as Rule XXVIII clause 3, *House Rules and Manual* § 913a (1997).

(b) In any case in which the conferees violate subsection (a), the conference report shall be subject to a point of order.

While the rule authorizes conferees to report a substitute on the same subject matter, it also restricts them to matter committed to them by one of the Houses. In the case before us neither House committed to the conferees a provision for making the Mutual Security Director a member of the board of the Export-Import Bank. And while the rule permits germane modifications of the matter in disagreement, such alteration of the board of directors of the Export-Import Bank is an expansion and not a modification of the matter in disagreement.

The Chair thinks the point of order is good and, therefore, sustains the point of order.<sup>6</sup>

### *Reconciling Divergent Treatments of Subject*

§ 19.11 Where a House amendment in the nature of a substitute authorized endowment and operating payments for specific institutions of higher education, and the Senate substitute therefor: (a) conferred land-grant college status on those institutions; (b) changed the form of the authorizations to

6. See also 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess., Dec. 14, 1971.

**include a direct appropriation; and (c) included conforming amendments to other legislation related to land-grant status, House conferees remained within the scope of the differences between the two versions as required by Rule XXVIII clause 3, by including in their report the Senate provision conferring land-grant status and a reduced House figure for the endowment payment.**

On June 8, 1972,<sup>(7)</sup> Mr. Joe D. Waggoner, Jr., of Louisiana, raised a point of order against the conference report on S. 659, the Higher Education Amendments of 1972. The bill had been considered in the House as H.R. 7248 under a rule<sup>(8)</sup> which authorized points of order against provisions therein that were properly under the jurisdiction of committees other than the Committee on Education and Labor. A point of order was raised pursuant to this rule and sustained against a provision which conferred land-grant college

status on institutions on Guam and the Virgin Islands. After passing H.R. 7248 the House substituted this bill for the language of S. 659. The Senate concurred in this House amendment in the nature of a substitute with a substitute of its own which contained the provision stricken from H.R. 7248 on the point of order noted above. Mr. Waggoner continued,

The conferees have agreed to most of the Senate amendment.

The statement of the managers is as follows:

The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.

Thus, it is clear, Mr. Speaker, that what the conferees did was to agree in conference to matter which had earlier been subject to a valid point of order in the House of Representatives.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, responded to the point of order.

MR. PERKINS: ... The House amendment authorized a lump sum appropriation of \$3 million for each institution, plus an annual appropriation of \$450,000 for each for general

7. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.

8. H. Res. 661, 117 CONG. REC. 37765, 92d Cong. 1st Sess., Oct. 27, 1971.

operating expenses in lieu of land-grant status for the institution.

The Senate amendment provided for endowments and payment of operating expenses, but in slightly different form. Land-grant status was conferred on the two institutions, with a cash endowment in lieu of the receipts from the sale of land scrip, plus conforming amendments to other related legislation which is related to land-grant status.

The issue before the conferees, therefore, was not whether aid should be extended to the College of the Virgin Islands and the University of Guam, but only the form such aid should take.

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of \$3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees. That rule to which the distinguished gentleman from Louisiana referred applied only to the consideration of the bill during the House debate.

Mr. Speaker, the point of order should not be sustained.

The Speaker, Carl Albert, of Oklahoma, gave the following ruling:

... Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. Obviously where, as here, the House amendment in the nature of a substitute and a Senate substitute therefor are both extensive and comprehensive legislative proposals, the task of writing a conference compromise is a difficult and painstaking task...

... The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

***Point of Order That Conferees Have Exceeded Scope; Exceeding Benefits in Either Version***

**§ 19.12 Where portions of a conference report on veterans' benefits contained higher entitlements for vocational rehabilitation assistance per month than those contained in either the House bill or the Senate amendment, the Speaker**

**held that the conferees had exceeded the scope permitted them by Rule XXVIII clause 3 and sustained a point of order against the report.**

On Aug. 22, 1974,<sup>(9)</sup> when the conference report on the Vietnam-Era Veterans' Readjustment Act was called up for consideration, a point of order was lodged against the report on the ground that the conferees had exceeded the scope of differences committed to them. After argument by the Member pressing the point of order, Mr. H. R. Gross, of Iowa, and the rebuttal by the chairman of the Committee on Veterans' Affairs, Mr. William Jennings Bryan Dorn, of South Carolina, the Chair sustained the point of order.

CONFERENCE REPORT ON H.R. 12628,  
VIETNAM ERA VETERANS READ-  
JUSTMENT ASSISTANCE ACT OF 1974

MR. DORN: Mr. Speaker, I call up the conference report on the bill (H.R. 12628) to amend title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and other persons; to make improvements in the educational assistance programs; and for other

purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from South Carolina?

POINT OF ORDER

MR. GROSS: Mr. Speaker, I ask to be recognized at the proper time to make a point of order against the conference report.

THE SPEAKER: The gentleman can be recognized prior to the reading of the statement of the managers on the conference report.

Is there objection to the request of the gentleman from South Carolina?

There was no objection.

THE SPEAKER: The gentleman from Iowa is recognized.

MR. GROSS: Mr. Speaker, I raise a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Amendments of 1974. The conference report violates clause 3 of rule XXVIII in that the conferees exceeded the scope of the conference.

Clause 3 of rule XXVIII states, in part, that the report of conferees:

Shall not include matter not committed to the conference committee by either House, nor shall their report include a modification of any specific topic, question, issue, or proposition committed to the conference committee by either or both Houses *if that modification is beyond the scope of that specific topic, question, issue, or proposition as so com-*

9. 120 CONG. REC. 30050-52, 93d Cong. 2d Sess.

10. Carl Albert (Okla.).

*mitted to the conference committee.*  
(emphasis added)

H.R. 12628, as approved by this House on February 19, authorized a 13.6 percent increase in monthly subsistence allowances for veterans participating in vocational rehabilitation training and veterans educational programs. The Senate, on June 19, adopted an amendment in the nature of a substitute that authorized an 18.2-percent increase in monthly payments under this legislation. The House subsequently disagreed with the Senate amendment and a conference was held.

Sections 2 and 5 of the House-passed bill provided for an increase in benefits of 13.6 percent for specific categories of eligible veterans and dependents. The corresponding provisions passed by the Senate, sections 101 and 213, authorize an increase of 18.2 percent in those benefits. The conference report, in sections 101 and 104, clearly authorize an increase of 22.7 percent in monthly allowances for those same categories of trainees. This modification is beyond the scope of the specific disagreement committed to the conference committee and is a clear violation of clause 3 of rule XXVIII. . . .

Mr. Speaker, sections 101 and 104 of the conference report exceed the scope of the conference. And I ask that the point of order be sustained.

THE SPEAKER: Does the gentleman from South Carolina desire to be heard on the point of order?

MR. DORN: I do, Mr. Speaker.

Mr. Speaker, I welcome the opportunity to explain the background of the particular provisions of the conference-reported bill which appear to be the

basis for the gentleman's raising of a point of order.

To simplify my explanation, may I take the example of a single veteran who is attending full-time college training. Under the existing law he receives an educational allowance of \$220 per month. This allowance is paid to him directly to assist in bearing his tuition, subsistence, and other educational expenses. As passed by the House, H.R. 12628 proposed to increase this allowance to \$250, representing an increase of 13.6 percent over the current rate. Following extended hearings and deliberations on the part of the Senate in which there was considerable support for an added or supplemental partial tuition allowance, which would also be payable directly to the veteran, the Senate returned our bill with an amendment in the nature of a complete substitute. Probably the most significant aspect of the Senate substitute was to provide a new rate "package" consisting of an 18-percent increase in the basic monthly allowance to \$260 for a single veteran, coupled with an additional "partial tuition assistance allowance" under a formula which would result, in the typical case, a maximum of \$720 per school year. Accordingly the total assistance package proposed by the Senate potentially available for a single veteran, including the partial tuition assistance allowance, would approximate \$290 per month. . . .

I think it is also significant to point out that the net fiscal effect of adoption of the conferees' recommendations will result in an annual savings to the Government of almost a half billion dollars per year over the Senate version.



In conclusion, Mr. Speaker, considered in the context of the overall rate structure package which was considered by the conferees, it is our strong conviction that the agreement on the single educational allowance rate contained in the conference bill does not violate either the letter or the spirit of rule XXVIII of the House of Representatives.

MR. GROSS: Mr. Speaker, may I be heard very briefly further?

THE SPEAKER: The gentleman from Iowa is recognized on his point of order.

MR. GROSS: Mr. Speaker, I respectfully submit that the gentleman has offered his resistance to the point of order based upon section 102 of the bill. My point of order goes to sections 101 and 104 of the conference report.

THE SPEAKER: The gentleman is correct.

Does the gentleman from South Carolina desire to be heard on the specific point of order made by the gentleman from Iowa? As the Chair understood it, the gentleman's argument related primarily to a point of order that might have been made on a different section.

MR. DORN: Mr. Speaker, I would like to comment further to the distinguished gentleman from Iowa.

The decision of the conferees to drop the partial tuition assistance and establish a single basic allowance of \$270 for chapter 34 trainees encompassed 98 percent of all trainees involved. Since both the House and Senate bills set the same percentage increase for trainees under Chapter 34, which may be 98 percent of all trainees, and disabled veterans training under chapter 31 to make up 2 percent of the trainees, the

conferees decided to remain consistent to the positions of both the House and Senate, and therefore extended the 23 percent increase to all classes of veterans.

THE SPEAKER: Is the gentleman arguing correctly to the point of order, or is the gentleman, in effect, conceding?

The Chair is prepared to rule.

The gentleman from Iowa makes a point of order against the conference report on H.R. 12628, the Veterans Education and Rehabilitation Act Amendments of 1974, on the ground that the conferees have exceeded the scope of their authority.

Specifically, it is alleged that the conference report provides a greater amount of vocational rehabilitation assistance per month and a greater apprenticeship or on-the-job training assistance, per month than either the House or Senate versions.

The Chair has examined section 101 of the conference report, which amends a table in title 38, United States Code, section 1504(b) to provide \$209 a month in vocational assistance for a veteran with no dependents enrolled full time at an educational institution. Section 2 of the House bill amends the payment figure to provide \$193 a month. Section 101 of the Senate amendment in the nature of a substitute amends the same figure to provide only \$201 a month.

The conference amendment clearly exceeds the dollar amount of either the House or Senate version.

Similarly, section 104 of the conference report amends a table in title 38, United States Code, section 1787(b) to provide \$196 a month assistance during the first 6 months for an individual

with no dependents, for apprenticeship or on-the-job training.

The House bill provides, in section 5, \$182 for that purpose, and the Senate amendment provides, in section 213, \$189 for that purpose.

The conference report exceeds the dollar amount contained in both the House bill and the Senate amendment in the nature of a substitute.

As the conferees have exceeded their authority under clause 3, rule XXVIII, the Chair therefore sustains the point of order against the conference report.

MOTION OFFERED BY MR. DORN

MR. DORN: Mr. Speaker, I move that the House recede from its disagreement to the Senate amendment to the text of the bill and agree to the same with the following amendment.

The Clerk read as follows:

Mr. Dorn moves that the House recede from its disagreement to the Senate amendment to the text of the bill and agree to the same with the following amendment: In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

That this Act may be cited as the "Vietnam-Era Veterans' Readjustment Assistance Act of 1974".

***Inclusion of Provision Deleted on Point of Order During Consideration of Bill***

**§ 19.13 A special rule permitting points of order to be raised against provisions in a House bill on jurisdictional grounds does not thereafter**

**serve as a restriction on the authority of House conferees to incorporate similar provisions, which had been in a Senate substitute, as part of the conference report.**

On June 8, 1972,<sup>(11)</sup> Mr. Joe D. Waggonner, Jr., of Louisiana, rose with a point of order against the conference report on S. 659, the Higher Education Amendments of 1972.

MR. WAGGONNER: Mr. Speaker, I make the point of order that the conference report on S. 659 does not comply with the rules and precedents of the House. House Resolution 661, the rule which governed the debate on H.R. 7248 provided in part that a point of order would lie against provisions in that bill that were properly under the jurisdiction of other committees.

Pursuant to this rule a point of order was made by the gentleman from Pennsylvania (Mr. Goodling) against the language in title XII relative to the creation of land-grant colleges on Guam and the Virgin Islands. The Chair on that occasion sustained the point of order and title XII was stricken. It was later amended with proper language.

On November 4, 1971, the House passed H.R. 7248 and then in the usual manner substituted the language of the House bill for the language of S. 659.

11. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.

On March 1, 1972, the Senate amended S. 659 with an amendment in the nature of a substitute for the House amendment in the nature of a substitute. Included in the text of this Senate amendment was language designating land-grant colleges on Guam and the Virgin Islands, language, Mr. Speaker, which had been earlier ruled out of order by you in the House.

The conferees have agreed to most of the Senate amendment.

The statement of the managers is as follows:

The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land-grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.

Thus, it is clear, Mr. Speaker, that what the conferees did was to agree in conference to matter which had earlier been subject to a valid point of order in the House of Representatives. . . .

Certainly, Mr. Speaker, to permit the House conferees to agree in conference to a Senate amendment, the language of which has or has been subject to a point of order, does violence to the orderly procedure in the House and I, therefore, make a point of order against section 506 of the conference report on the grounds that it includes specific language against which a point of order by the Chair and acting under the authority of House Resolution [6]61, the rule governing the original House debate on this legislation. . . .

THE SPEAKER:<sup>(12)</sup> Does the gentleman from Kentucky (Mr. Perkins) desire to be heard on the point of order?

MR. [CARL D.] PERKINS: Yes, I do, Mr. Speaker.

THE SPEAKER: The gentleman is recognized.

MR. PERKINS: Mr. Speaker, the precedent to which the distinguished gentleman from Louisiana referred was with reference to a peculiar situation. If the bill to which he had referred had been brought to the floor of the House under an ordinary rule, the point of order would not have been well taken. But it was brought to the House under a unique rule at that time. . . .

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of \$3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees. That rule to which the distinguished gentleman from Louisiana referred applied only to the consideration of the bill during the House debate.

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12. Carl Albert (Okla.).

Mr. Speaker, the point of order should not be sustained.

It was a special and unique rule governing that debate only. It cannot be relied upon now. . . .

THE SPEAKER: Does the gentleman from Minnesota desire to be heard?

MR. [ALBERT H.] QUIE [of Minnesota]: Yes, Mr. Speaker, I would like to speak in opposition to the point of order.

Mr. Speaker, adding to what the gentleman from Kentucky has said—and I think the gentleman from Kentucky summed up the opposition to the point of order in a very excellent manner—I should like to read that portion of the rule that applied when the point of order was made on November 4, 1971. That part of the rule is as follows:

And further, all titles, parts, or sections of the said substitute, the subject matter of which is properly within the jurisdiction of any other standing committee of the House of Representatives, shall be subject to a point of order for such reason if such point of order is properly raised during the consideration of H.R. 7248.

We have gone by that position. We have S. 659 before us, which has been agreed to in the conference report. We had in the bill H.R. 7248, when we sent it to the other body, the \$3 million for the institutions of higher education, but we did not make them land-grant colleges. Since they were already set up in that way, the House accepted that portion of the Senate language which is within our jurisdiction, and under the rules, it seems to me, we have only the question of germaneness and cannot raise the rule under which we operated

when H.R. 7248 was considered in the House.

MR. WAGGONER: Mr. Speaker, the gentleman from Minnesota says that the point of order should have been made during the consideration, and properly stated, of H.R. 7248. The point I make is exactly this: A point of order was made and was sustained during the consideration of H.R. 7248. The question is not whether or not there is an appropriation. The question still is whether or not this committee, having already been ruled against on a point of order during consideration of H.R. 7248, can now, by another device, bring back in this conference report legislation which designates these two institutions in Guam and the Virgin Islands as land-grant institutions. . . .

THE SPEAKER: The Chair is ready to rule. The gentleman from Louisiana makes a point of order that the conference report violates the rules and precedents of the House. Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. . . .

Several of the managers on the part of the House conferred with the Chair during the conference deliberations and stressed to the Chair that at every stage of their negotiations particular attention was being given to the rules governing conference procedure and the authority of the conferees.

Whenever a possible compromise infringed or even raised a question of the infringement of the rules of the House, the Chair was informed that the man-

agers on the part of the House resolved that matter so there was no conflict with the provisions of rules XX or XXVIII.

The matter to which the gentleman from Louisiana referred was contained in title XI of the House amendment to the Senate bill. The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

***Funds Authorized by One House for One Year and by the Other House for the Subsequent Year***

**§ 19.14 Where one House authorizes certain funds for a fiscal year and the other House authorizes a lesser amount for that year as well as additional funds for the subsequent fiscal year, and neither version contains an overall total amount, House conferees do not exceed the scope of their authority by including in their report the amount authorized by one House for the first year and the amount authorized by the other House for the subsequent year, even though the total authorization re-**

**flected in the report is greater than that computed in either version.**

On June 8, 1972,<sup>(13)</sup> Mr. Joe D. Waggoner, Jr., of Louisiana, raised a point of order against the conference report on S. 659, the Higher Education Amendments of 1972.

MR. WAGGONER: . . . I respectfully make the point of order, Mr. Speaker, that the conference committee has exceeded its authority. Section 1803(a) of the House-passed bill dealing with appropriations for emergency school aid authorized \$1,500,000,000 for the next 2 fiscal years. In the Senate bill, in section 704(a) the Senate proposed the same amount of money, \$1,500,000,000 for the first 2 fiscal years for emergency school aid.

Now, Mr. Speaker, as we know, section 3263, volume 8, of Cannon's Precedents of the House of Representatives states:

Conferees may not go beyond the limits of the disagreements confided to them, and where the differences involve numbers, conferees are limited to the range between the highest figure proposed by one House and the lowest proposed by the other.

Each House, Mr. Speaker, dealing with this very specific subject, came to a very clear dollar figure for this authorization, \$1,500,000,000. It is apparent, Mr. Speaker, that the conferees disregarded this. The conferees

13. 118 CONG. REC. 20281, 92d Cong. 2d Sess.

proposed an authorization for the first 2 years for emergency school aid of \$2 billion, a half-billion dollars higher than proposed by either House of the Congress.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, spoke in defense of the conference report.

MR. PERKINS: . . . The House amendment authorized the appropriations for the emergency school aid provisions of \$500 million for fiscal year 1972, and \$1 billion for the fiscal year 1973.

In contrast, the Senate amendment authorized \$500 million for fiscal year 1973, and \$1 billion for the fiscal year 1974.

The conference report authorizes the House amount for the fiscal year 1973, and the Senate amount for the fiscal year 1974.

The Precedents of the House are clear. The test is the total authorized amount in any single year, not the cumulative total. Therefore, the conference report does not violate the House Rules, and the point of order should be overruled.

MR. WAGGONER: Mr. Speaker, I desire to speak further to the point of order. . . .

Mr. Speaker, the Precedents of the House do not speak to the fiscal year allocations. The Precedents of the House and the Rules of the House speak to the limitations and to the range between the highest and the lowest figure proposed by one House or the other. I submit the conferees have violated the Rules of the House, be-

cause they have not limited their actions to the range.

They have considered in their actions fiscal year appropriations and not limitations of the respective bills which went to the conference.

THE SPEAKER:<sup>(14)</sup> The Chair is prepared to rule. . . .

The Chair will point out that neither the House nor the Senate provisions dealing with emergency school aid set an overall limit on authorizations. Both dealt with specific fiscal years. The conference in this situation had the authority to consider the differences between the two Houses with respect to each of the fiscal years 1972, 1973, and 1974, and to compromise their differences on a year-by-year basis. This they have done.

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

### *Appropriation on Legislative Bill*

**§ 19.15 A conference report is subject to a point of order in the House if the managers on the part of the House on a legislative bill agree to a Senate amendment appropriating money.**

On May 22, 1936,<sup>(15)</sup> Mr. James M. Mead, of New York, called up the conference report on H.R.

14. Carl Albert (Okla.).

15. 80 CONG. REC. 7790-92, 74th Cong. 2d Sess.

9496, to protect the United States against loss in delivery through the mails of Veterans' Administration benefit checks. Mr. James P. Buchanan, of Texas, raised a point of order.

THE SPEAKER:<sup>(16)</sup> The gentleman from New York [Mr. Mead], chairman of the Committee on the Post Office and Post Roads, presents a conference report signed by the conferees on the part of the Senate and the House. The gentleman from Texas [Mr. Buchanan] makes the point of order that the conference report is out of order because the conferees on the part of the House in conference agreed to an amendment of the Senate providing an appropriation contrary to the rules of the House.

Senate amendment No. 1 contains the following language:

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

This amendment also contains the following language:

The Secretary of the Treasury shall reimburse the Postmaster Gen-

eral, from the aforesaid appropriation contained in said supplemental appropriation act, for such postage and registry fees as may be required in connection with such transmittal.

Rule XX, clause 2, of the rules of the House of Representatives,<sup>(17)</sup> reads as follows:

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

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

The Chair therefore sustains the point of order.

**§ 19.16 A conference report on a legislative bill in which the conferees had agreed to an amendment appropriating funds was ruled out as in violation of Rule XX clause 2.**

On Oct. 4, 1962,<sup>(18)</sup> the following occurred in the House:

<sup>17.</sup> *House Rules and Manual* § 829 (1997).

<sup>16.</sup> Joseph W. Byrns (Tenn.).

MR. [THOMAS J.] MURRAY [of Tennessee]: Mr. Speaker, I call up the conference report on the bill (H.R. 7927) to adjust postal rates, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> Is there objection to the request of the gentleman from Tennessee?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, and I do so in order to make a parliamentary inquiry, I desire to make a point of order against consideration of the conference report. . . .

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

The Clerk will report the title of the bill.

The Clerk read the title of the bill.

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

MR. GROSS: Mr. Speaker, I make the point of order against the conference report on the ground that it violates clause 2 of rule XX of the House rules.<sup>(20)</sup> . . .

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

Sec. 1104. Notwithstanding any other provision of law, the benefits made payable under the Civil Service Retirement Act by reason of the enactment of this part shall be paid from the civil service retirement and disability fund.

The words "shall be paid from the civil service retirement and disability fund" constitute an appropriation within the meaning of clause 2 of rule XX. . . .

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

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

THE SPEAKER PRO TEMPORE: The gentleman from Iowa [Mr. Gross] makes a point of order that the language contained on page 110, section 104, line 12, "shall be paid from the civil service retirement and disability fund" is in violation of clause 2, rule XX.

The Chair sustains the point of order.

***Restriction on Managers Authority — Appropriations in Senate Amendment; Effect of Waiver in House***

**§ 19.17 A point of order against a conference report on a legislative bill will only lie under Rule XX clause 2, if the provision alleged to be an appropriation were originally contained in a Senate amendment and if House managers at the conference**

18. 108 CONG. REC. 22332, 22333, 87th Cong. 2d Sess.

19. Carl Albert (Okla.).

20. *House Rules and Manual* § 829 (1997).



were without specific authority to agree to that amendment, and will not lie against a provision permitted by the House to remain in its text.

The conference report on the Vietnam Humanitarian Assistance Act of 1975 (H.R. 6096) was called up in the House on May 1, 1975.<sup>(1)</sup> Ms. Elizabeth Holtzman, of New York, then raised a point of order against the report, arguing that it contained a provision making an appropriation on a legislative bill in violation of Rule XX clause 2.<sup>(2)</sup> The provision complained of was in the House bill and permitted the use of previously appropriated funds of the Department of Defense to be used for evacuation programs. The House language had been protected from a point of order by a special order adopted prior to the consideration of the measure.<sup>(3)</sup> The point of order and the decision of Speaker Carl Al-

bert, of Oklahoma, overruling the point of order are carried herein.<sup>(4)</sup>

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of U.S. Armed Forces in Indochina, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

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

#### POINT OF ORDER

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

THE SPEAKER: The gentlewoman will state it.

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

In the House bill (H.R. 6096), section 3 dealt with evacuation programs referred to in section 2 of the bill and waived the same series of laws with respect thereto. In order for section 3 to be considered, it required a rule from the Rules Committee. And a rule was

1. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess.
2. *House Rules and Manual* § 829 (1997).
3. See H. Res. 409, which waived points of order against this provision, 121 CONG. REC. 11262-70, 94th Cong. 1st Sess., Apr. 22, 1975.

4. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess., May 1, 1975.

granted waiving points of order against section 3 of the bill. But section 7 of the conference report, in speaking of evacuation programs authorized by the entire act and not just by one section, exceeds the scope of section 3 of the bill and exceeds the waiver that was permitted under the rule. It therefore violates rule XXI, clause 5, and violates rule XX, clause 2, which prohibits House conferees from accepting a Senate amendment providing for an appropriation on a nonappropriation bill in excess of the rules of the House.

Mr. Speaker, last week the Committee of the Whole deliberated on an amendment that exceeded the limitations of the rule granted by the Rules Committee. That was the Eckhardt amendment, and it was ruled out of order by the Chairman. The language in section 7 of the conference report in essence has the same flaw as the Eckhardt amendment.

The last sentence of section 7 of the conference report would waive various provisions of law with respect to \$327 million, whereas the last sentence of section 3 of the House bill waived these laws only with respect to \$150 million. Section 7 of the conference report, therefore, is broader than section 3 of the House bill.

Had the language of section 7 been offered as an amendment to the House bill, it would have been subject to a point of order. Since the authority of the House conferees is no broader than the waiver originally granted to the bill by the Rules Committee, section 7 of the conference report should be ruled out of order.

THE SPEAKER: Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. MORGAN: Yes, Mr. Speaker.

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

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

Mr. Speaker, the point of order has no standing and I hope it is overruled. . . .

THE SPEAKER: The Chair is ready to rule.

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

The Chair would first point out that the provisions of clause 2, rule XX, preclude House conferees from agreeing to a Senate amendment containing an appropriation on a legislative bill, and do not restrict their authority to consider an appropriation which might have been contained in the House-passed version. In this instance, the conferees have recommended language which is virtually identical to section 3 of the House bill, and they have not agreed to a Senate amendment containing an appropriation. Therefore, clause 2, rule XX, is not applicable to the present conference report.

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

The Chair feels that an analogous situation may be found in Deschler's Procedure, chapter 25, section 23.11. There, points of order had been waived against portions of a general appropriation bill which were unauthorized by law, and the bill passed the House containing those provisions and was sent to conference; the conferees were permitted to report their agreement as to those provisions, since the waiver carried over to the consideration of the same provision when the conference report was before the House.

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

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

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

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

Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of April 28, 1975.)

***Application of Rule XX Clause 2 Restriction to Senate Legislative Bills***

**§ 19.18 Rule XX clause 2, which precludes House managers from agreeing to Senate amendments providing for appropriations on a legislative bill, absent a grant of specific House authority to do so, applies only to Senate amendments sent to conference and not to appropriations contained in Senate legislative bills.**

**Where a conference report on a Senate bill is before the House and contains a recommendation that the Senate concur in a House amendment with an amendment, the report is a recommendation for Senate action and at that moment in time there is no Senate amendment before the House for action.**

On June 30, 1976,<sup>(5)</sup> a conference report on S. 3295, the housing amendments of 1976, was before the House. The report proposed that the Senate recede from its disagreement with a House amendment in the nature of a substitute and concur therein with a further substitute. The proposed amendment would have included the original Senate provision which was, under the precedents of the House, an “appropriation” within the meaning of Rule XX clause 2.<sup>(6)</sup> When a point of order was made against the conference report, the following arguments and ruling ensued:

MR. [HENRY S.] REUSS [of Wisconsin]:  
Mr. Speaker, I call up the conference report on the Senate bill (S. 3295) to extend the authorization for annual contributions under the U.S. Housing Act of 1937, to extend certain housing programs under the National Housing Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

5. 122 CONG. REC. 21632-34, 94th Cong. 2d Sess.

6. *House Rules and Manual* § 829 (1997).

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Wisconsin?

## POINT OF ORDER

MR. [GARRY E.] BROWN of Michigan: Reserving the right to object, Mr. Speaker, I raise a point of order against the conference report.

THE SPEAKER: The gentleman will state his point of order.

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

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

The Senate-passed bill contains section 9(a)(2) and 9(b) which in effect provide for expenditures to be made from the various FHA insurance funds to honor claims made eligible for payment by the provisions of section 9 generally. These amendments are to section 518(b) of the National Housing Act and relate to sections 203 and 221 housing programs for which the authority of the Secretary of HUD to

pay claims related to certain structural defects has expired if the claims were not filed by March 1976.

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

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

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

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

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

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

The FHA insurance funds are designed to provide the reserves for payments on defaulted mortgages and for the operation of HUD related to the

7. Carl Albert (Okla.).

various insurance programs and any diversion of the use of such funds such as for payment for defects in the structure would violate clause 5 of rule XXI. In further support of this point of order, and specifically on the point that the provisions constitute a diversion of funds for a separate purpose not within the intention of the legislation establishing the fund, I cite the ruling of the Chair on October 5, 1972, which holds that an amendment allowing for the use of highway trust fund moneys to purchase buses,

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

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

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

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

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

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

tion reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendments thereto may be raised at any time.

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

I respectfully suggest, Mr. Speaker, at this point in time when we are having some questions raised about the integrity of the House rules and House administration, this is not the time to render a decision on a point of order that gives in effect further credence to

the fact that we do not intend to maintain integrity in this House with respect to the rules of the House if the procedure is carried out in a circuitous way.

THE SPEAKER: Does the gentleman from Ohio care to be heard on the point of order?

MR. [THOMAS L.] ASHLEY [of Ohio]: Very briefly, Mr. Speaker.

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

THE SPEAKER: The Chair is ready to rule.

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

The Chair has ruled on this matter before.

On January 25, 1972, the Chair ruled in connection with a point of order made by the gentleman from Iowa (Mr. Gross) against the conference report on a foreign military assistance authorization bill (S. 2819) on the ground that the House conferees had exceeded their authority by including in the conference report an appropriation entirely in conflict with clause 2, rule XX. That

rule provides, in relevant part, that "no amendment of the Senate"—that is the important language—no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

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

The Chair, therefore, overrules the point of order.

MR. BROWN of Michigan: Mr. Speaker, in view of the ruling of the Chair, I just would like to point out that in the conference report the paragraph appears:

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

In other words, with a Senate amendment.

Now, I respectfully suggest that for all intents and purposes, by using the circuitous route of taking up the Senate bill and including the House language, we nullify totally the basic directive of the House rules that this House shall not concur in any appropriation in a legislation bill not a general appropriations act, and for the Chair to rule that we will accept a circuitous violation of the House rules, that we will not accept a direct violation, I think is not in the best interests of the House.

THE SPEAKER: The Chair just thinks there are other rules that govern and

that can protect the House in situations of this type.<sup>(8)</sup> The gentleman has referred to the language of the conference agreement; and the Chair would point out that the managers have proposed that the Senate recede and concur in the House amendment with an amendment. There is no Senate amendment before the House at this time.

Is there objection to the request of the gentleman from Wisconsin that the statement be read in lieu of the report?

There was no objection.

### *Appropriation Language in Legislative Bill, Restriction on Managers Authority*

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8. The procedural safeguards mentioned by the Speaker against the inclusion of appropriations in Senate bills include: (1) possible points of order under § 401 of the Congressional Budget Act—if the Senate provision can be construed as new spending authority not subject to amounts specified in advance in appropriations acts where budget authority has not been provided in advance (in this case, the money had already been appropriated and was in a revolving fund—so § 401 was not applicable); and (2) returning Senate bills which contain appropriations to the Senate by asserting the constitutional prerogative of the House to originate “revenue” measures—construed under the precedents to include at least “general appropriation bills”.

**§ 19.19 A provision in a legislative bill authorizing the use, without a subsequent appropriation, of funds previously appropriated by law for a particular purpose, for a new purpose, constitutes an appropriation in a legislative bill (in contravention of Rule XXI clause 5(a)) and violates the restriction placed on the managers by Rule XX clause 2. A conference report may be ruled out on a point of order if the managers exceed their authority.**

The point of order against the conference report on H.R. 5612, the Small Business Assistance Act, together with the Chair’s response, as recorded in the proceedings of Oct. 1, 1980,<sup>(9)</sup> are set out below:

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The gentleman from California is now recognized on his point of order.

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I rise and make a point of order against the conference report on the bill, H.R. 5612, on the grounds that the conferees have agreed to a provision in the Senate amendment which constitutes an appropriation on a legislative bill, in violation of

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9. 126 CONG. REC. 28638, 96th Cong. 2d Sess.

10. William H. Natcher (Ky.).



clause 2 of rule XX of the rules of the House of Representatives. The conferees have included, as an amendment to the bill, a title II, which provides for the award of attorneys' fees and other expenses to the prevailing party other than the United States, in certain actions or administrative proceedings in which the judgment or adjudication has been adverse to the United States, unless the court or adjudicative officer of the agency finds that the position of the United States was substantially justified or that special circumstances make the award unjust.

I will specify the place in the report if anyone so desires.

THE SPEAKER PRO TEMPORE: Does the gentleman from Iowa desire to be heard on the point of order?

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I think nothing I could say would add or subtract anything. The Speaker has all the information.

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

The gentleman from California (Mr. Danielson) makes the point of order that the conference report on the bill H.R. 5612 contains provisions of the Senate amendment constituting appropriations on a legislative bill in violation of clause 2, rule XX, which prohibits House conferees from agreeing to such provisions without prior authority of the House.

The provisions in title II question authorize appropriations to pay court costs and fees levied against the United States, but also provide that if payment is not made out of such authorized and appropriated funds, payment will be made in the same manner as the payment of final judgments under sections

2414 and 2517 of title 28, United States Code. Judgments under those sections of existing law are paid directly from the Treasury pursuant to section 724a of title 31 of the United States Code, which states that there are appropriated out of the Treasury such sums as may be necessary for the payment of judgments, awards, and settlements under sections 2414 and 2517 of title 28. Thus the provision in the Senate amendment contained in the conference report extends the purposes to which an existing permanent appropriation may be put and allows the withdrawal directly from the Treasury, without approval in advance by appropriation acts, of funds to carry out the provisions of title II of the Senate amendment.

For the reasons stated, the Chair sustains the point of order against the conference report.

***Applicability of Rule XXI Clause 5(a) to a Motion To Concur in a Senate Amendment to a House Legislative Bill***

**§ 19.20 In a case of first impression, the Speaker entertained a point of order under Rule XXI clause 5(a), (which prohibits the inclusion in a legislative bill or an amendment thereto of an item of appropriation) where an amendment in disagreement was pending and a motion was offered to recede and**

**concur in a Senate amendment to a House legislative bill.**

The conference report on H.R. 5612, the Small Business Assistance Act, 1980, was ruled out on a point of order since the managers had agreed to a Senate amendment carrying an appropriation, a provision to which the managers on the part of the House could not agree under the restrictions imposed on their authority under Rule XX clause 2.<sup>(11)</sup>

A motion was then made by the manager of the bill, Mr. Neal Smith, of Iowa, to recede from disagreement and concur in the Senate amendment to the House bill with a further amendment which was essentially the text of the conference agreement but modified by a new section making expenditures in order only to the extent and in such amounts as are provided in advance in appropriation acts.

Two points of order were made against this motion, one under Rule XXI clause 5(a)<sup>(12)</sup> on the ground that the motion still contemplated a reappropriation of

funds; the other under Rule XXVIII clause 5<sup>(13)</sup> on the ground that the language in the motion would not have been germane to the original House bill.

The Chair entertained the Rule XXI point of order first, since, if sustained, it would invalidate the entire motion. That point of order was overruled since the Chair discerned no appropriation in the language of the motion. The germaneness point of order was then pressed, and the Chair sustained that argument, thus setting the stage for a motion to reject the portion of the motion which would not have been considered germane.

The proceedings of Oct. 1, 1980,<sup>(14)</sup> involving the latter two points of order are carried here. The proceedings involving the conference report itself are covered in § 25.13, *infra*.

MOTION OFFERED BY MR. SMITH OF IOWA

MR. SMITH of Iowa: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Smith of Iowa moves that the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 5612) to amend section 8(a) of the Small Business Act and

11. See *House Rules and Manual* § 829 (1997).

12. *Id.* at § 846a.

13. *Id.* at § 913c.

14. 126 CONG. REC. 28638-42, 96th Cong. 2d Sess.

concur therein with the following amendment:

In lieu of the matter proposed to be inserted by the Senate, insert the following:

“PART A. SMALL BUSINESS ADMINISTRATION MINORITY BUSINESS DEVELOPMENT PROGRAM AMENDMENTS . . .”

TITLE II—EQUAL ACCESS TO JUSTICE ACT

SEC. 201. This title may be cited as the “Equal Access to Justice Act” . . .

AWARD OF FEES AND OTHER EXPENSES IN CERTAIN AGENCY ACTIONS

SEC. 203. (a)(1) Subchapter I of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new section:

“§ 504. Costs and fees of parties . . .”

“(d)(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code. . . .”

LIMITATION

SEC. 207. The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act is effective only to the extent and in such amounts as are provided in advance in appropriations Acts. . . .

MR. SMITH of Iowa: Mr. Speaker, this amendment retains all of the language agreed to by the conferees, but it spe-

cifically provides that the provisions for the payment of judgments, attorney's fees and other expenses are effective only to the extent and in the amounts approved in advance in appropriations acts. This modifies those provisions which have been ruled to be an appropriation on an authorization bill. It makes no other changes in the language. It retains verbatim all other provisions which are so essential to small business. If the House adopts the amendment, this bill would be sent back to the Senate with the House amendment and, hopefully, it would pass.

POINT OF ORDER

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I will again raise a point of order of an appropriation in a legislative bill, for the reason that this amendment, if adopted, would require an affirmative action at any time against, for example, the Comptroller General before he could issue a voucher authorizing the payment of funds from the Treasury as to whether or not the award of attorneys' fees and costs pursuant to this proposed bill was something heretofore authorized and for which funds had theretofore been appropriated.

This would be an added burden and an added activity on the part of the Comptroller General and would constitute, I respectfully submit, an appropriation on a legislative bill.

For that reason, I again raise the point of order. . . .

MR. SMITH of Iowa: Mr. Speaker, I think it is very clear the way it is worded that it is just an authorization for an appropriation. There has to be a

specific appropriation, the same procedure we use in almost all laws around here.

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The Chair will be glad to hear the gentleman.

MR. MCDADE: Mr. Speaker, the language says only to the extent and in such amounts as are provided in advance in appropriations acts.

My friend and I have been on the Appropriations Committee together, I guess, for about 36 years. This is boilerplate language. The point of order ought not to lie.

#### FURTHER POINT OF ORDER

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I further make a point of order.

THE SPEAKER PRO TEMPORE: The Chair will be glad to hear the gentleman.

MR. ROSTENKOWSKI: Mr. Speaker, the amendment, as I understand it, further allows for attorneys' fees to be paid in excess of what was prescribed for in the legislation out of the Small Business Committee. The general application of the bill is far in excess. I still think that the germaneness of the amendment of the gentleman is in question.

MR. SMITH of Iowa: Mr. Speaker, I have nothing further.

THE SPEAKER PRO TEMPORE: The Chair will dispose of the appropriation point of order first.

Then the Chair will take up the matter of germaneness.

On page 22 of the motion the following limitation under section 207 is included:

The payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this act is effective only to the extent and in such amounts as are provided in advance in appropriation acts.

Therefore, the point of order is overruled under clause 5, rule XXI.

The Chair would like to inquire of the gentleman from Illinois (Mr. Rostenkowski) if he desires to make a point of order as to the germaneness of a portion of the motion offered by the gentleman from Iowa.

MR. ROSTENKOWSKI: In my opinion, Mr. Speaker, the attorney's fees is not germane to the narrow small business bill. . . .

THE SPEAKER PRO TEMPORE: The Chair is now ready to rule. While the motion is germane to the Senate amendment which contains the provision concerning attorneys' fees, the Chair would rule that the language is not germane to the original House bill which narrowly amended the Small Business Act in an unrelated way. That is under clause 5 of rule XXVIII, the Chair would sustain a point of order as to title II of the motion.

Does the gentleman from Illinois have a motion to reject that portion?

MOTION OFFERED BY MR. ROSTENKOWSKI

MR. ROSTENKOWSKI: Mr. Speaker, I offer a motion.

The Clerk read as follows:

15. William H. Natcher (Ky.).

Mr. Rostenkowski moves to strike title II of the motion offered by the gentleman from Iowa, Mr. Smith.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Rostenkowski) will be recognized for 20 minutes, and the gentleman from Iowa (Mr. Smith) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Illinois (Mr. Rostenkowski).

***Conference Compromise Eliminating Appropriation on Legislative Bill***

**§ 19.21 Although Rule XX clause 2 prohibits House conferees from agreeing to a Senate amendment containing an appropriation to a legislative bill absent specific authority from the House, the conferees may include in their report a modification of such an amendment which eliminates the appropriation.**

On June 8, 1972,<sup>(16)</sup> the House was considering the conference report on S. 659, the Higher Education Amendments of 1972. Mr. Joe D. Waggoner, Jr., of Louisiana, raised a point of order against the conference report. Among the alleged defects of the conference

16. 118 CONG. REC. 20280, 20281, 92d Cong. 2d Sess.

report was the agreement of the House managers to a Senate provision which conferred land-grant status on colleges on Guam and the Virgin Islands and changed the form of an authorization for their endowments and operating expenses to include a direct appropriation. Mr. Waggoner quoted from the statement of the managers:

The conference agreement retains the House provision with respect to endowment grants and the Senate conforming amendments relating to land-grant status for such institutions. The Senate amendments are modified so as to provide an annual authorization in the Act equivalent with that provided under the Senate amendments.

Mr. Waggoner continued,

... [T]he Managers on the part of the House may not agree in conference to amendments in violation of clause 2 of rule XXI or to Senate amendments to legislative bills carrying appropriations unless authorized by a vote of the House.

Carl D. Perkins, of Kentucky, Chairman of the Committee on Education and Labor, responded to the point of order.

MR. PERKINS: ... The House amendment authorized a lump sum appropriation of \$3 million for each institution, plus an annual appropriation of \$450,000 for each for general

operating expenses in lieu of land-grant status for the institution.

The Senate amendment provided for endowments and payment of operating expenses, but in slightly different form. Land-grant status was conferred on the two institutions, with a cash endowment in lieu of the receipts from the sale of land scrip, plus conforming amendments to other related legislation which is related to land-grant status.

The issue before the conferees, therefore, was not whether aid should be extended to the College of the Virgin Islands and the University of Guam, but only the form such aid should take.

The conferees adopted the Senate approach of conferring land-grant status on the two institutions instead of assistance in lieu of land-grant status, but limited the amount of the endowment payment to the House figure of \$3 million. The Senate conforming amendments were modified to assure that the colleges' payments for general operating expenses did not exceed the amounts they would have received if they were located within the United States.

The provision reported by the conferees, therefore, represents a compromise between the provisions of both bills committed to conference. It certainly remains well within the scope of the issues presented to the conferees.

Speaker Carl Albert, of Oklahoma, then stated:

The Chair is ready to rule. The gentleman from Louisiana makes a point of order that the conference report violates the rules and precedents of the

House. Since the conference report on the bill S. 659 was filed some 2 weeks ago, the Chair has carefully scrutinized the agreements that were reached in conference to be sure that the managers have not violated the rules of the House with respect to conference reports. Obviously where, as here, the House amendment in the nature of a substitute and a Senate substitute therefor are both extensive and comprehensive legislative proposals, the task of writing a conference compromise is a difficult and painstaking task.

Several of the managers on the part of the House conferred with the Chair during the conference deliberations and stressed to the Chair that at every stage of their negotiations particular attention was being given to the rules governing conference procedure and the authority of the conferees.

Whenever a possible compromise infringed or even raised a question of the infringement of the rules of the House, the Chair was informed that the managers on the part of the House resolved that matter so there was no conflict with the provisions of rules XX or XXVIII.

... The Chair has examined the parts of the conference report to which the point of order is directed and the relevant portions of the statement of the managers. The Chair is satisfied that the managers have conformed to the rules of the House, and therefore overrules the point of order.

***Unauthorized Designated Allocations Within Range of Disagreement on Lump-sum Appropriation***

**§ 19.22 When language in an appropriation bill specifically limits use of a lump-sum appropriation "to projects authorized by law," and the conferees agree to a sum between the differences of the two Houses, a conference report is not subject to a point of order upon the ground that the lump-sum appropriation embraces funds which would exceed the amount authorized by law if apportioned to two of the projects in accordance with the Senate report.**

On Aug. 13, 1957,<sup>(17)</sup> Mr. Clarence Cannon, of Missouri, called up the conference report on H.R. 8090, public works appropriations, fiscal 1958.

MR. [JOHN] TABER [of New York]: Mr. Speaker, I make a point of order against the conference report on the ground that it carries appropriations not authorized by law. In support of the point of order, Mr. Speaker, I call attention to the conference report and the statement in connection therewith. On page 4, the Success Reservoir is carried at \$5 million and the Terminus Reservoir at \$2,500,000. The two together are more or less in the same project. They had only \$500,000 available at

17. 103 CONG. REC. 14571-76, 85th Cong. 1st Sess.

the time the bill was in the House, and there has been no authorization bill passed since that time. At the time the bill was in the House, the committee said:

Success and Terminus Reservoirs, Calif.: The current basin monetary authorization would be exceeded by \$6,882,000 if the budget estimates of \$7,500,000 were allowed for these two projects. The committee has allowed \$618,000, the balance remaining in the present monetary authorization. Of this amount \$518,000 is for Success Reservoir and \$100,000 is for Terminus Reservoir. The Corps of Engineers is directed to proceed with these two projects up to the limit of the budget estimates, using available unobligated funds, should legislation be enacted increasing the monetary limitation to an amount equal to or in excess of the total of the budget estimates. . . .

THE SPEAKER:<sup>(18)</sup> Does the gentleman from Missouri [Mr. Cannon] desire to be heard on the point of order?

MR. CANNON: . . . Senate amendment No. 4, on page 5, to which the gentleman refers, is not an appropriation but precludes use of funds for items in the appropriation unless or until authorized.

Accordingly, the point of order that it is not authorized does not lie. . . .

THE SPEAKER: The gentleman from New York [Mr. Taber] makes a point of order on two items set forth in the statement of the managers on the part of the House. It appears to the Chair that the report of the conference committee stays within the amount of the two Houses. The language on page 3

18. Sam Rayburn (Tex.).

specifies that the appropriation can only be used for projects authorized by law. Therefore, the Chair must overrule the point of order. . . .

The gentleman from Missouri is recognized on the conference report.

*Parliamentarian's Note:* At the time H.R. 8090 was being considered by the House Subcommittee on Public Works Appropriations, it was conceded that only \$618,000 remained of the funds previously authorized for the Success and Terminus Reservoirs. It was contemplated at that time that the omnibus rivers and harbors and flood control authorization bill, S. 497, would subsequently authorize \$6,882,000, the difference between the \$7,500,000 estimated for these reservoir projects by the Bureau of the Budget and requested by the Army Corps of Engineers, and the \$618,000 of unspent authorizations then available to be appropriated.<sup>(19)</sup> The House report on H.R. 8090 allocated this \$618,000 (\$500,000 to Success and \$118,000 to Terminus)<sup>(20)</sup> as part of a lump-sum appropriation of \$442,186,800

19. See hearings on H.R. 8090 before House Subcommittee on Public Works of the Committee on Appropriations, 85th Cong. 1st Sess., at pp. 418, 419 (1957).

20. H. Rept. No. 85-552, p. 4, 85th Cong. 1st Sess. (1957).

for general construction for rivers and harbors and flood control.<sup>(1)</sup> The Senate report on H.R. 8090 alluded to S. 497,<sup>(2)</sup> which had passed the Senate and was then pending before the House Committee on Public Works. In reliance on these anticipated increased authorizations the Senate report allocated the full \$7,500,000 for these two projects,<sup>(3)</sup> and appropriated a lump sum for general construction for rivers and harbors and flood control of \$470,040,500.<sup>(4)</sup> But S. 497 was not law at the time the conferees met on H.R. 8090. (Nor was it ever enacted into law. After the House adopted it during the second session of the 85th Congress, the President vetoed it.)<sup>(5)</sup>

The conferees agreed to a lump sum, \$449,398,500, between the House and Senate figures. Since the bill limited the use of the lump sum to projects authorized by law, funds in excess of that authorized, which were allocated to Success and Terminus Reservoirs in the

1. *Id.* at pp. 3, 8.

2. S. Rept. No. 85-609, 85th Cong. 1st Sess., pp. 19, 20 (1957).

3. *Id.* at p. 9.

4. *Id.* at pp. 6, 18.

5. See 104 CONG. REC. 6389, 85th Cong. 2d Sess., Apr. 15, 1958.



Senate report, could not be used for that purpose.

***Senate Practice; Constitutional Point of Order***

**§ 19.23 Senate practice admits a point of order that a portion of a conference report is out of order under the Constitution, but such a point is not decided by the Presiding Officer but is submitted to the Senate: “Is the point of order well taken?”**

During consideration in the Senate of the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act, 1994, a constitutional point of order was raised by Senator John S. McCain III, of Arizona. The disposition of the point of order is carried here.<sup>(6)</sup>

MR. MCCAIN: Madam President, I make a constitutional point of order that the retroactive tax increases in the conference report which predate April 8, 1993, are in violation of the due process clause of the fifth amendment of the Constitution.

THE PRESIDING OFFICER:<sup>(7)</sup> Under the precedents and practices of the Senate, the Chair has no power or authority to pass on such a point of order. The

6. See 139 CONG. REC. 19750, 19759, 19760, 103d Cong. 1st Sess., Aug. 6, 1993.

7. Patty Murray (Wash.).

Chair, therefore, under the precedents of the Senate, submits the question to the Senate, Is the point of order well taken?

Debate on this question is limited to 1 hour equally divided and controlled in the usual form pursuant to section 305(c)(2) of the Congressional Budget Act.

The Senator from Arizona controls 30 minutes, the Senator from Tennessee controls 30 minutes.

Who yields time? . . .

Mr. McCain addressed the Chair.

THE VICE PRESIDENT:<sup>(8)</sup> The question before the Senate is, Is the point of order well taken? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 44, nays 56. . . .

THE VICE PRESIDENT: On this vote, the yeas are 44, the nays are 56. The point of order is not sustained.

MR. [DANIEL P.] MOYNIHAN [of New York]: Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

***Senate Decision Interpreting “Byrd Rule”***

**§ 19.24 In the Senate, under the so-called “Byrd rule” (section 13 of the Budget Act), a provision which produces no measurable**

8. Albert A. Gore, Jr. (Tenn.).

**changes in outlays or revenues is not necessarily extraneous.**

The provision in the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, which was targeted by a point of order by Senator John C. Danforth, of Missouri, related to a program to provide pediatric immunizations under the Medicaid program. The point of order, the Chair's response, and the vote taken on the motion to sustain the Chair's ruling are carried here.<sup>(9)</sup>

MR. DANFORTH: Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair.

First, is a provision of the budget reconciliation bill extraneous under section 313(b)(1)(A) of the Budget Act, the Byrd rule, if it produces no changes in outlays or revenues that can be estimated?

THE PRESIDING OFFICER:<sup>(10)</sup> Such a provision would not necessarily be out of order.

MR. DANFORTH: Would not necessarily be out of order.

The second question is: If the impact on outlays or revenues cannot be estimated, are they merely incidental to a nonbudgetary component under section 313(b)(1)(D) of the Byrd rule?

THE PRESIDING OFFICER: Once again, that would not necessarily be the case.

MR. DANFORTH: Mr. President, I now wish to raise a point of order, and do raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

THE PRESIDING OFFICER: The point of order is not well taken.

MR. DANFORTH: Mr. President, I appeal the ruling of the Chair.

THE PRESIDING OFFICER: Under the previous order, there is a half-hour equally divided on the appeal.

MR. DANFORTH: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is this a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

MR. [JAMES R.] SASSER [of Tennessee]: Mr. President, I yield myself such time as I may consume, and I will be very brief.

Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try

9. 139 CONG. REC. 19763, 19764, 19767, 103d Cong. 1st Sess., Aug. 6, 1993.

10. Herbert H. Kohl (Wis.).

to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report. . . .

THE PRESIDING OFFICER: All time has been yielded back.

The question is, is the appeal of the Senator from Missouri well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required for the appeal to be well taken.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 43, nays 57. . . .

***Senate Practice; Point of Order Under "Byrd Rule"***

**§ 19.25 Although a point of order under section 313 of the Budget Act is not debatable in the Senate, under section 904(d) of the Budget Act an appeal of a ruling thereon is debatable for one hour, equally divided between and**

**controlled by the moving party and the bill manager.**

On Aug. 6, 1993, during the debate on the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, a point of order was directed to a provision imposing domestic content requirements on U.S. cigarette manufacturers. The Presiding Officer held the provision not to be "extraneous" and therefore not subject to such point of order under the Byrd rule, as expressed in section 313 of the Budget Act.

While under section 313 a point of order is not subject to debate, an appeal from the decision of the Presiding Officer under section 904 is subject to one hour of debate.

To overturn the Chair's decision, a vote of three-fifths of the Members duly chosen and sworn is required.

A relevant portion of the proceedings is carried herein.<sup>(11)</sup>

MR. [HANK] BROWN [of Colorado]: . . . Mr. President, I raise a point of order that section 1106(a) is extraneous and violates section 313(b)(1)(D) of the Congressional Budget Act of 1974.

11. 139 CONG. REC. 19780-83, 103d Cong. 1st Sess., Aug. 6, 1993.

It violates it because it produces changes in the revenues that are clearly only incidental to the nonbudgetary components of the provision. The reality is this imposes the first domestic content provision that applies to exports. It is a tiny fraction of revenue—actually not even reducing the deficit—but only one-fourth of 1 percent of the tobacco—

THE PRESIDING OFFICER:<sup>(12)</sup> If the Senator will withhold, the Chair wishes to advise the Senator the point of order is not debatable. So if the Senator is setting a predicate for offering a point of order, that is acceptable. If he is debating a point of order already offered, it is not.

MR. BROWN: I do raise that point of order and ask the Chair to rule on section 1106(a).

THE PRESIDING OFFICER: The Chair will not sustain the point of order. The point of order is not sustainable.

MR. BROWN: Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The vote will be taken by the yeas and nays.

MR. [WENDELL H.] FORD [of Kentucky]: Mr. President, as I understand it we have 30 minutes? Was that the gentleman's agreement? Or what is the time agreement?

THE PRESIDING OFFICER: The Chair advises the Senate the time available

for debate will be 1 hour unless changed by unanimous consent. . . .

MR. [PAUL S.] SARBANES [of Maryland]: Mr. President, we ask unanimous consent the time on the appeal be limited to 10 minutes equally divided, 5 to a side.

THE PRESIDING OFFICER: Hearing no objection, that will be the order. . . .

MR. FORD: Mr. President, the Byrd rule under which my colleague from Colorado has made his appeal is very important. The individual's name who is carried on this Byrd rule does it because it is important to this institution.

Mr. President, let me explain to my colleagues, while I believe the Parliamentarian after careful review—and I underscore careful—has advised the Chair that this provision does not violate that Byrd rule.

This provision raises some \$29 million over a 5-year period for deficit reduction.

The CBO estimate for this provision analyzed each part of the provision and concluded that each had a budgetary impact on the \$29 million in savings achieved by this provision. That is the Byrd rule question, not the underlying argument. . . .

I urge my colleagues to uphold the ruling of the Chair. . . .

THE PRESIDING OFFICER:<sup>(13)</sup> All time has expired. The question is, Is the appeal of the Senator from Colorado well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required to overturn the decision of the Chair.

12. Joseph I. Lieberman (Conn.).

13. Charles S. Robb (Va.).

MR. BROWN: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The clerk will call the roll. . . .

If there are no other Senators desiring to vote, on this vote the yeas are 43, the nays are 57. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the appeal is rejected.

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I move to reconsider the vote by which the appeal was rejected.

MR. [PATRICK J.] LEAHY [of Vermont]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## § 20. Statements Accompanying Report

*Parliamentarian's Note:* A report of a conference committee must be printed as a report of the House, and must be accompanied by the explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. Such statement must be sufficiently detailed and explicit to inform the House as to the effect which the amendments or proposition contained in such report will

have upon the measure to which those amendments or propositions relate.<sup>(14)</sup>

Sufficiency of the joint statement is a matter for the House to determine in its vote on the conference report, and not for the Speaker to determine on a point of order.

### *Proposed Action on Amendments in Disagreement*

**§ 20.1 Although the rules do not require the managers of a conference to set out in their explanatory statement proposed action on amendments in disagreement, they may do so if they desire.**

On June 19, 1941,<sup>(15)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. John J. Cochran, of Missouri, who made the following remarks in regard to H.R. 4590:

MR. COCHRAN: Mr. Speaker, in order to advance my thought, I am referring specifically to the Department of the Interior appropriation bill, which will undoubtedly be considered today.

14. Rule XXVIII clause 1(d), *House Rules and Manual*, § 911 (1997).

15. 87 CONG. REC. 5352, 77th Cong. 1st Sess.

The conference report on that bill indicates that the Senate receded in 10 instances and the House receded on 89 amendments. There are in disagreement 38 amendments. The conference report and statement explain the amendments that have been agreed to. After the House has disposed of the amendments that have been agreed to en bloc we will then take up individually the amendments in disagreement. The conference report simply states that those amendments are in disagreement, but upon investigation I have determined that in many instances a majority of the conferees have already agreed that when those amendments are reached a motion will be made to recede and concur with an amendment. Naturally amendments in disagreement taking them as a whole are most important. I feel that the conferees not only on appropriation bills, but on all other bills where amendments are in disagreement and a motion is to be made to recede and concur, with an amendment that has already been agreed to by the conferees, then that motion should be printed in the conference report, so that the Members of the House may have an opportunity to intelligently examine the amendment and take such action as they deem advisable when it is reached. . . .

THE SPEAKER: . . . The Chair knows of no ruling of any Speaker or of anything in the rules or precedents of the House, that would require a conference committee to file more than what they considered to be a detailed statement of agreement made in the conference. Explanatory statements are made in the statement accompanying a conference report, but it is, so far as the

Chair knows, entirely within the hands of the managers as to what they will include in the statement. The Chair cannot see how, under the rules of the House, members of a conference committee can be forced to include something in their statement that they do not want to include, and that would be the position of the Chair upon this matter at this time.

It occurs to the Chair, however, that the managers certainly under the rules would have the power to include in the statement accompanying a conference report the additional information suggested by the gentleman from Missouri in his parliamentary inquiry.

### *Joint Statement and Legislative History*

**§ 20.2 Example of a joint statement of managers accompanying a conference report which incorporated by reference legislative history from House and Senate committee reports on the pending bill and "related legislation."**

H.R. 956, the Product Liability Legal Reform Act, had been reported by the Committee on the Judiciary and then referred sequentially to the Committee on Commerce. Commerce did not report H.R. 956 but filed a report on a similar measure, H.R. 917. Conferees were named from both

committees and the inclusion of portions of the legislative history from both versions of the bill in part reflects the jurisdictional dispute between the two on the subject of product liability.

A portion of the joint statement showing the manner in which the committee reports were incorporated by reference is excerpted from the Record of Mar. 14, 1996,<sup>(16)</sup> and included here.

CONFERENCE REPORT ON H.R. 956,  
COMMON SENSE PRODUCT LIABILITY  
LEGAL REFORM ACT OF 1996

Mr. [Henry J.] Hyde [of Illinois] submitted the following conference report and statement on the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes:

CONFERENCE REPORT (H. REPT. 104-  
481)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 956), to establish legal standards and procedures for product liability litigation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

16. 142 CONG. REC. 4784, 4790, 4793,  
104th Cong. 2d Sess.

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE AND TABLE  
OF CONTENTS

(a) *SHORT TITLE.*—*This Act may be cited as the “Common Sense Product Liability Legal Reform Act of 1996”.*

(b) *TABLE OF CONTENTS.*—*The table of contents is as follows: . . .*

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE . . .

The conferees incorporate by reference in this Statement of Managers the legislative history reflected in both House Report 104-64, Part 1 and Senate Report 104-69. To the extent not otherwise inconsistent with the conference agreement, those reports give expression to the intent of the conferees. (The conferees also take note of House Report 104-63, Part 1, which contains supplementary legislative history on a related bill.) . . .

From the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY HYDE,  
JAMES SENSENBRENNER,  
Jr.,  
GEORGE W. GEKAS,  
BOB INGLIS,  
ED BRYANT,

From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

TOM BLILEY,  
MICHAEL OXLEY,  
CHRISTOPHER COX,  
*Managers on the Part of the  
House.*  
LARRY PRESSLER,

SLADE GORTON,  
TRENT LOTT,  
TED STEVENS,  
OLYMPIA SNOWE,  
JOHN ASHCROFT,  
J.J. EXON,  
JOHN D. ROCKEFELLER,  
*Managers on the Part of  
the Senate.*

### *Minority Views*

#### **§ 20.3 A statement of the managers on the part of the House accompanies conference reports but minority views do not accompany such reports.**

On June 1, 1949,<sup>(17)</sup> the following occurred in the House:

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I ask unanimous consent that the House conferees on the reorganization bill may have until midnight tonight to file a report. . . .

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Is there any minority report?

MR. MCCORMACK: Well, we have not agreed, but I ask that the conferees may have until midnight tonight in case there is a report.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, reserving the right to object, would that include the right of the minority to file a report?

MR. MCCORMACK: Yes. I will also ask that that be included.

THE SPEAKER:<sup>(18)</sup> Well, there are no minority views on a conference report.

MR. HOFFMAN of Michigan: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN of Michigan: May not the conferees express their views? They can do it on the floor, then, can they not, if they can get recognition.

THE SPEAKER: A statement of the managers on the part of the House accompanies the conference report.

#### **§ 20.4 Minority views are not in order on a conference report; but the majority of the managers may, in the statement accompanying the report, indicate exceptions taken by certain conferees.**

On Dec. 6, 1967,<sup>(19)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Emanuel Celler, of New York, for the purpose of calling up the conference report on H.R. 6111, a bill providing for the establishment of a Federal Judicial Center. By unanimous consent, the statement of the managers on the part of the House was read in lieu of the report. The last paragraph of the statement read as follows:

18. Sam Rayburn (Tex.).

19. 113 CONG. REC. 35135-37, 90th Cong. 1st Sess.

17. 95 CONG. REC. 7096, 81st Cong. 1st Sess.



Representative MacGregor and Representative McClory, although they signed the conference report, emphasize their exceptions to two portions of the amendment. They would except as to that part of section 620 that locates the Federal Judicial Center in the judicial branch of the Government rather than in the Administrative Office of the United States Courts, and except as to that part of section 625 that authorizes the Director to appoint and fix the compensation of professional personnel rather than to require the Board to appoint and fix the compensation of such personnel.

### *Content of the Statement of Managers*

**§ 20.5 The Statement of Managers which must accompany a conference report is an informative document, is not voted on, and may contain such matter as the conferees of the House and Senate may jointly determine—and a tribute to a deceased staff member who had a major impact on the legislation has been included.**

On Aug. 25, 1980,<sup>(20)</sup> the statement accompanying the conference report on H.R. 5192, the education amendments of 1980, carried a tribute to the associate general

<sup>20</sup>. 126 CONG. REC. 22946, 22987, 96th Cong. 2d Sess.

counsel of the Committee on Education and Labor.

Mr. [William D.] Ford of Michigan submitted the following conference report and statement on the bill (H.R. 5192), an act to amend and extend the Higher Education Act of 1965, and for other purposes:

#### CONFERENCE REPORT (H. REPT. NO. 96-1251)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Education Amendments of 1980"....

#### JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5192) to amend and extend the Higher Education Act of 1965, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

## IN MEMORIAM

The conferees note with great sadness the absence from our deliberations of Mr. William F. Gaul, Associate General Counsel of the House Committee on Education and Labor.

Mr. Gaul has provided a central thread of informed judgment and wise counsel throughout all previous conference committee deliberations on the Higher Education Act from its original enactment in 1965 through the amendments of 1968, 1972, and 1976.

Mr. Gaul worked tirelessly on the House version of this reauthorizing legislation through its enactment last November. But shortly thereafter, he was stricken by a fatal illness which confined him to hospital quarters during our conference committee deliberations.

We have greatly missed his good and wise counsel in our deliberations. We wish he could have been with us. But most of all, we wish to record, as a part of this conference report, our great and continuing indebtedness to Mr. Gaul for the extraordinary contributions he had made throughout the last fifteen years to the creation, development, and refinement of the Higher Education Act.

On behalf of the millions of postsecondary students and the thousands of postsecondary institutions who have and will continue to benefit from the Higher Education Act, we wish to state that Mr. William F. Gaul's leadership role in constructing this legislation will be greatly noted and long remembered.

***Legal Effect of Language in Statement of Managers***

**§ 20.6 On occasion the House has referenced conditions**

**specified in the statement of managers accompanying a conference report in an amendment to an amendment in disagreement, thus elevating the referenced portion of the statement to the status of law.**

Under Rule XXVIII clause 1(d),<sup>(1)</sup> the statement of managers which is required to accompany a conference report is to be jointly prepared by the managers of the two Houses, and shall be sufficient to inform the House as to the effect the amendments or propositions contained in such report will have on the measure to which those amendments or propositions relate. Such statement is explanatory and for guidance in interpreting the explicit provisions in the conference report, but does not have the status of law. By incorporating certain conditions spelled out in such a statement into an amendment, those conditions can be, in a sense, elevated to the status of law. The type of motion which has been used to accomplish this result is illustrated by the motion offered to an amendment in disagreement to H.R. 4624, the

1. *House Rules and Manual* § 911 (1997).

Veterans Affairs and Housing and Urban Development Appropriations Act of 1995, conference report in 1994, which is carried here.<sup>(2)</sup>

MOTION OFFERED BY MR. STOKES

MR. [LOUIS] STOKES [of Ohio]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Stokes moves that the House recede from its disagreement to the amendment of the Senate numbered 28, and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following: "*Provided further*, That notwithstanding the language preceding the first proviso of this paragraph, \$289,500,000 shall be used for special purpose grants in accordance with the terms and conditions specified for such grants in the committee of conference report and statement of the managers (H. Rept. 103-715) accompanying H.R. 4624, except for the grant of \$500,000 for the Earth Conservatory for the acquisition of land near Wilkes-Barre, PA".

MR. [JOHN] LEWIS of California (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from California?

There was no objection.

2. 140 CONG. REC. 24324, 103d Cong. 2d Sess., Sept. 12, 1994.

3. Michael R. McNulty (N.Y.).

### *Reading Statements and Reports*

§ 20.7 **The statement of the managers accompanying a conference report is not read after the reading of the report itself.**

On July 23, 1946,<sup>(4)</sup> the following occurred in the House:

MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, I call up the conference report on the joint resolution (H.J. Res. 371) extending the effective period of the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the joint resolution.

THE SPEAKER:<sup>(5)</sup> Is there objection to the request of the gentleman from Kentucky? . . .

MR. [JESSE P.] WOLCOTT [of Michigan]: Do I correctly understand, Mr. Speaker, that if objection is made to the reading of the statement in lieu of the report, that in that case the joint resolution will be read and then the statement will be read?

THE SPEAKER: If the request made by the gentleman from Kentucky is objected to, then the conference report will be read.

4. 92 CONG. REC. 9754, 9765, 79th Cong. 2d Sess.

5. Sam Rayburn (Tex.).

MR. WOLCOTT: If objection is made to that request, will the resolution be read and then the statement be read?

THE SPEAKER: The conference report will be read. The only thing before the House now is the conference report.

MR. WOLCOTT: In view of the fact that there is no additional time, and it is apparent that no additional time will be granted, I think the Members should have an opportunity to read the joint resolution or hear it read. For that reason, I object.

THE SPEAKER: The Clerk will read the conference report.

The Clerk read the conference report. . . .

MR. WOLCOTT: Mr. Speaker, I ask unanimous consent that the statement of the managers on the part of the House be read.

MR. SPENCE: I object, Mr. Speaker.

THE SPEAKER: Objection is heard.

**§ 20.8 The statement of the managers accompanying a conference report is not read after the reading of the report itself. And although the statement may by unanimous consent be read in lieu of the report, if objection is made to the reading of the statement in lieu of the conference report, the Clerk reads the report.**

On the legislative day of Sept. 25, 1961,<sup>6</sup> the Speaker Pro Tempore, John W. McCormack, of Massachusetts, recognized Mr. Albert Thomas, of Texas, who called up the conference report on the supplemental appropriations bill for fiscal 1962.

MR. THOMAS: Mr. Speaker, I call up the conference report on the bill (H.R. 9169) and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Texas?

MR. [JOHN] TABER [of New York]: Mr. Speaker, I object.

The Clerk read the conference report.

***Withdrawal of Conference Report Pending Completion of Reading the Report***

**§ 20.9 When a conference report is called up for consideration in the House, the statement of the managers may be read in lieu of the report by unanimous consent; and if there is objection, the Clerk proceeds to read the report; but the manager may withdraw the report at any**

6. 107 CONG. REC. 21518-28, 87th Cong. 1st Sess., Sept. 27, 1961 (Calendar Day).

**time before action is taken thereon.**

Until the new rules were adopted for the 96th Congress,<sup>(7)</sup> every conference report had to be read to initiate its consideration. This reading requirement could be dispensed with by unanimous consent or by other parliamentary means, and often for the sake of clarity, the request was made to read the statement of the managers in lieu of the report.

In the illustration included here, the objection to dispensing with the reading of the report was motivated by a desire to put off consideration until another day. The following proceedings occurred on July 18, 1977:<sup>(8)</sup>

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I call up the conference report on the bill (H.R. 6138) to provide employment and training opportunities for youth, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is there objection to the request of the gentleman from Kentucky?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the conference report.

The Clerk proceeded to read the conference report.

MR. PERKINS (during the reading): Mr. Speaker, I again ask unanimous consent that the statement of the managers be read in lieu of the report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kentucky?

MR. BAUMAN: Mr. Speaker, reserving the right to object, it is after 5:30.

Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read.

The Clerk continued to read the conference report.

MR. PERKINS (during the reading): Mr. Speaker, I withdraw the conference report at this time.

7. See H. Res. 5, 125 CONG. REC. 7-16, 96th Cong. 1st Sess., Jan. 15, 1979. This change is now embodied in Rule XXVIII clause 2(c), *House Rules and Manual* § 912d (1997). See also § 25.7, *infra*.

8. 123 CONG. REC. 23459, 23460, 95th Cong. 1st Sess.

9. James C. Wright, Jr. (Tex.).

## E. CONSIDERATION AND DISPOSITION OF REPORT

## § 21. In General

Conference reports embody the compromises negotiated by the managers of both Houses and must be acted on in both Houses.<sup>(1)</sup> Each report must be voted on as a whole and adopted or rejected in its entirety,<sup>(2)</sup> although the House rules now permit separate votes on nongermane matter contained in a conference report.<sup>(3)</sup> In accordance with Jefferson's Manual, conference reports may not be amended or altered by either House acting alone<sup>(4)</sup> although the

two Houses may do so by concurrent resolution.<sup>(5)</sup> A report may also be amended by recommittal with instructions to the conference committee who may then file a new report.<sup>(6)</sup>

*Parliamentarian's Note:* The question of consideration as provided for in Rule XVI clause 3,<sup>(7)</sup> may be raised against a conference report, and this is a proper way to avoid immediate consideration of a report. On Sept. 28, 1976, Speaker Carl Albert, of Oklahoma, entertained the question of consideration before recognizing Members wishing to press points of order against the substance of the report.<sup>(8)</sup> A conference report cannot be tabled,<sup>(9)</sup> referred,<sup>(10)</sup> or amended.<sup>(11)</sup> There is no direct

1. *House Rules and Manual* § 549 (1997); see §§ 21.2, 21.3, *infra*.

2. §§ 30.4, 30.5, *infra*.

3. H. Res. 1153, 92d Cong. 2d Sess., Oct. 13, 1972, added clause 4 to Rule XXVIII, *House Rules and Manual* § 913(b) (1997). This clause provides that the House may vote separately on portions of conference reports containing nongermane material if offered in the House. However, in conformity with the principle set forth in § 542 of Jefferson's Manual, rejection of a portion of a conference report results in the rejection of the entire report. See §§ 30.10–30.12, *infra*.

4. Jefferson's Manual, *House Rules and Manual* § 542 (1997); see § 30.6, *infra*.

5. 8 Cannon's Precedents § 3308; and 5 Hinds' Precedents §§ 6536, 6537.

6. 8 Cannon's Precedents § 3317. See generally, § 32, *infra*.

7. *House Rules and Manual* § 781 (1997). See also 8 Cannon's Precedents § 2439.

8. 122 CONG. REC. 33018, 33019, 94th Cong. 2d Sess.

9. 5 Cannon's Precedents §§ 6538–6544.

10. *Id.* at § 6558.

11. *Id.* at §§ 6534, 6535.

precedent on the applicability of the motion to postpone.

***Conference Report Not Subject to Motion To Lay on the Table***

**§ 21.1 While the practice of the House is not to allow a motion to table a conference report, the Senate has taken such action and informed the House, by message, that it insisted on its amendments to a House bill. The House then acted on the bill and amendments thereto by privileged motion, the stage of disagreement being in effect.**

The practice of the House is not to apply the motion to lay on the table a conference report. This practice has been followed at least since the 42d Congress when Speaker Blaine refused to entertain the motion, and his decision was sustained on appeal.<sup>(12)</sup>

In the 93d Congress, the Senate did table a conference report on a House bill and the Senate amendments in disagreement, informed the House of this action together with a message further insisting on its amendments.

<sup>12.</sup> 5 Hinds' Precedents §§ 6539, 6540.

The message and the proceedings of July 16, 1974,<sup>(13)</sup> in the House are carried here.

FURTHER MESSAGE FROM THE  
SENATE

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had tabled the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 7824) entitled "An act to establish a Legal Services Corporation, and for other purposes."

And that the Senate further insists upon its amendments to the above-entitled bill, disagreed to by the House. . . .

LEGAL SERVICES CORPORATION ACT  
MOTION OFFERED BY MR. PERKINS

MR. [CARL D.] PERKINS [of Kentucky]:  
Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Perkins moves that the House take from the Speaker's table the bill H.R. 7824, with the Senate amendments thereto, recede from its disagreement to the Senate amendment to the text of the bill and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Legal Services Corporation Act of 1974".

SEC. 2. The Economic Opportunity Act of 1964 is amended by adding at

<sup>13.</sup> 120 CONG. REC. 23348, 23349, 23353, 23354, 93d Cong. 2d Sess.

the end thereof the following new title:

“TITLE X—LEGAL SERVICES  
CORPORATION ACT . . .

THE SPEAKER:<sup>(14)</sup> The gentleman from Kentucky (Mr. Perkins) will be recognized for 1 hour.

PARLIAMENTARY INQUIRY

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. GROSS: Mr. Speaker, when was this matter brought to the floor of the House.

THE SPEAKER: The Chair will state that the Senate had just messaged this matter over to the House; the Chair received the message a few minutes ago, informing the House that the Senate insists on its amendments to the House bill.

MR. GROSS: Mr. Speaker, is there any information available to the Members of the House concerning the action taken by the other body on this matter?

THE SPEAKER: The Chair will state that that is not a parliamentary inquiry.

MR. PERKINS: If the gentleman will yield, yes, there happens to be.

MOTION TO LAY THE MOTION ON THE  
TABLE OFFERED BY MR. GROSS

MR. GROSS: Mr. Speaker, I move to lay the motion on the table.

THE SPEAKER: The question is on the motion offered by the gentleman from Iowa.

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. GROSS: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: The Chair will count; 162 Members are present, not a quorum.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device; and there were—yeas 136, nays 269, not voting 29. . . .

So the motion to table was rejected.

The result of the vote was announced as above recorded.

MR. PERKINS: Mr. Speaker, on May 16 we sent the Legal Services conference report, after it was adopted, over to the Senate. As I recall, the House acted first. Over there, the conference report was tabled. I do not know the reasons why, but I presume they received word that in all probability the conference report as passed by the House and agreed to by the Senate may not be acceptable to the President of the United States.

*Receiving Senate Message During Adjournment*

**§ 21.2 The Speaker laid before the House a communication from the Clerk advising that pursuant to authority granted, he had, during adjournment, received a message from the Senate an-**

14. Carl Albert (Okla.).



**nouncing agreement to a conference report.**

On June 30, 1958,<sup>(15)</sup> Speaker Sam Rayburn, of Texas, laid before the House the following communication from the Clerk of the House:

*June 30, 1958.*

THE HONORABLE THE SPEAKER,  
*House of Representatives.*

SIR: Pursuant to authority granted on June 27, 1958, the Clerk received from the Secretary of the Senate on Friday, June 27, 1958, the following message:

That the Senate agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12181) entitled "An act to amend further the Mutual Security Act of 1954, as amended, and for other purposes."

Respectfully yours,

RALPH R. ROBERTS,  
*Clerk, United States House of Representatives.*

***Senate Has "Deemed" Adoption of Conference Report When Message Received From House***

**§ 21.3 The Senate stipulated, by unanimous consent, that a conference report already agreed to by the House**

15. 104 CONG. REC. 12671, 85th Cong. 2d Sess.

**be deemed to have been adopted by the Senate, on receipt of a message from the House informing the Senate of the adoption of a Senate concurrent resolution correcting the enrollment of the bill in question, changing a proviso included in the conference agreement.**

The unanimous-consent request propounded in the Senate not only deemed the adoption of the report but disposed of the motion to reconsider and provided for the insertion of comments by Senators into the *Congressional Record*.

The request, made on Oct. 21, 1993,<sup>(16)</sup> is included here. The House agreed to the concurrent resolution on Oct. 26, 1993,<sup>(17)</sup> and this is the date shown in the House Calendar for the adoption of the conference report in the Senate.

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I ask unanimous consent that when the Senate receives a message from the House that the House has agreed to Senate Con-

16. 139 CONG. REC. 25876, 103d Cong. 1st Sess.

17. For the House action and the text of the concurrent resolution, see 139 CONG. REC. 25876, 103d Cong. 1st Sess.

current Resolution 48, as passed the Senate, that the conference report accompanying H.R. 2403, the Treasury, Postal Service appropriations bills shall be deemed to have been adopted, and the motion to reconsider shall be deemed to have been laid on the table, with the above occurring without any intervening action or debate; and that any statements relating to that conference report be placed in the Record at the appropriate place.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, it is so ordered.

So the conference report was deemed to have been agreed to, as follows:

H.R. 2403

That the Senate recede from certain of its amendments.

That the House recede from its disagreement to certain amendments of the Senate and agree to the same.

That the House recede from its disagreement to certain amendments of the Senate and agree to the same with an amendment; and the Senate agree to the same.

Signed by a majority of the conferees on the part of both Houses.

***Consideration of Report Before Amendments in Disagreement***

**§ 21.4 In the consideration of conference reports the report itself is considered and voted up or down before action is taken on amendments in disagreement.**

On Mar. 16, 1942,<sup>(18)</sup> after Mr. Hatton W. Sumners, of Texas, called up the conference report on S. 2208, to further expedite the prosecution of the war, he raised a parliamentary inquiry:

Amendment No. 32 is highly controversial. I understand it is my duty to move that the House further insist upon this amendment. May I ask unanimous consent that the consideration of that amendment be postponed for the moment?

THE SPEAKER:<sup>(19)</sup> The Chair suggests to the gentleman from Texas that the first thing to do is to adopt the conference report, leaving out, of course, those matters that are in disagreement.

MR. SUMNERS of Texas: Then, Mr. Speaker, I make that motion at this time.

Mr. Wright Patman, of Texas, then posed an inquiry concerning the disposal of another amendment reported from the conference in disagreement. The Speaker replied,

The parliamentary situation is this: Insofar as the amendments in disagreement are concerned, the conference report must first be voted up or down.

***Recognition for Question of Privilege of the House During Consideration of Report***

18. 88 CONG. REC. 2502-04, 77th Cong. 2d Sess.

19. Sam Rayburn (Tex.).

**§ 21.5 During the consideration of a conference report the Speaker declined to recognize a Member on a question of privilege of the House.**

On Oct. 3, 1949,<sup>(20)</sup> the House was considering the conference report on S. 1407, to promote the rehabilitation of the Hopi and Navaho Indian tribes and the better utilization of resources on their respective reservations. Mr. Clare E. Hoffman, of Michigan, then sought the floor:

Mr. Speaker, will the gentleman yield?

MR. [TOBY] MORRIS [of Oklahoma]: I yield to the gentleman from Michigan.

MR. HOFFMAN of Michigan: Mr. Speaker, I rise to a question of privilege of the House.

THE SPEAKER:<sup>(1)</sup> What is the gentleman's question of privilege?

MR. HOFFMAN of Michigan: The question of privilege is that, although we have been in session here something like 9 months, ever since we came back it has been almost impossible, in spite of the efforts of the Speaker, for the Members to hear what is going on. And I have a resolution which I want to offer, and which is as follows:

*Be it resolved*, That the legislative business of the House be suspended until order in the House is obtained so that Members may be informed as

to the measures which are being considered.

THE SPEAKER: The Chair cannot recognize the gentleman for that purpose inasmuch as there is another matter pending before the House.

***Speaker's Discretion as To Scheduling of Conference Report***

**§ 21.6 The Speaker announced from the Chair that he would not recognize Members for unanimous-consent requests until disposition of a conference report on a bill making appropriations for foreign assistance.**

On Oct. 6, 1962,<sup>(2)</sup> Speaker John W. McCormack, of Massachusetts, made the following statement regarding the consideration of the conference report on H.R. 13175:

The Chair desires to make a brief statement that the Chair will not recognize any Member for unanimous-consent requests until after the foreign assistance appropriations conference report is disposed of.

In order that Members may understand the reason why the Chair is doing this, last night our dear friend and distinguished colleague, the gentleman from Louisiana [Mr. Passman] had an accident. He was sent to the Naval

20. 95 CONG. REC. 13662, 81st Cong. 1st Sess.

1. Sam Rayburn (Tex.).

2. 108 CONG. REC. 22709, 87th Cong. 2d Sess.

Hospital. He is in his office. He is going to handle the conference report this morning. . . .

The Chair, and I know the Members, will all agree with the thoughts and the action of the Chair to have the conference report disposed of as quickly as possible so that the gentleman from Louisiana may go back to the hospital for further treatment.

### *Withdrawal of Report After Filing*

#### § 21.7 A conference report has been withdrawn by unanimous consent.

On June 8, 1942,<sup>(3)</sup> the following occurred in the House:

MR. [R. EWING] THOMASON [of Texas]: Mr. Speaker, I ask unanimous consent to withdraw the conference report which I filed this morning on the bill S. 2025, to readjust the pay and allowances of personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.

THE SPEAKER:<sup>(4)</sup> Without objection, it is so ordered.

There was no objection.

### *Special Consideration of a Conference Report Established by Special Order*

3. 88 CONG. REC. 5031, 77th Cong. 2d Sess.

4. Sam Rayburn (Tex.).

§ 21.8 A special order providing for the consideration in the House of a conference report on a major budget reconciliation bill may contain many elements. In 1993, the resolution included: a blanket waiver of points of order; the allocation of extended debate time among the 14 committees involved; a clause self-executing another resolution providing new procedures to implement budget enforcement procedures; special procedures to follow in the House if the conference report were rejected; and finally, specifying that the previous question be considered as ordered without any intervening motion except one motion to recommit which could not contain instructions.

House Resolution 240 was called up in the House on Aug. 5, 1993. Following its adoption, the conference report itself was considered and adopted by the narrowest of margins. The resolution from the Committee on Rules, a portion of the debate, and the consideration of the conference report as ex-

cerpted from the Record of Aug. 5,<sup>(5)</sup> are noted below.

WAIVING POINTS OF ORDER AGAINST  
CONFERENCE REPORT ON H.R. 2264,  
OMNIBUS BUDGET RECONCILIATION  
ACT OF 1993

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 240 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 240

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for six hours, with one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs; twenty minutes equally divided and

controlled by the chairman and ranking minority member of the Committee on Education and Labor; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Foreign Affairs; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Natural Resources; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Post Office and Civil Service; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation; twenty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Veterans' Affairs; and one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. The previous question shall be considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit, which may not contain instructions and on which the previous question shall be considered as adopted. After disposition of the conference report, no further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

5. 139 CONG. REC. 19309, 19310, 19321, 19476, 103d Cong. 1st Sess.

SEC. 2. House Resolution 235 is hereby adopted.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentleman from California [Mr. Beilenson] is recognized for 1 hour.

MR. BEILENSON: . . . Mr. Speaker, House Resolution 240 provides for 6 hours of general debate on the reconciliation conference report, with the time allocated among the committees instructed to report deficit reduction legislation, and the time for each committee equally divided and controlled between the chairman and ranking minority member of each. The conference report will be considered as read. All points of order against the conference report and against its consideration are waived.

The conference report needs a waiver of the three-day layover requirement. The report also exceeds the scope of the conference; for example, the section providing an income tax credit for employees who pay Social Security taxes on their employees' tip income was in neither the House nor Senate bill. To meet the conferees' ambitious deficit reduction target, it was necessary for conferees to exceed scope in order to reach agreement between the Houses.

Mr. Speaker, the rule provides one motion to recommit which may not contain instructions. No further action on this reconciliation measure is in order except by subsequent order of the House. Finally, the rule provides that House Resolution 235 is adopted.

At this point, Mr. Speaker, I would like to explain House Resolution 235. First, the intent is to put in place, in

conjunction with the executive order that the President issued yesterday, the entitlement review procedures dropped from the conference report because of the Byrd rule in the Senate. The Executive order directs the Office of Management and Budget to set targets for entitlement spending. . . .

Finally, under House Resolution 235, it would not be in order to consider any general appropriation bill until Congress, if required, adopts a budget resolution including the entitlement review problem. The point of order could be waived only by adoption of a single resolution covering all general appropriation bills. . . .

#### H. RES. 235

*Resolved*, That, for fiscal years 1994 through 1997—

(1) the provisions of, and the procedures and points of order set forth in, sections 16004(c)(2), 16005, and 16009 of H.R. 2264, as passed the House (One Hundred Third Congress), shall, with respect to the House of Representatives, apply to any special direct spending message the President submits pursuant to a presidential order as if that message were submitted pursuant to section 16004(c)(1) of that bill; and

(2) for purposes of this application, any reference in section 16004(c)(2) to paragraph (1) or in section 16005 or 16009 to section 16004 shall be deemed to be to the appropriate provisions of that presidential order. . . .

MR. [MARTIN O.] SABO [of Minnesota]: Mr. Speaker, pursuant to House Resolution 240, I call up the conference report on the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994.

6. Gerald D. Kleczka (Wis.).

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Pursuant to House Resolution 240, the conference report is considered as having been read. . . .

Pursuant to the rule, the Committee on Ways and Means and the Committee on the Budget will each control 1 hour of debate, equally divided and controlled by the chairman and ranking minority member; and the following committees will each control 20 minutes of debate, equally divided and controlled by the chairman and ranking minority member: The Committee on Agriculture; the Committee on Armed Services; the Committee on Banking, Finance and Urban Affairs; the Committee on Education and Labor; the Committee on Energy and Commerce; the Committee on Foreign Affairs; the Committee on the Judiciary; the Committee on Merchant Marine and Fisheries; the Committee on Natural Resources; the Committee on Post Office and Civil Service; the Committee on Public Works and Transportation; and the Committee on Veterans' Affairs.

At this time, the gentleman from Minnesota [Mr. Sabo], will be recognized for 30 minutes and the gentleman from Ohio [Mr. Kasich] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Sabo]. . . .

MR. SABO: Mr. Speaker, I yield the balance of my time to the distinguished Speaker of the House, the gentleman from Washington [Mr. Foley].

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, one important thing

has happened today, and important as it was, a more important thing is about to happen.

The important thing that has already happened was not a reconciliation but an engagement, and all of us wish our two colleagues on the Republican side, Susan Molinari and Bill Paxon, the best of futures and the warmest of best wishes. . . .

Whether we decide at long last, after many years of indulgence and avoidance and delay and excuse, take a hard road back to fiscal responsibility and a sound economic future for all of our people. . . .

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 240, the previous question is ordered on the conference report.

The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

#### RECORDED VOTE

MR. [JOHN R.] KASICH [of Ohio]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 218, noes 216, not voting 0.

## § 22. Calling Up as Privileged

Prior to 1902, a conference report could be considered as soon as it was filed in the House. Therefore, no distinction was then made

7. John P. Murtha (Pa.).

between the privilege of filing and the privilege of considering such a report. However, the rules of the House were amended in that year to interpose the requirement that, except during the last six days of a session, the report and accompanying statement must have been printed in the *Congressional Record* before the report would be privileged for consideration.<sup>(8)</sup> This qualified but did not diminish the high privilege accorded the consideration of a conference report. Subject to this qualification, as amended by the “three-day rule”<sup>(9)</sup>

8. See 5 Hinds’ Precedents § 6516. This provision, as amended, now appears as Rule XXVIII clause 2(a), *House Rules and Manual* § 912 (1997).

9. The “three-day rule” dictates that, except during the last six days of a session, a conference report shall not be considered until the third day after the report and accompanying statement shall have been filed in the House, and that the report and statement shall have been printed in the daily edition of the *Congressional Record* for the day on which they shall have been filed before such consideration shall be in order. In addition, the rule requires that copies of both the report and statement be available on the floor before consideration shall be in order. Rule XXVIII clause 2(a), *House Rules and Manual* § 912 (1997). See, generally, § 27, *infra*.

(which originated in the Legislative Reorganization Act of 1970<sup>(10)</sup> and which was incorporated into the standing rules of the House pursuant to House Resolution 5, 92d Cong. 1st Sess., Jan. 22, 1971), the consideration of a conference report continues to enjoy the same privilege as does the filing of the report.<sup>(11)</sup> It may be presented for consideration at any time in the House except during the reading of the Journal, during a roll call, or when the House is voting on any proposition.<sup>(12)</sup>

This section includes precedents which predate the “three-day rule,” but which nonetheless reflect valid principles pertaining to the privilege of considering conference reports. For the effect of the “three-day rule” on this privilege, see § 27, *infra*.

The time requirements of Rule XXVIII clause 2(a) may be waived whenever the House by resolution, unanimous consent, or a suspension of the rules agrees to its waiver.<sup>(13)</sup>

10. 84 Stat. 1140, Pub. L. 91-510 § 125(b)(1) (Oct. 26, 1970).

11. See § 16.1, *supra*.

12. Rule XXVIII clause 1(a), *House Rules and Manual* § 909 (1997).

13. See §§ 22.6-22.8, 27.3-27.9, *infra*.



***Privileged Status of Conference Report***

**§ 22.1 A conference report which has been properly filed and available for the three days required under the rule may be called up as privileged; and objection to a unanimous-consent request to read the statement in lieu of the report does not prevent consideration.**

The proceedings of June 28, 1974,<sup>(14)</sup> relating to calling up the conference report on H.R. 7724, the Biomedical Research Act, demonstrate the privileged status accorded a conference report.

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the bill (H.R. 7724) to amend the Public Health Service Act to establish a national program of biomedical research fellowships, traineeships, and training to assure the continued excellence of biomedical research in the United States, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

14. 120 CONG. REC. 21734, 21735, 93d Cong. 2d Sess.

THE SPEAKER:<sup>(15)</sup> Is there objection to the request of the gentleman from West Virginia?

MRS. [MARGARET M.] HECKLER of Massachusetts: Mr. Speaker, reserving the right to object, I would like to address a question to our distinguished chairman of the Committee on Interstate and Foreign Commerce (Mr. Staggers).

Therefore, Mr. Speaker, I object.

THE SPEAKER: The Clerk will read the report.

The Clerk proceeded to read the conference report.

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, I understood the gentlewoman from Massachusetts to object to the consideration of the conference report.

THE SPEAKER: The gentlewoman did not make any such objection. The request was that the statement be read in lieu of the conference report and there was objection, so we are reading the report.

MR. BAUMAN: Mr. Speaker, I distinctly heard the gentlewoman's statement, and she just reaffirmed to me that she objected to the consideration.

THE SPEAKER: The gentlewoman has no right to object to the consideration. It is a privileged conference report. It has been on file the requisite time.

15. Carl Albert (Okla.).

The Clerk will continue to read the report.

The Clerk proceeded to read the conference report.

MRS. HECKLER of Massachusetts: Mr. Speaker, in view of the pressing business of this House, I withdraw my objection.

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

There was no objection.

The Clerk read the statement.

### ***Requirement of Printing in Congressional Record***

**§ 22.2 The consideration of a conference report is privileged business, and (in 1959) the calling up of such a report did not require unanimous consent after the report had been printed in the *Congressional Record* in accordance with the then-current provisions of Rule XXVIII clause 2.<sup>(16)</sup>**

On Sept. 2, 1959,<sup>(17)</sup> Mr. Emanuel Celler, of New York, called up the conference report on S. 2524, relating to the power of the states to impose taxes on income derived from interstate

<sup>16</sup>. *House Rules and Manual* § 912 (1997).

<sup>17</sup>. 105 CONG. REC. 17769, 86th Cong. 1st Sess.

commerce, and asked unanimous consent that the statement of the managers on the part of the House be read in lieu of the report. Mr. Wright Patman, of Texas, reserved the right to object, and questioned both the propriety of such a measure originating in the Senate, and the wisdom of the merits of the bill. The following then occurred:

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I demand the regular order.

THE SPEAKER:<sup>(18)</sup> The regular order has been demanded.

Is there objection to the request of the gentleman from New York [Mr. Celler] that the statement of the managers on the part of the House be read in lieu of the report?

MR. PATMAN: Well, I reserved the right to object.

THE SPEAKER: The regular order has been demanded.

MR. PATMAN: Well, I will be compelled to object, Mr. Speaker, if the regular order is demanded.

THE SPEAKER: Then, the Clerk will read the conference report.

MR. PATMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. PATMAN: If I do not object to the reading, that does not foreclose me from objecting to the consideration of the conference report?

THE SPEAKER: This is a privileged matter. No objection lies.

<sup>18</sup>. Sam Rayburn (Tex.).

MR. PATMAN: No objection lies on this? The Speaker is talking about the reading?

THE SPEAKER: The Chair is talking about the conference report, which is a privileged matter.<sup>(19)</sup>

MR. PATMAN: And one objection would not lie to it?

THE SPEAKER: No objection would.

*Parliamentarian's Note:* At the time this precedent occurred, Rule XXVIII clause 2 required only that a conference report and accompanying statement be printed in the Record prior to the consideration of the report (except during the last six days of a session). In this case, the report had been filed and ordered printed on Sept. 1, 1959, and was therefore privileged for consideration when called up by Mr. Celler. Subsequent amendments to clause 2 are noted elsewhere in this section.

***Privileged Status of a Conference Report—Rescission Bill***

**§ 22.3 Consideration of a conference report on a measure that began its passage through the Congress as a rescission bill under section 1017 of the Impoundment Control Act is pursuant to**

**the normal provisions of Rule XXVIII involving conference reports and does not lose its status as privileged thereunder because it reaches the floor after the 45-day period delineated in the Act.**

Under the Impoundment Control Act of 1974, a rescission bill must be considered in the House before 45 days have elapsed after the receipt of the President's rescission proposals. In the instance cited below, which was a case of first impression under the Act, a point of order was raised when the conference report was called up after the expiration of the 45-day period. The detailed argument on the point of order brought by Mr. James C. Wright, Jr., of Texas, and the response by George H. Mahon, of Texas, Chairman of the Committee on Appropriations, are carried herein.<sup>(20)</sup>

MR. MAHON: Mr. Speaker, pursuant to the order of the House of Thursday last, I call up the conference report on the bill (H.R. 3260) to rescind certain budget authority recommended in the message of the President of November 26, 1974 (H. Doc. 93-398) and as those rescissions are modified by the message of the President of January 30, 1975

19. Rule XXVIII clause 1(a), *House Rules and Manual* § 909 (1997).

20. 121 CONG. REC. 8484, 8485, 94th Cong. 1st Sess., Mar. 25, 1975.

(H. Doc. 94-39) and in the communication of the Comptroller General of November 6, 1974 (H. Doc. 94-391), transmitted pursuant to the Impoundment Control Act of 1974, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(1)</sup> Is there objection to the request of the gentleman from Texas?

POINT OF ORDER

MR. WRIGHT: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER: The gentleman will state his point of order.

MR. WRIGHT: Mr. Speaker, I make a point of order against the conference report. Approval of this conference report at this time would constitute a violation of the Congressional Budget and Impoundment Control Act of 1974 in that more than 45 days prescribed in that act have expired.

The rescissions that are the subject of this conference report were proposed by the President in House Document 93-398, November 26, 1974, and as amended by House Document 94-39, January 30, 1975.

Mr. Speaker, it is essential that we follow proper procedures as we implement the provisions of title X of the Congressional Budget and Impoundment Control Act of 1974.

These rescissions were originally proposed on November 26 by the President. The 93d Congress adjourned be-

fore the expiration of the 45-day period as prescribed in title X, part B, section 1011, paragraph (5), and these rescissions were automatically retransmitted at the beginning of the 94th Congress, and thus the 45-day period which Congress is allowed in which to complete its action began running again, this time expiring on February 28, 1975. And even though the President later revised these rescissions, the time period upon which the 45-day period is based is determined by the date of the original rescission message.

In House Document 93-410, December 13, 1974, as submitted by the Comptroller General of the United States, the Comptroller General held that the time frames for congressional and General Accounting Office action on rescissions are not altered by the supplemental messages of the President. I quote this sentence:

They start from the date of the President's original message.

And Mr. Speaker, the opinion of the Comptroller General is even more important than usual because of the special responsibilities conferred upon him under sections 1015 and 1016 of title X.

Thus, Mr. Speaker, it is clearly established that the 45-day period has elapsed in regard to rescissions 75-28 and 75-28A.

And it is essential that such an opinion be sustained, because if it were not, then the President could send a revision of a rescission to the Congress whenever he desired in order to keep the 45-day period from ever expiring. Such a procedure would clearly violate the very heart and purpose of title X.

1. Carl Albert (Okla.).

Mr. Speaker, once the 45-day period elapses, a rescission cannot be part of a rescission bill under the definitions of title X of the Congressional Budget and Impoundment Control Act of 1974.

This is clearly spelled out in title X, part B, section 1011, paragraph (3) which defines what a "rescission bill" is, and I quote:

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 1012, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress.

This is further reinforced by section 1012(b) of title X which reads as follows:

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any amount of budget authority proposed to be rescinded or that is to be rescinded as set forth in such special message shall be made available for obligation unless, within the prescribed 45 day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

Mr. Speaker, clearly 45 days of continuous session have elapsed and a rescission bill containing rescission 75-28 as amended by rescission 75-28A would not be in order. The executive branch, recognizing that the 45-day period has expired, has proceeded to make the funds in question available for obligation.

The Comptroller of the Department of Defense in a letter to the chairman of the House Appropriations Committee recognizes that the period provided by law for approving this rescission has legally expired. He states that he and the Director of the Office of Management and Budget have proceeded to implement the obligation of the defense funds after the expiration of the 45-day period of February 28.

Mr. Speaker, I insist on my point of order.

THE SPEAKER: Does the gentleman from Texas wish to be heard on the point of order?

MR. MAHON: Mr. Speaker, I ask to be heard on the point of order.

Mr. Speaker, we are breaking new ground in the House of Representatives today. For the first time in the life of the House of Representatives, we have a conference report on a rescission bill under the new law. I wish to be heard against the point of order.

I would say that the thrust of the point of order of the gentleman from Texas (Mr. Wright) is that the Impoundment Control Act defines a rescission bill as a bill or joint resolution which rescinds budget authority, and upon which Congress completes action before the end of the first period of 45 days of continuous session after the time on which the President's message is received by the Congress.

The gentleman from Texas argues that this period has now elapsed and that further consideration is not in order. . . .

Mr. Speaker, when the House considered the bill before us 1 month ago today, on February 25, we were within the 45-day period specified by the act

for the consideration of a rescission. If the House were considering the item contained in this rescission bill for the first time today, the point of order made by the gentleman would, of course, lie. But this is a conference report. The House passed this bill a month ago under the rules and under the requirements of the Budget Control and Impoundment Act, and the other body passed the bill. There is nothing in the law prohibiting the consideration of conference reports after the 45-day period on a bill that has been considered and passed, as this one has within the 45-day period. There are no grounds not to consider the conference report today, as I see it.

Further, Mr. Speaker, section 1017(c)(5) of the act entitled "Floor Consideration in the House," says that except to the extent specifically provided in this subsection—and there is no such reference in the subsection—consideration of any conference report on rescission bills shall be governed by the Rules of the House of Representatives applicable to other conference reports in similar circumstances.

There is nothing in this conference report that would have been subject to a point of order when the bill was originally considered in the House and the bill itself was considered within the 45-day period referred to in the act.

Mr. Speaker, as I indicated, if we are considering these particular rescissions today for the first time in a bill just reported to the House, the gentleman's point of order might lie. But at this stage in the legislative process, when we have before us this conference report, that is, a consideration of a proper conference report, the point of order

does not lie, in my judgment, and should be overruled.

Mr. Speaker, I ask that the point of order be overruled. . . .

THE SPEAKER: The Chair is ready to rule.

The gentleman from Texas (Mr. Wright) has made a point of order against the consideration of the conference report on the basis that it would violate provisions of the Congressional Budget and Impoundment Control Act of 1974. Specifically, it is alleged that since the 45-day period provided for in section 1011 of the act has expired, the report may not be considered.

The section referred to by the gentleman defines a rescission bill for the purposes of title X of the act. Technically speaking, after the expiration of the 45-day period a bill does not meet the definition of a "rescission bill" under the terms of the act. The effect of this, however, is simply to deny to the bill the privilege for initial consideration in the House afforded under section 1017. This is not tantamount to the proposition that the Congress cannot pass a bill the effect of which is to rescind certain budget authority irrespective of any particular time frame. The act itself recognizes the power of Congress to pass such a bill by providing in section 1001 that nothing contained in the act shall be construed as conceding the constitutional powers of the Congress.

The House passed this bill within the time period specified in the act. The other body then acted on the bill, and the differences were resolved in conference. The conference report is now before the House. All rules of the House relative to consideration of conference

reports having been complied with, the Chair finds no reason to prohibit the consideration of this report. The point of order is therefore overruled.

***Requirement for Printing Conference Report in Record***

§ 22.4 The consideration of a conference report is not in order until the third day after the report and statement have been filed in the House; and then only if they were printed in the Record for the day on which filed; and because of this requirement, a Part II of the Daily Record has sometimes been printed to accommodate the report so the consideration of the report will not be delayed.

On Sept. 13, 1976,<sup>(2)</sup> the rather voluminous conference report and statement of the managers on the bill H.R. 10612, the Tax Reform Act of 1976, were filed in the House. The text of the conference report was printed in the *Congressional Record* but a special Part II of the Daily Record was authorized to carry the statement so the filing would meet the mandate of Rule

2. 122 CONG. REC. 30103, 94th Cong. 2d Sess.

XXVIII clause 2(a)<sup>(3)</sup> which specifies that the printing must be in the Record of the day filed.

***Calling Up During Last Six Days of a Session***

§ 22.5 The requirement of Rule XXVIII clause 2<sup>(4)</sup> that a conference report and accompanying statement be printed in the Record does not apply during the last six days of a session.

On Dec. 29, 1970,<sup>(5)</sup> Mr. George H. Mahon, of Texas, submitted the conference report and the statement of the managers on the part of the House on H.R. 19590, defense appropriations, fiscal 1971. Immediately thereafter, the following occurred:

MR. MAHON: Mr. Speaker, I call up the conference report on the bill (H.R. 19590) making appropriations for the Department of Defense for the fiscal year ending June 30, 1971, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

3. *House Rules and Manual* § 912a (1997).

4. *Id.*

5. 116 CONG. REC. 43804-08, 43813-15, 91st Cong. 2d Sess.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

The second session of the 91st Congress adjourned *sine die* on Jan. 2, 1971.

### *Waiver of Printing Requirement*

**§ 22.6 The House has consented unanimously to the consideration of a conference report notwithstanding the rule requiring the printing of such reports in the Record.**

On Oct. 3, 1940,<sup>(7)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Clarence Cannon, of Missouri:

Mr. Speaker, I understand it is probable that the Senate will pass the bill (H.R. 10539) making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes, and return it to the House with amendments before adjournment tonight.

I therefore ask unanimous consent that notwithstanding any adjournment of the House, the Clerk of the House be authorized to receive any message on that bill; and that the House disagree to any amendments of the Senate to

the bill and agree to a conference thereon, and that the Speaker appoint managers on the part of the House to attend such conference.

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

There was no objection. . . .

MR. CANNON of Missouri: Mr. Speaker, in view of the action just taken by the House on the bill H.R. 10539, I ask unanimous consent that it be in order tomorrow to consider the conference report on that bill, the rule requiring the printing of conference reports in the Record to the contrary notwithstanding.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.

### *Immediate Consideration*

**§ 22.7 Consideration of a conference report was, by unanimous consent, made in order on the day presented, notwithstanding that the report had not been printed in the Record pursuant to Rule XXVIII clause 2.<sup>(8)</sup>**

On Oct. 21, 1963,<sup>(9)</sup> Mr. Oren Harris, of Arkansas, submitted the conference report on S. 1576, to provide assistance in combating

6. John W. McCormack (Mass.).

7. 86 CONG. REC. 13138, 76th Cong. 3d Sess.

8. *House Rules and Manual* § 912a (1997).

9. 109 CONG. REC. 19942, 19954, 88th Cong. 1st Sess.



mental retardation. He then made the following request:

Mr. Speaker, I ask unanimous consent that it may be in order, notwithstanding that the privileged report has just been presented to call up the conference report this afternoon.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from Arkansas? . . .

There was no objection.<sup>(11)</sup>

**§ 22.8 The House may adopt a resolution which provides, *inter alia*, for the consideration of a conference report notwithstanding the rule requiring printing in the Record.**

On June 30, 1951,<sup>(12)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Adolph J. Sabath, of Illinois, who submitted House Resolution 309, taking from the Speaker's table House Joint Resolution 277, making temporary appropriations for fiscal 1952, disagreeing to the Senate amendments thereto, agreeing to a conference requested by the Senate, and authorizing the Speaker to appoint conferees without inter-

10. John W. McCormack (Mass.).

11. See also 84 CONG. REC. 11105, 76th Cong. 1st Sess., Aug. 4, 1939.

12. 97 CONG. REC. 7538, 82d Cong. 1st Sess.

vening motion. Section 2 of House Resolution 309 read as follows:

It shall be in order to consider the conference report on the said joint resolution when reported notwithstanding the provisions of clause 2, rule XXVIII.

The resolution was agreed to.

### ***Privilege of Conference Report***

**§ 22.9 The consideration of a conference report is a matter of high privilege and takes precedence over unfinished business.**

While unfinished business is considered pursuant to the Order of Business rule (Rule XXIV clause 1), the privilege of a conference report is specifically bestowed in Rule XXVIII clause 1. See *House Rules and Manual* § 880, 105th Congress, for the privileged matters which may interrupt the order of business.

The parliamentary inquiry of Mr. Robert E. Bauman, of Maryland, and the Chair's response on Oct. 4, 1978,<sup>(13)</sup> are carried here.

CONFERENCE REPORT ON H.R. 12930,  
TREASURY-POSTAL SERVICE APPROPRIATIONS, 1979

13. 124 CONG. REC. 33473, 95th Cong. 2d Sess.

MR. [TOM] STEED [of Oklahoma]: Mr. Speaker, I call up the conference report on the bill (H.R. 12930) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1979, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from Oklahoma?

MR. BAUMAN: Mr. Speaker, reserving the right to object, I do so only to ask the Chair about the order of business. It was the impression of the gentleman from Maryland that the unfinished business before the House was the votes that were put off on yesterday.

THE SPEAKER: Conference reports are privileged and can take precedent [sic] over unfinished business. The House will consider the Treasury-Postal Service appropriations conference report, managed by the gentleman from Oklahoma (Mr. Steed); the Older American Act amendments conference report; Environmental Protection Agency research and development amendments conference report; additional Federal judgeships conference report; and Small Business Administration authorizations conference report. These are all conference reports. Following the consideration of these conference reports, the unfinished business, the votes on suspensions from yesterday, will take place.

14. Thomas P. O'Neill, Jr. (Mass.).

MR. BAUMAN: I thank the Chair.

***Considering Conference Reports En Bloc Pursuant to Special Rule***

§ 22.10 Where the House had passed one bill dealing with energy policy, and the Senate had amended five unrelated House bills with different aspects of its version of energy policy, and five conference reports had eventually been filed, the Committee on Rules reported, and the House adopted, a special order permitting concurrent consideration of the five reports and permitting one indivisible vote on their final adoption.

The resolution reported from the Committee on Rules and a portion of the debate, as excerpted from the proceedings of Oct. 13, 1978,<sup>(15)</sup> are carried here.

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORTS ON H.R. 4018, H.R. 5146, H.R. 5037, H.R. 5289 (AND H.R. 5263 IF FIRST ADOPTED BY THE SENATE)

MR. [RICHARD] BOLLING [of Missouri]: By the direction of the Committee on Rules I call up House Resolution

15. 124 CONG. REC. 36966, 36975, 95th Cong. 2d Sess.

1434 and ask for its immediate consideration.

H. RES. 1434

*Resolved*, That upon the adoption of this resolution, any rule of the House to the contrary notwithstanding, it shall be in order in the House to consider en bloc the conference reports on the bills H.R. 4018, H.R. 5146, H.R. 5037, H.R. 5289 (and H.R. 5263 if first adopted by the Senate), and all points of order against said conference reports are hereby waived. After debate in the House on said conference reports, which shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Ad Hoc Committee on Energy, the first hour of which shall be confined solely to the conference report on the bill H.R. 5289, the previous question shall be considered as ordered on said conference reports to one vote on their final adoption, and the vote on said conference reports shall not be subject to a demand for a division of the question or to a motion to reconsider.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

MR. BOLLING: . . . We reported out a rule that would put together all of the work of the House on energy, and which follows exactly what we did in the beginning when we had the ad hoc committee's bill on the floor of the House.

We are finishing as we began, dealing with the matter in whole as the various parts survive.

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

Mr. Speaker, I know there is great controversy over this rule; and having presented what I believe to be the salient point of the rule, that all the available conference reports will be dealt with in one vote, I am going to reserve the balance of my time in order to be able to continue in the debate at a later time. . . .

THE SPEAKER:<sup>(17)</sup> The question is on ordering the previous question.

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 207, nays 206, answered "present" 1, not voting 16 . . . .

So the previous question was ordered.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

### *Calling Up Conference Reports En Bloc*

**§ 22.11 The Chairman of the Ad Hoc Committee on Energy called up en bloc the conference reports on five bills, where such consideration had been provided for by a previously adopted special order which waived all**

17. Thomas P. O'Neill, Jr. (Mass.).

**points of order and specified four hours of debate time.**

House Resolution 1434, which provided for this unusual procedure, had been adopted by the House<sup>(18)</sup> when only four of the conference reports had been passed by the Senate and messaged to the House. The fifth was also in order for this en bloc procedure if its adoption by the Senate had been accomplished before House consideration of the five began. The action of the chairman of the Ad Hoc Committee, the Speaker's response to an inquiry about the availability of all five reports, and the Chair's statement about the division of debate time, taken from the proceedings of Oct. 14, 1978,<sup>(19)</sup> are carried here.

CONFERENCE REPORTS ON NATIONAL ENERGY ACT

MR. [THOMAS L.] ASHLEY [of Ohio]: Mr. Speaker, pursuant to House Resolution 1434, I call up the conference reports on the bills (H.R. 4018) to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics, (H.R. 5037) for the relief of Jack R. Misner, (H.R. 5146) to amend the Tariff Schedules of the United States to provide for the duty-

18. See § 22.10, supra, for H. Res. 1434 and the adoption thereof.

19. 124 CONG. REC. 38349, 38350, 95th Cong. 2d Sess.

free entry of competition bobsleds and luges, (H.R. 5289) for the relief of Joe Cortina of Tampa, Fla., and (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts.

The Clerk read the titles of the bills.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> Pursuant to House Resolution 1434, the gentleman from Ohio (Mr. Ashley) will be recognized for 2 hours and the gentleman from Illinois (Mr. Anderson) will be recognized for 2 hours.

The Chair will recognize the gentleman from Ohio (Mr. Ashley) and the gentleman from Illinois (Mr. Anderson) for 30 minutes to debate the conference report on H.R. 5289.

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, my parliamentary inquiry is this:

Under the rule governing the conference reports, it made the fifth conference report dealing with energy tax credits subject to consideration contingent upon consideration by the other body and its availability. Do I understand from the reading that this fifth conference report is also included in the motion of the gentleman from Ohio (Mr. Ashley)?

THE SPEAKER PRO TEMPORE: The Chair would like to advise the gentleman from Maryland (Mr. Bauman) that

20. William H. Natcher (Ky.).

the message was just received from the Senate.

MR. BAUMAN: So that all five conference reports are available?

THE SPEAKER PRO TEMPORE: That is correct.

MR. BAUMAN: And we have the papers for that conference report at this time?

THE SPEAKER PRO TEMPORE: The papers are here at the Speaker's table.

MR. BAUMAN: May I further inquire of the Chair whether the first hour of debate is to be directed to the natural gas conference report and not to the other four conference reports?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BAUMAN: Only to the natural gas conference report?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BAUMAN: Would it be out of order to discuss the other parts during that time?

THE SPEAKER PRO TEMPORE: The Chair would like to advise the gentleman that the Chair would have to rule as points along that line are brought to the attention of the Chair.

MR. BAUMAN: I thank the Speaker.

THE SPEAKER PRO TEMPORE: The Chair would like to advise the gentleman that the resolution provides the first hour of which shall be confined solely to the conference report on the bill H.R. 5289.

***Points of Order Preserved  
Where Consideration Postponed***

**§ 22.12 Where a conference report is considered as read and further proceedings are postponed, points of order against the report may still be raised when the report is again before the House as unfinished business.**

On Sept. 23, 1976, a voluminous conference report on the Outer Continental Shelf Lands Act Amendments of 1976, was called up in the House. After attempts to dispense with the reading by unanimous consent were unsuccessful, the manager of the conference report, John M. Murphy, of New York, made a two-part request: that reading be dispensed with and that consideration of the report be postponed until the following week. There followed a series of inquiries as shown here:<sup>(1)</sup>

MR. MURPHY of New York: Mr. Speaker, I call up the conference report on the Senate bill (S. 521) to increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

1. 122 CONG. REC. 32102, 32103, 94th Cong. 2d Sess.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from New York.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, reserving the right to object, I should like to ask the chairman of the ad hoc select committee at this time if he will withdraw this report from consideration or seek to postpone further consideration of the report. If not, those on this side will be constrained to object to the request of the gentleman from New York.

Mr. Speaker, the House should not squander its precious remaining hours on a bill that is clearly destined, if not designed, to be vetoed.

MR. MURPHY of New York: Mr. Speaker, I have no intention to withdraw the conference report.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, then I object.

THE SPEAKER: Objection is heard. The Clerk will read.

The Clerk read as follows:

(For conference report and statement see proceeding of the House of September 20, 1976.) . . .

MR. MURPHY of New York: Mr. Speaker, I ask unanimous consent to dispense with further reading of the report, and that consideration thereof be the unfinished business when the House convenes on Tuesday next.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from New York?

MR. FISH: Mr. Speaker, I reserve the right to object.

Mr. Speaker, reserving the right to object—and I shall not object—I wish to be sure that I understand the request of the gentleman from New York. The gentleman is asking that: First, the rest of the report be considered as read; second, that further consideration today be dispensed with; and, third, that it not be considered until next Tuesday at the earliest.

Also, Mr. Speaker, I reserve several points of order against the conference report, and would ask, is this the understanding with my reservation of these points of order?

THE SPEAKER PRO TEMPORE: The points of order will still be in order.

MR. FISH: I thank the Chair.

MR. MURPHY of New York: I would clarify for my colleague that the unanimous-consent request specifically stated that this would be the first order of business on Tuesday next.

MR. FISH: On Tuesday next?

MR. MURPHY of New York: Tuesday next.

MR. FISH: Not before that?

THE SPEAKER PRO TEMPORE: The first order of unfinished business on Tuesday next.

MR. MURPHY of New York. That is correct.

MR. FISH: Mr. Speaker, further reserving the right to object, is the Chairman also of the opinion that the several points of order which I have so reserved will be protected when we take this matter up?

MR. MURPHY of New York: If the gentleman will yield, the Chair always protects the points of order of the minority.

MR. FISH: Mr. Speaker, I withdraw my reservation of objection.

2. Carl Albert (Okla.).

3. Thomas P. O'Neill, Jr. (Mass.).

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

There was no objection.

***Question of Consideration  
Against Postponed Confer-  
ence Report***

**§ 22.13 Where the initial consideration of a conference report, after the reading thereof had been dispensed with, was postponed to a day certain, the question of consideration may be raised when the report is laid before the House as unfinished business; and the question of consideration is addressed before the Chair entertains points of order against the report.**

Where the House had by unanimous consent dispensed with the reading of a conference report and then postponed consideration to a later day, it was, on the appointed day, laid before the House. The proceedings of Sept. 28, 1976,<sup>(4)</sup> were as shown:

CONFERENCE REPORT ON S. 521, OUTER  
CONTINENTAL SHELF LANDS ACT  
AMENDMENTS OF 1976

4. 122 CONG. REC. 33018, 33019, 94th  
Cong. 2d Sess.

THE SPEAKER:<sup>(5)</sup> The unfinished business is the further consideration of the conference report on the Senate bill S. 521, which the Clerk will report by title.

The Clerk read the title of the Senate bill.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I demand the question of consideration.

THE SPEAKER: The question is, Will the House now consider the conference report on the Senate bill S. 521.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. FISH: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 150, not voting 44 . . . .

So consideration of the conference report was ordered.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRY

MR. FISH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FISH: Mr. Speaker, my parliamentary inquiry is as to whether my reserved points of order are in order at this time?

THE SPEAKER: The Chair will state that they are.

***Conference Report "Considered  
as Agreed To"***

5. Carl Albert (Okla.).

**§ 22.14 On rare occasions, the House, acting by unanimous consent, has considered a conference report as agreed to, thus precluding a vote on the question of adoption.**

The type of unanimous-consent request utilized by the chairman of the Committee on Public Works and Transportation, carried below,<sup>(6)</sup> was unusual. Normally, a request is made for the consideration of a measure, and if that is granted, the question is then put on its adoption.

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. Emerson] at 1 o'clock and 29 minutes p.m.

CONFERENCE REPORT ON S. 440,  
NATIONAL HIGHWAY SYSTEM DESIGNATION ACT OF 1995

MR. [BUD] SHUSTER [of Pennsylvania]: Mr. Speaker, on behalf of both the majority and the minority, I ask unanimous consent that the conference report to accompany the Senate bill (S. 440) to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes, be considered as agreed to.

The Clerk read the title of the Senate bill.

6. See 141 CONG. REC. 33981, 33988, 104th Cong. 1st Sess., Nov. 18, 1995.

(For conference report and statement, see proceedings of the House of November 15, 1995, at page H12459.)

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Is there objection to the request of the gentleman from Pennsylvania? . . .

There was no objection.

THE SPEAKER PRO TEMPORE: Without objection, the conference report is agreed to.

There was no objection.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The second *Congressional Record* line "There was no objection" was technically not required. Only one unanimous-consent request was before the House.

***Agreeing to Report by Unanimous Consent***

**§ 22.15 Instance where the House, by unanimous consent, agreed to consider and adopt a conference report thus avoiding the possibility of a vote on the question.**

The State, Commerce, Justice and the Judiciary Appropriation Act, fiscal 1990, had been reported from conference with amendments remaining in disagreement. After adoption of the conference report, the amendments in disagreement

7. Bill Emerson (Mo.).



were acted on in the House, then in the Senate. Most issues in disagreement were resolved, except for three amendments which had reached the third degree between the two Houses. These Senate amendments to House amendments to Senate amendments to the House bill remained unresolved when a final conference report was called up on Nov. 7, 1989.<sup>(8)</sup>

The conference solution provided for the House to recede from its disagreement to each of the Senate amendments to the House amendments to the original Senate amendments and concur with further House amendments. The unusual unanimous-consent request, the form of the report, and the action of the House are carried here.

FURTHER CONFERENCE REPORT ON H.R. 2991, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1990

Mr. [Neal] Smith of Iowa submitted the following conference report and statement on the bill (H.R. 2991) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for

the fiscal year ending September 30, 1990, and for other purposes:

CONFERENCE REPORT (H. REPT. 101-332)

The further committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2991) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary and related agencies for the fiscal year ending September 30, 1990, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendment numbered 53:

That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

*INTERAGENCY LAW ENFORCEMENT*

*ORGANIZED CRIME DRUG ENFORCEMENT*

*For necessary expenses for the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking not otherwise provided for, \$168,560,000: Provided, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation: Provided further, that appropriations under this heading may be used to reimburse agencies for any costs incurred by Organized Crime Drug Enforcement Task Forces between October 1, 1989 and the date of enactment of this Act: Provided further, That section 506(a)(1) of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by*

8. 135 CONG. REC. 27738, 27746, 27747, 101st Cong. 1st Sess.

*section 6091 of the Anti-Drug Abuse Act of 1988, is amended by adding "or 0.25 percent, whichever is greater," after "\$500,000".*

And the Senate agree to the same. . . .

NEAL SMITH,  
BILL ALEXANDER,  
JOSEPH D. EARLY . . .

*Managers on the Part of the House.*

ERNEST F. HOLLINGS,  
DANIEL K. INOUE,  
DALE BUMPERS . . .

*Managers on the Part of the Senate.*

FURTHER CONFERENCE REPORT ON H.R. 2991, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1990

MR. SMITH of Iowa: Mr. Speaker, I ask unanimous consent that the House immediately consider and agree to the further conference report to accompany the bill (H.R. 2991) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1990, and for other purposes, and that said conference report and statement of the managers be considered as having been read. . . .

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is there objection to the request of the gentleman from Iowa?

There was no objection.

(For conference report and statement see proceedings of the House of earlier today). . . .

The conference report was agreed to.

9. Charles E. Bennett (Fla.).

A motion to reconsider was laid on the table.

### ***Rule Requiring "Layover" Waived for Remainder of Week***

**§ 22.16 By unanimous consent, consideration of conference reports the same day reported has been made in order during the remainder of the week.**

On Sept. 8, 1959,<sup>(10)</sup> Speaker Sam Rayburn, of Texas, recognized Majority Leader John W. McCormack, of Massachusetts, to make the following request:

Mr. Speaker, I ask unanimous consent that during the remainder of this week it shall be in order to consider conference reports the same day reported, notwithstanding the provisions of Rule XXVIII clause 2.<sup>(11)</sup>

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

There was no objection.<sup>(12)</sup>

**§ 22.17 The House may grant a unanimous-consent request that it may be in order for a**

10. 105 CONG. REC. 18626, 86th Cong. 1st Sess.

11. *House Rules and Manual* § 912a (1997).

12. See also 113 CONG. REC. 36409, 90th Cong. 1st Sess., Dec. 13, 1967.

**stated period to consider conference reports as they are submitted notwithstanding the fact that they have not been printed in the Record.**

On July 25, 1947,<sup>(13)</sup> Speaker Joseph W. Martin, Jr., of Massachusetts, recognized Mr. Charles A. Halleck, of Indiana, to make the following request:

Mr. Speaker, I ask unanimous consent that it may be in order for the balance of the week to consider conference reports as they are submitted, notwithstanding the fact that they have not been printed in the Record.

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

There was no objection.<sup>(14)</sup>

**§ 22.18 The House adopted a resolution providing during the remainder of the week for the consideration of conference reports the same day reported, notwithstanding the provisions of Rule XXVIII clause 2.<sup>(15)</sup>**

13. 93 CONG. REC. 10258, 80th Cong. 1st Sess.

14. See also 100 CONG. REC. 14670, 83d Cong. 2d Sess., Aug. 16, 1954.

15. *House Rules and Manual* § 912a (1997).

On July 25, 1956,<sup>(16)</sup> Mr. Howard W. Smith, of Virginia, by direction of the Committee on Rules, presented House Resolution 630, and asked for its immediate consideration.

The Clerk read as follows:

*Resolved*, That during the remainder of this week it shall be in order to consider conference reports the same day reported notwithstanding the provisions of clause 2, rule XXVIII. . . .

THE SPEAKER:<sup>(17)</sup> The question is on the resolution.

The question was taken; and (two-thirds having voted in favor thereof) the resolution was agreed to.<sup>(18)</sup>

### ***Rule Waived for Remainder of Session***

**§ 22.19 By unanimous consent the consideration of conference reports the same day reported has been made in order during the remainder of the session.**

16. 102 CONG. REC. 14456, 84th Cong. 2d Sess.

17. Sam Rayburn (Tex.).

18. A two-thirds vote of the Members present and voting is required for the immediate consideration of resolutions reported from the Committee on Rules. See Rule XI clause 4, *House Rules and Manual* § 729 (1997).

On Sept. 16, 1961,<sup>(19)</sup> Mr. Carl Albert, of Oklahoma, made the following request:

...I would like to ask unanimous consent that... during the remainder of the session it shall be in order to consider conference reports the same day reported, notwithstanding the provisions of clause 2 of rule XXVIII.<sup>(20)</sup>

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, reserving the right to object, may I say in connection with this request that this matter has been called to my attention. It is standard procedure as we come up to the end of a session. I sincerely hope it is not objected to, because its adoption will very materially expedite the business of the House of Representatives to the objective of *sine die* adjournment.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> Is there objection to the request of the gentleman from Oklahoma?

There was no objection.<sup>(2)</sup>

**§ 22.20 The Speaker Pro Tempore declined to recognize a Member to ask unanimous consent for the revocation of the proceedings whereby the House had agreed to permit the consideration of conference reports on the same day**

19. 107 CONG. REC. 19800, 87th Cong. 1st Sess.

20. See *House Rules and Manual* § 912a (1997).

1. John W. McCormack (Mass.).

2. See also 105 CONG. REC. 19128, 86th Cong. 1st Sess., Sept. 11, 1959.

**reported for the remainder of the session.**

On Sept. 25, 1961,<sup>(3)</sup> the following occurred in the House:

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I have a unanimous-consent request to make concerning the procedure of the House. I ask unanimous consent that the action by which clause 2 of rule XXVIII<sup>(4)</sup> was suspended a week ago last Saturday<sup>(5)</sup> be revoked, and that clause 2, rule XXVIII of the Rules of the House of Representatives be restored.

Mr. Speaker, I should like to be heard briefly on my reasons for so doing.

Mr. Speaker, as the Members well know, suspension of clause 2, rule XXVIII, provides for the consideration of a conference report when it is reported to the House. I agreed a week ago last Saturday and offered no objection to suspension of that provision of the rule for the reason, I thought, that by not objecting the business of the House during the past week would be expedited. But if this session is to continue interminably, I think the Members of the House ought to know what the remaining conference reports contain. . . .

Mr. Speaker, the deficiency appropriation bill coming up, as now pending before the other body, contains over a

3. 107 CONG. REC. 21183, 21184, 87th Cong. 1st Sess.

4. See *House Rules and Manual* § 912a (1997).

5. See § 22.19, *supra*.

billion dollars or an increase of almost half a billion dollars over the bill which the House approved. I certainly want, and I would hope the other Members of the House would want to know why this deficiency appropriation bill has been increased by a half-billion dollars. I do not want to see that bill considered nor do I want to see the foreign aid appropriations bill, dealing with billions of dollars, considered without ample notice to the House.

Mr. Speaker, that is the reason I have asked unanimous consent that clause 2, rule XXVIII, be restored with full force and effect.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, reserving the right to object, we sincerely hope that Members handling conference reports will cooperate in advising the House as to any changes that have been made in House bills. The procedure about which the gentleman is talking is the one generally used toward the end of sessions of Congress. Of course, it is necessary for the expeditious handling of the business leading to adjournment of the House as the gentleman well knows. . . .

The procedure by which the handling of these matters may be expedited is not only an accommodation to individual Members, but is beneficial to the House of Representatives as a whole. I hope the gentleman will not pursue his unanimous-consent request. I would like to cooperate with the gentleman in having matters thoroughly explained as they come from conference, but I would be constrained to object if the gentleman should pursue his request. . . .

I would respectfully suggest that the gentleman withdraw his request.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Under the circumstances the Chair declines to recognize the gentleman from Iowa to submit the request.

### *Calling Up Report as Privileged Pursuant to Unanimous-consent Agreement*

**§ 22.21 A conference report was called up as privileged following agreement to a unanimous-consent request permitting it to be called up the same day reported.**

On Oct. 21, 1963,<sup>(7)</sup> after Mr. Oren Harris, of Arkansas, submitted the conference report and statement on S. 1576, a bill providing assistance for combating mental retardation, the following occurred:

MR. HARRIS: Mr. Speaker, I ask unanimous consent that it may be in order, notwithstanding that the privileged report has just been presented, to call up the conference report this afternoon.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Arkansas?

MR. [PAUL F.] SCHENCK [of Ohio]: Mr. Speaker, reserving the right to object,

6. John W. McCormack (Mass.).

7. 109 CONG. REC. 19942, 19954, 88th Cong. 1st Sess.

8. John W. McCormack (Mass.).

may I inquire of the chairman of the committee if he intends to fully explain the conference report when it is brought up?

MR. HARRIS: I may say to the gentleman it is my intention with other members of the conference committee to explain in full the conference report. I should like to say to the gentleman I do this because we did not have the privilege of filing the report last week prior to adjournment of the House. We had no idea that the conferees would get together on the bill. We were at an impasse and it looked like it would be impossible to reach agreement and, therefore, I did not ask permission to file it at that time. To our amazement and complete satisfaction the conferees did agree. I have just now had the opportunity of filing the report. I am leaving late this afternoon as one of the delegates appointed by the Speaker to the U.S. delegation at an international conference in Geneva, and I would like to get the report considered before I leave. That is the reason for asking for this privilege. . . .

MR. [LESLIE C.] ARENDS [of Illinois]: Mr. Speaker, reserving the right to object, and I shall not object, in view of the circumstances explained by the gentleman from Arkansas. May I ask the chairman if you have agreed on any time later in the day for consideration of this conference report?

MR. HARRIS: That is up to the Speaker. It is his prerogative. I assume it will be following the Consent Calendar, and disposition of the bill to be considered under suspension, but that is up to the Speaker.

MR. ARENDS: I understand. The only statement I should like to make to the

gentleman is that I trust this action later today will not in any way set a precedent. It is unusual procedure, but under the circumstances that prevail at the moment I voice no objection to consideration of the conference report later on in the day.

MR. HARRIS: I would not want it to be a precedent.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, I want it clearly understood that this is not to be considered as establishing any kind of precedent. It is extremely fast action to bring a conference report to the House and within an hour or so consider it without having conformed to the rules which require that it lay over. I want it thoroughly understood, therefore, this is not to be considered as a precedent but, rather, in the nature of an accommodation under the circumstances to the gentleman from Arkansas [Mr. Harris]. . . .

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

There was no objection. . . .

MR. HARRIS: Mr. Speaker, I call up the conference report on the bill (S. 1576) to provide assistance in combating mental retardation through grants for construction of research centers and grants for facilities for the mentally retarded and assistance in improving mental health through grants for construction and initial staffing of community mental health centers, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is there objection to the request of the gentleman from Arkansas?

There was no objection.

**§ 22.22 Where consideration of a conference report is made in order, by unanimous consent, on the same day the report is filed, the report is called up as privileged.**

On Sept. 12, 1962,<sup>(10)</sup> the following occurred in the House:

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that consideration of the military construction appropriation bill for fiscal 1963 may be in order this afternoon.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Later that day Mr. Harry R. Sheppard, of California, submitted the conference report on H.R. 12870. Immediately thereafter Speaker John W. McCormack, of Massachusetts, recognized Mr. Sheppard:

Mr. Speaker, I call up the conference report on the bill (H.R. 12870) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1963,

9. Carl Albert (Okla.).

10. 108 CONG. REC. 19258, 19278, 87th Cong. 2d Sess.

11. Roland V. Libonati (Ill.).

and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

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

There was no objection.

The Clerk read the statement.

THE SPEAKER: The gentleman from California [Mr. Sheppard] is recognized.

***Example of Requests To Expedite Consideration of Conference Report***

**§ 22.23 Instance where a conference report was filed from the floor during debate on a special order reported from the Committee on Rules waiving the "layover" requirement for consideration of the conference report.**

Where Congress was pressing toward an Easter recess, it: (1) permitted the immediate filing of a conference report of a major bill; and (2) provided for debate on the report before printed copies were available and before the official debate was in order. These requests are carried here as exam-

ples of the way consideration of a measure may be expedited.<sup>(12)</sup>

MR. [SPARK M.] MATSUNAGA [of Hawaii]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 358, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 358

*Resolved*, That immediately upon the adoption of this resolution, clause 2, rule XXVIII to the contrary notwithstanding, it shall be in order to consider any conference report on the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes, to increase the low-income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, and for other purposes.

THE SPEAKER:<sup>(13)</sup> The gentleman from Hawaii (Mr. Matsunaga) is recognized for 1 hour.

MR. MATSUNAGA: Mr. Speaker, I yield 30 minutes to the gentleman from Tennessee (Mr. Quillen), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 358 provides that, clause 2, rule XXVIII of the Rules of the House of Representatives to the contrary notwithstanding, it would be in order to consider the con-

ference report on the bill H.R. 2166, known as the Tax Reduction Act of 1975.

Clause 2 of rule XXVIII is divided into two paragraphs. Paragraph (a) relates to the 3-day filing requirement for the conference report and the accompanying statement, and the printing of both in the *Congressional Record* for the day on which such report and statement are filed.

Paragraph (b) relates to the consideration of Senate amendments reported from conference in disagreement. . . .

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, the hour is late in the afternoon, and I realize the cries of "Vote! Vote!" have begun to rise in the Chamber. But as one who was not present in the Committee on Rules and, therefore, did not vote on this particular rule, I do have some reservations about the apparently very hasty manner in which we are going to consider this bill this afternoon. . . .

As I understand it, there are three copies—and I stand to be corrected if I am wrong—there are only three copies available of a conference report on a \$23 billion bill. I do not want to stand here and pose as a purist and as a stickler for detail, because I am perfectly willing to take shortcuts when it is necessary. But my vacation is not so important, we are not so busy that we should not take more time to consider this matter today.

THE SPEAKER: The time of the gentleman has expired. . . .

MR. MATSUNAGA: Mr. Speaker, I yield 3 minutes to the distinguished chairman of the Committee on Ways

12. 121 CONG. REC. 8895-97, 8899, 8900, 8916, 8917, 94th Cong. 1st Sess., Mar. 26, 1975.

13. Carl Albert (Okla.).



and Means, the gentleman from Oregon (Mr. Ullman).

MR. [AL] ULLMAN [of Oregon]: Mr. Speaker, let me tell my friends in the House that the conferees have worked about as diligently as any Members ever have. We have attempted to keep the American people, as well as the Members of Congress informed.

We have had full press conferences yesterday and today following every action that we have taken. It has been rather widely publicized in the press.

... [W]e have had the staff working as hard and as efficiently as possible. They are in the process of copying all the material now. We had expected this to be on the floor by 5:30, and I am rather sure that it will. That is the timetable they are meeting for both copies of the bill and the statement of the managers.

Now, the statement of the managers is here now and copies of the bill will be very shortly. . . .

MR. MATSUNAGA: Mr. Speaker, I yield 1 additional minute to the gentleman from Oregon.

MR. [MAX] BAUCUS [of Montana]: Mr. Speaker, will the gentleman yield? . . .

Mr. Speaker, earlier this morning, about noon, I, as a new Member of Congress, thought that I should inform myself so that I could inform my constituents of what is in the tax bill, so I found out where the conferees were meeting. I went over to the room, talked to the policeman. He said I could enter because I was a Member of Congress.

I got into the meeting room, and I was asked to leave.

Mr. Speaker, I understand that not only Members of Congress who are not

conferees, but also other Members of the Committee on Ways and Means are not entitled to sit in on the closed conference committee meetings. . . .

MR. ULLMAN: Mr. Speaker, if I have any additional time, let me reply to the gentleman.

The gentleman raised the issue of an open conference. It has never been done. I am not going to be adverse to doing it. I think one can make an argument for doing it. The Senate has not passed rules that correspond to the House as of yet. If they would have, I am sure this conference would have been open. But we also have space problems. We did move over into the main hearing room of the Committee on Ways and Means for part of the conference, but we were over here at H-208, and we were also over on the Senate side into a small room. If there were any problems, I apologize to my friend from Montana (Mr. Baucus). I did not ask him to leave. I think it was another member of the committee. But it would not have been fair to allow one member and not allow others. It is a Senate rule that prevents it, and the Senators are rather touchy about it, and I think, under the circumstances, it would have been very unfair to us to allow this to happen. . . .

MR. MATSUNAGA: Mr. Speaker, I yield 1 minute to the gentleman from Oregon (Mr. Ullman).

CONFERENCE REPORT ON H.R. 2166,  
TAX REDUCTION ACT OF 1975

Mr. Ullman submitted the following conference report and statement on the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes,

to increase the low-income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, and for other purposes:

CONFERENCE REPORT (H. REPT. 94-120)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes, to increase the low income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Tax Reduction Act of 1975". . . .

SPECIAL ORDER REQUESTS

MR. ULLMAN: Mr. Speaker, I ask unanimous consent that upon the adoption of the rule I be granted a 60-minute special order.

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

MR. [ROBERT E.] BAUMAN [of Maryland]: Reserving the right to object, Mr. Speaker, we have in the rules of the House an adequate rule for the consideration of conference reports, which provides for points of order for nongermane amendments, motions to reject, debate of the conference report, and that rule governing conference reports protects both the rights of the majority and the minority. I have no way of knowing, nor does any Member in this Chamber know, who will control the time during a special order, except the gentleman from Oregon, whether questions, once raised, will be answered, or whether or not debate will deteriorate into partisan debate.

THE SPEAKER: The gentleman is very effectively but improperly stating the rules. The minority has 30 minutes and the majority has 30 minutes on the conference report.

MR. BAUMAN: I am talking about the lack of protection contained in the request for the 1-hour special order that was just made by the gentleman from Oregon.

THE SPEAKER: Any Member of the House may make a request for a special order.

MR. BAUMAN: I withdraw my reservation of objection.

MR. [HERMAN T.] SCHNEEBELI [of Pennsylvania]: Mr. Speaker, further reserving the right to object, I also ask for a 60-minute special order following that of the gentleman from Oregon (Mr. Ullman).

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

There was no objection.

MR. SCHNEEBELI: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection. . . .

MR. MATSUNAGA: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appear to have it.

MR. [WILLIAM L.] ARMSTRONG [of Colorado]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 240, noes 172, not voting 20. . . .<sup>(14)</sup>

### *Appointing Conferees Before Papers Received From Senate*

**§ 22.24 Instance where the House deemed a general appropriation bill to be in conference, although the Senate had not yet acted on the matter and requested a conference, and provided that the Speaker be deemed to have appointed conferees, but permitting an immediate motion to instruct.**

14. See § 25.21, *infra*, for proceedings on calling up the conference report and consideration thereof.

The wording of unanimous-consent requests to anticipate Senate action and deem a matter in conference has varied from time to time, depending on the emphasis placed on preserving the option for a motion to instruct the conferees.

In the 100th Congress,<sup>(15)</sup> a request was made to deem a bill in conference and authorized the Speaker to appoint conferees without intervening motion, thus precluding a motion to instruct. In the 101st Congress,<sup>(16)</sup> a request was utilized which deemed the matter in conference and authorized the Speaker to appoint conferees, thus assuring a motion to instruct. In the instance discussed here,<sup>(17)</sup> the availability of the motion to instruct is left somewhat in doubt, although as shown by the proceedings below, a motion was offered and no objection or question was raised.

DEEMING HOUSE TO HAVE DISAGREED TO SENATE AMENDMENTS AND AGREED TO CONFERENCE AND DEEMING SPEAKER TO HAVE APPOINTED CONFEREES ON H.R. 3759,

15. See 133 CONG. REC. 35049, 100th Cong. 1st Sess., Dec. 11, 1987.

16. See 135 CONG. REC. 18642, 101st Cong. 1st Sess., Aug. 3, 1989.

17. See 140 CONG. REC. 1903, 1904, 103d Cong. 2d Sess., Feb. 10, 1994.

## EMERGENCY SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1994

MR. [RICHARD A.] GEPHARDT [of Missouri]: Mr. Speaker, I ask unanimous consent that if and when the Clerk receives a message from the Senate indicating that that body has passed H.R. 3759, the emergency supplemental appropriations bill, with amendments, insisted on its amendments and requested a conference with the House, that the House be deemed to have disagreed to the amendments of the Senate and agreed to the conference asked by the Senate, and that the Speaker be deemed to have appointed conferees. . . .

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> Is there objection to the request of the gentleman from Missouri?

There was no objection.

## MOTION TO INSTRUCT CONFEREES ON H.R. 3759, EMERGENCY SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1994

MR. [JOSEPH M.] MCDADE [of Pennsylvania]: Mr. Speaker, I offer a motion to instruct conferees on H.R. 3759.

The Clerk read as follows:

Mr. McDade moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on H.R. 3759, be instructed to agree to the D'Amato amendment number 1442 as modified, as adopted by the Senate. On vote number 36, as follows:

SEC. . Extension of RTC Civil Statute of Limitations.

"Section 21A(b)(14)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(14)(C) is amended by striking clause (i) and inserting in lieu thereof the following:

"(i) the period beginning on the date the claim accrues (as determined pursuant to section 11(d)(14)(B) of the Federal Deposit Insurance Act) and ending on December 31, 1995; or ending on the date of the termination of the corporation pursuant to section 21A(m)(1), whichever is later; or."

MR. MCDADE (during the reading): Mr. Speaker, I ask unanimous consent that the motion to instruct conferees be considered as read and printed in the Record. . . .

THE SPEAKER PRO TEMPORE: The gentleman from Pennsylvania [Mr. McDade] will be recognized for 30 minutes, and the gentleman from Iowa [Mr. Smith] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. McDade].

*Parliamentarian's Note:* The difficulty of drafting a motion to instruct where the Senate action on the matter has not yet been finalized is shown by the somewhat ambiguous form of the motion offered by Mr. McDade.

***Validity of Report as Effected by Informal Meeting of Conferees***

§ 22.25 A conference report having been signed by a majority of the managers of

18. Jim Chapman (Tex.).

**each House, the Senate having received and acted upon it and notified the House of its action, the report is properly before the House when called up.**

On June 19, 1948,<sup>(19)</sup> Mr. Walter G. Andrews, of New York, submitted the conference report on S. 2655, the Selective Service Act of 1948. Mr. Vito Marcantonio, of New York, made a point of order in which he contended that the document submitted by Mr. Andrews was not a valid conference report because he alleged the agreement contained therein had been reached prior to the formal appointment of the Senate managers. Mr. Andrews acknowledged that the House managers had met informally prior to the appointment of their Senate counterparts, but he asserted that subsequent to that meeting a full and free conference with the duly appointed Senate managers took place at which the report at issue was agreed upon.

THE SPEAKER:<sup>(20)</sup> The Chair is ready to rule.

On page 770, volume 5, of Hinds' Precedents, section 6497 states:

19. 94 CONG. REC. 9253, 9268, 9269, 80th Cong. 2d Sess.

20. Joseph W. Martin, Jr. (Mass.).

A conference report is received if signed by a majority of the managers of each House.

The Chair has examined the report and the papers and finds that it is signed by five of the managers on the part of the Senate and six of the seven managers on the part of the House.

The Chair has no knowledge, of course, how this report was reached, but the Chair cannot impeach the names of the managers on the part of the two Houses. Furthermore, the Senate having already received the report, and according to a message heretofore received by the House has officially adopted it, the Chair feels that under the circumstances the report is properly before the House for such action as the House may see fit to take. The Chair overrules the point of order.

### *Precedence Over Call of the Consent Calendar*

#### **§ 22.26 Consideration of conference reports takes precedence over the calling of the Consent Calendar.**

On Nov. 30, 1945,<sup>(1)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. John W. McCormack, of Massachusetts:

Mr. Speaker, I ask unanimous consent that the conference report on the rescission bill may precede the call of the Consent Calendar on Monday.

1. 91 CONG. REC. 11279, 79th Cong. 1st Sess.

THE SPEAKER: It is not necessary to obtain unanimous consent for that. The Chair can recognize the gentleman to call up the conference report before the call of the Consent Calendar and will do so.

**§ 22.27 While the call of the Consent Calendar under Rule XIII clause 4<sup>(2)</sup> is mandatory on the first and third Mondays of the month immediately after approval of the Journal, the Speaker may recognize a Member to call up a conference report under Rule XXVIII clause 1,<sup>(3)</sup> before directing the Clerk to call the Consent Calendar.**

On May 4, 1970,<sup>(4)</sup> after the announcement of the death of Mr. William L. St. Onge, of Connecticut, the following occurred:

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I call up the conference report on the bill (H.R. 515) to amend the National School Lunch Act and the Child Nutrition Act of 1966, to clarify responsibilities related to providing free and reduced-price meals and preventing discrimination against children, to revise program matching re-

2. See annotation to Rule XIII clause 4(a) *House Rules and Manual* § 746 (1997).

3. *Id.* at § 909.

4. 116 CONG. REC. 13987-4014, 14021-33, 14043, 91st Cong. 2d Sess.

quirements, to strengthen the nutrition training and education. . . .

THE SPEAKER:<sup>(5)</sup> The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table. . . .

THE SPEAKER: This is Consent Calendar day. The Clerk will call the first bill on the Consent Calendar.

### § 23. Who May Call Up; Reading

It is the general practice for the Speaker to recognize the senior majority manager on the part of the House to call up a conference report for consideration. On one instance, this general practice was followed even though this senior majority manager (the chairman of the legislative committee which had handled the bill) had not signed the report and was opposed to it.<sup>(6)</sup> The Speaker may recognize a junior member of the conference committee in the absence of the senior House conferee<sup>(7)</sup> or even the ranking majority member in lieu of the chairman of the legislative committee who was also a conferee.<sup>(8)</sup>

5. John W. McCormack (Mass.).

6. § 23.3, *infra*.

7. § 23.1, *infra*.

8. § 23.2, *infra*.

### *Junior Member of Conference Committee*

**§ 23.1 The Speaker has recognized a junior member of the conference committee when the senior House conferee was unable to be present on the floor to file or call up the report.**

On Dec. 23, 1969,<sup>(9)</sup> the Record indicates that Speaker John W. McCormack, of Massachusetts, recognized Mr. Thomas L. Ashley, of Ohio, for the following purpose:

Mr. Ashley submitted the following conference report and statement on the bill (H.R. 4293) to provide for continuation of authority for regulation of exports:

CONFERENCE REPORT (H. REPT. 91-786)

The signatures were affixed to the report in the following manner:

WRIGHT PATMAN,  
LEONOR SULLIVAN,  
HENRY REUSS,  
THOMAS ASHLEY,  
WILLIAM B. WIDNALL,  
CHESTER L. MIZE,  
*Managers on the Part of the House.*<sup>(10)</sup>

9. 115 CONG. REC. 40982-84, 91st Cong. 1st Sess.  
10. *Parliamentarian's Note:* Mr. Ashley was the fifth ranking Democrat on the Committee on Banking and Cur-

MR. ASHLEY: Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the bill (H.R. 4293) to provide for continuation of authority for regulation of exports.

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

There was no objection.

*Parliamentarian's Note:* Mr. Patman, the senior House conferee, was unable to be present on the floor either to file or call up the conference report.

### *Ranking Majority Member*

**§ 23.2 The Speaker has recognized the ranking majority member of a committee (not the chairman, who was also a conferee) to call up a conference report.**

On July 17, 1967,<sup>(11)</sup> the following occurred in the House:

THE SPEAKER:<sup>(12)</sup> The Chair recognizes the gentleman from Maryland [Mr. Friedel].

- rency. Wright Patman (Tex.), was the chairman of the committee, and Mrs. Leonor K. Sullivan (Mo.), and Mr. Henry Reuss (Wis.), were the third and fourth ranking majority members, respectively.  
11. 113 CONG. REC. 19032, 19033, 90th Cong. 1st Sess.  
12. John W. McCormack (Mass.).

MR. [SAMUEL N.] FRIEDEL: Mr. Speaker, I call up the conference report on the Senate joint resolution (S.J. Res. 81) to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees, and ask for its immediate consideration.

THE SPEAKER: The Clerk will read the conference report.

The Clerk read the conference report. . . .

MR. FRIEDEL: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Friedel moves to concur in the Senate amendments to the House amendment.

THE SPEAKER: The gentleman from Maryland is recognized for 1 hour.

*Parliamentarian's Note:* The chairman of the Committee on House Administration<sup>(13)</sup> was opposed to the legislation, had not handled the resolution when it was under debate in the House, and had agreed that the Speaker should recognize the ranking majority member to call up this report and offer the essential motions.

### ***Member Opposed to Conference Report***

#### **§ 23.3 The senior manager on the part of the House at a conference called up a con-**

13. Omar T. Burleson (Tex.).

### **ference report, even though he had not signed the report and was in fact opposed to it.**

On Dec. 6, 1967,<sup>(14)</sup> Speaker John W. McCormack, of Massachusetts, recognized William R. Poage, of Texas, Chairman of the Committee on Agriculture, to call up the conference report on H.R. 12144, the Federal Meat Inspection Act:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the bill (H.R. 12144) to clarify and otherwise amend the Meat Inspection Act, to provide for cooperation with appropriate State agencies with respect to State meat inspection programs, and for other purposes. . . .

THE SPEAKER: The Chair recognizes the gentleman from Texas [Mr. Poage].

MR. POAGE: Mr. Speaker, I yield myself 5 minutes. . . .

This report is signed by all of the conferees on the part of the Senate and all but two of the conferees on the part of the House. I am one of those two. . . .

After Mr. Poage explained his opposition to the conference report, and after debate had taken place thereon, the House adopted the report.

14. 113 CONG. REC. 35144-51, 35163, 90th Cong. 1st Sess.



## § 24. Custody of the Official Papers

Neither House may consider a conference report until it has possession of the official papers,<sup>(15)</sup> which consist of the original bill and any amendments thereto.<sup>(16)</sup> Copies of the conference report itself and the statement of the managers must also be available on the floor.<sup>(17)</sup>

It is customary for the managers of the House which had requested a conference to carry the official papers with them to the conference. If the conferees reach an agreement (even a partial agreement), the papers change hands, and the managers of the House which had agreed to the conference take possession thereof and their House acts first on the report.<sup>(18)</sup> However, if the managers of the agreeing House fail to take possession of the papers at the close of a successful conference, the managers of the asking House

15. § 24.1, *infra*.

16. § 24.2, *infra*.

17. Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997), as amended by the Legislative Reorganization Act of 1970, 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(2) (Oct. 26, 1970).

18. § 24.3, *infra*.

may retain the papers and that House acts first on the report.<sup>(19)</sup> When the conferees report in total disagreement the papers do not change hands.<sup>(20)</sup>

### *Possession of Official Papers*

**§ 24.1 It is not in order to consider a conference report in the House until the original (official) papers are in possession of the House.**

On Aug. 20, 1937,<sup>(1)</sup> Mr. Andrew J. May, of Kentucky, submitted the conference report and statement of the managers on H.R. 7985, providing for the enlargement of Washington Airport. After Mr. May sought unanimous consent for the immediate consideration of the conference report, the following occurred:

THE SPEAKER:<sup>(2)</sup> The gentleman from Kentucky has filed a conference report. Has the gentleman from Kentucky the original papers in the case? The only papers available are copies of the conference report and the official papers do

19. §§ 24.4, 24.5, *infra*.

20. § 24.13, *infra*.

1. 81 CONG. REC. 9515, 75th Cong. 1st Sess.

2. William B. Bankhead (Ala.).

not seem to have been returned from the Senate.

MR. MAY: The report is signed by the Senate conferees and by the House conferees.

THE SPEAKER: But the Chair cannot permit the consideration of a conference report on a bill while the original papers are in the possession of the other body, which seems to be the case in this instance. The Chair is of the opinion the gentleman will have to withhold his request for consideration until the papers are sent over from the Senate. The Chair has had a diligent search made and the records do not show that the papers have been mes-saged over.

**§ 24.2 When a conference report is called up for consideration it is not necessary that copies of the bill to which the conference report relates be available for all Members of the House; it is sufficient that the official papers—the House bill and the Senate amendment there-to—are before the House.**

On July 28, 1954,<sup>(3)</sup> after the House consented to dispensing

3. 100 CONG. REC. 12399, 12425, 83d Cong. 2d Sess. See Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997) which requires that such reports be printed in the Record, and thus affords Members the oppor-

with the reading of the conference report on H.R. 8300, the Internal Revenue Code of 1954, Mr. Herman P. Eberharter, of Pennsylvania, raised several points of order:

Mr. Speaker, the first point of order I wish to offer to the conference report is that a copy of the House bill is not before the House.

THE SPEAKER:<sup>(4)</sup> A copy of the report is not before the House?

MR. EBERHARTER: A copy of the House bill, H.R. 8300, is not before the House. Members cannot obtain a copy of the House bill.

THE SPEAKER: The subject matter before the House is the conference report, rather than the bill as such.

MR. EBERHARTER: Mr. Speaker, if I may discuss the matter, under section 6518, chapter 527, I think it is, volume 5 of Cannon's Precedents, it is stated that the House bill with the Senate amendments must be on the floor of the House for consideration. As I see it, the Members are unable to obtain copies of the House bill.

THE SPEAKER: The Chair will say that both the bill and the conference report are here. The precedent in volume 5, section 6518, of Hinds' Precedents requires the official papers—the House bill and the Senate amendment—to be here. They are here at the desk at this moment, and there is no requirement that each Member have a copy. The point of order is overruled.

tunity to examine a report prior to its consideration.

4. Joseph W. Martin, Jr. (Mass.).

***Agreeing House To Take Custody of Papers***

§ 24.3 The House agreeing to a conference normally takes possession of the original papers at the conclusion of the conference and acts first on the report.

On Dec. 19, 1963,<sup>(5)</sup> several Members were discussing the possibility of prompt action on the conference report anticipated on the foreign aid appropriations bill of 1964.

MR. [CHARLES A.] HALLECK [of Indiana]: As I understand it, the other body having asked for the conference, if the conferees are able to agree on a conference report then we would get the papers first.

MR. [OTTO E.] PASSMAN [of Louisiana]: That is my understanding. . . .

MR. HALLECK: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(6)</sup> The gentleman will state it.

MR. HALLECK: Mr. Speaker, in the event that the conference report is acted on first in the House, as we now understand it will be, would a motion to recommit with instructions be in order?

THE SPEAKER: A proper motion would be.

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5. 109 CONG. REC. 25249, 88th Cong. 1st Sess.
  6. John W. McCormack (Mass.).

***Failure of Managers To Take Possession of the Papers***

§ 24.4 If the managers on the part of the House which agrees to a conference fail to take possession of the papers at the close of a conference, the other House may, since it has the papers before it, act first on the conference report.

On July 4, 1952,<sup>(7)</sup> after the House had completed debate on the conference report on S. 3066, to amend the defense housing laws, the following occurred:

MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(8)</sup> The Chair will state to the gentleman from New York that a motion to recommit is not in order, the Senate having acted on the conference report.<sup>(9)</sup>

MR. MULTER: Mr. Speaker, if they did, they acted improperly, because

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7. 98 CONG. REC. 9379, 9380, 82d Cong. 2d Sess.
  8. Sam Rayburn (Tex.).
  9. 98 CONG. REC. 9216, 82d Cong. 2d Sess., July 3, 1952.

this should have been acted on in the House first.<sup>(10)</sup>

THE SPEAKER: The Chair is not aware that the Senate has acted improperly. We have received a message that they agreed to the conference report.

***Order of Acting on a Conference Report and Course of Official Papers; Effect on Motion To Recommit***

**§ 24.5 While the House agreeing to the request for a conference normally acts first on the report, if conferees reach an agreement, an exchange of the official papers in conference can change the normal order of action on the report.**

Where the managers on the part of the House had signed a conference report before their formal appointment, thus making the report, if called up, vulnerable to a point of order under Rule XXVIII clause 6,<sup>(11)</sup> the report was recommitted to the conference, by unanimous consent, so that an open meeting of the conferees

10. The Senate requested the conference on this measure on July 3, *Id.* at pp. 9048, 9049, and the House agreed thereto on the same date, *Id.* at p. 9216.

11. See *House Rules and Manual* § 913d (1997).

could take place before signatures were affixed to the report. Discussion about the course of conference papers and the options available to the House acting first to recommit or instruct are excerpted from the proceedings of Mar. 25, 1980,<sup>(12)</sup> and are carried here.

RECOMMITAL TO CONFERENCE OF S. 662, INTERNATIONAL DEVELOPMENT BANKS AUTHORIZATION

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to recommit the Senate bill, S. 662, to conference.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> Is there objection to the request of the gentleman from Wisconsin? . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Further reserving the right to object, Mr. Speaker, I would like to make a further parliamentary inquiry.

If this request is granted, the House is then asking the other body for a conference. At that point it allows the other body to act first under the rules, and that would preclude a motion to recommit with instructions on the part of any Member of the House. Is that correct?

THE SPEAKER PRO TEMPORE: This request would not change the order of consideration of the new report. It merely asks for a recommital of the conference report to the same conference.

12. 126 CONG. REC. 6429-31, 96th Cong. 2d Sess.

13. John P. Murtha (Pa.).

MR. BAUMAN: If the motion is granted, is a motion to recommit or a motion to instruct in order at this time?

THE SPEAKER PRO TEMPORE: The House would still act first on the conference report.

MR. BAUMAN: Further reserving the right to object, the gentleman from Maryland, knowing the outcome of the consideration of the conference, would very much like to make a motion to instruct but does not have one prepared at this time.

THE SPEAKER PRO TEMPORE: The Chair advises that would not be in order at this time in any event.

MR. BAUMAN: That was the question the gentleman put to the Chair, whether a motion to instruct would be in order at this time. The Chair says "No." If this request is not granted and a point of order is made against the consideration of the conference report, as the gentleman from Wisconsin suggested, it might be that no motion to instruct would be in order under rule XXVIII at that time, would it?

THE SPEAKER PRO TEMPORE: If a point of order were sustained under clause 6 to rule 28 a new conference would be considered as requested and conferees appointed without intervening motion and the Senate would probably agree to a new conference and would probably act first on the new conference report. . . .

If this request is granted to recommit the conference report, the motion to recommit would be protected for the minority.

MR. BAUMAN: But if the other body acts, Mr. Speaker, that precludes a motion to recommit with instructions; does it not?

THE SPEAKER PRO TEMPORE: If this goes back to the same conference the other body, of course, does not have to agree to a request for a new conference.

MR. BAUMAN: But the other body can act first, thereby precluding any motion to recommit?

THE SPEAKER PRO TEMPORE: If the papers are traded in conference, that is possible, but not the normal sequence. . . .

MR. BAUMAN: Mr. Speaker, further reserving the right to object, is it within the province of the senior conferee to return the papers to this House for action first, in order to protect a motion to recommit?

MR. REUSS: Mr. Speaker, if the gentleman will yield, that is absolutely right. That would be the normal course.

MR. BAUMAN: Mr. Speaker, further reserving the right to object, do I have the guarantee of the gentleman from Wisconsin that that will be his course of action?

MR. REUSS: Yes, the gentleman does. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

*Parliamentarian's Note:* Under Rule XXVIII, if a point of order is sustained against a report under clause 6(b), the report is deemed to be rejected, and the Speaker appoints new conferees without intervening motion, thus precluding a motion to instruct.

### *Transmittal of Conference Papers*

§ 24.6 In rare circumstances conference papers may be informally exchanged between the House and Senate, to accommodate a particularly tight legislative schedule; and on one occasion the House, which was scheduled to act first on a report, informally left the papers with the Senate at the conclusion of the conference and after the Senate acted on a motion to recommit (which was defeated) the papers were given (not messaged to) to the House which acted first on the report.

When papers are transferred in an informal fashion there is no indication in the Record of the transaction. The first message shown in the *Congressional Record* occurred when the House informed the Senate that it had adopted the conference report. After the Senate had rejected the motion to recommit, and relinquished the papers to the House, it continued to debate the conference report.

The excerpt from the proceedings of July 14, 1988,<sup>(14)</sup> follows:

DEPARTMENT OF DEFENSE AUTHORIZATION ACT—CONFERENCE REPORT—FISCAL YEAR 1989

THE ACTING PRESIDENT PRO TEMPORE:<sup>(15)</sup> Under the previous order, the Senate will now proceed to the consideration of the conference report on H.R. 4264, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, the Senate will proceed to the consideration of the conference report.

Under the previous order, the Senator from Indiana, Mr. Quayle, is recognized to offer a motion to recommit. The Senator from Indiana.

MOTION TO RECOMMIT

MR. [DAN] QUAYLE [of Indiana]: Mr. President, I send a motion to recommit

14. 134 CONG. REC. 18277, 18281, 18286, 18411, 100th Cong. 2d Sess.

15. Richard C. Shelby (Ala.).

to the desk and ask for its immediate consideration.

THE ACTING PRESIDENT PRO TEMPORE: The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. Quayle] moves to recommit the pending conference report with instructions that the Senate conferees insist on a position more favorable to the Senate position on ICBM modernization, SDI, Poseidon SSBNs, depressed trajectory missile testing, and nuclear testing, and that in addition the amendments authorized be changed to eliminate those items not requested nor estimated for in the President's budget, with the resulting savings to be apportioned to readiness and sustainability programs that will enhance conventional deterrence forces.

THE ACTING PRESIDENT PRO TEMPORE: The Senator from Indiana. . . .

Under the previous order, the question is on agreeing to the motion to recommit the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll. . . .

The motion to recommit was rejected. The Senate then informally relinquished possession of the papers to the House and continued to debate the report.<sup>(16)</sup>

Later, in the House:

CONFERENCE REPORT ON H.R. 4264,  
NATIONAL DEFENSE AUTHORIZATION  
ACT, FISCAL YEAR 1989

16. 134 CONG. REC. 18411, 100th Cong. 2d Sess., July 14, 1988.

MR. [LES] ASPIN [of Wisconsin]: Mr. Speaker, pursuant to the provisions of House Resolution 492, I call up the conference report on the bill (H.R. 4264) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The Clerk read the title of the bill.

*Where Transmittal of Conference Papers Does Not Follow Normal Practice*

§ 24.7 It is customary, at the conclusion of a successful conference, for the asking House to surrender the original papers to the agreeing House, so that the latter may act first on the report; but failure to follow this usual order does not specifically violate a rule.

At the conclusion of the successful conference on H.R. 3982, the Omnibus Reconciliation Act of 1981, the Senate retained the original papers for a period of time, and did not give them to the House conferees to file them in the House with the conference report. They were later delivered separately to the House, by the Senate

messenger, and were filed at the Speaker's table.

On July 31, 1981,<sup>(17)</sup> a parliamentary inquiry was addressed to the Speaker, as follows:

MR. [BRUCE F.] VENTO [of Minnesota]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The gentleman will state it.

MR. VENTO: Mr. Speaker, I inquire of the Chair whether the papers of the reconciliation package, H.R. 3982, are in the possession of the House.

THE SPEAKER PRO TEMPORE: Yes, they are.

MR. VENTO: Mr. Speaker, I would further inquire, is it customary for these papers to remain in the possession of the House at the conclusion of a conference committee, and in this instance, were they retained at the conclusion of the conference committee, or were they more recently delivered to the House?

THE SPEAKER PRO TEMPORE: Yes, the Chair would say to the gentleman, it is customary for the papers to be transferred to the House which agree to the conference—and is to act first on the report—at the conclusion of a successful conference.

MR. VENTO: In this case, Mr. Speaker, were the papers retained by the House conferees on the matter of the reconciliation conference?

THE SPEAKER PRO TEMPORE: Evidently not, because they were brought

back to the House this morning at about 9:15 by a messenger from the other body.

MR. VENTO: Mr. Speaker, in other words, this violated one of the tenets that we have in terms of consideration.

I thank the Chair.

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman that this deviated from custom but did not especially violate the rules of the House.

*Parliamentarian's Note:* Jefferson's Manual, in section 555, states that the conferees of the asking House are to surrender the original papers to the conferees of the other House at the conclusion of a successful conference. Of concern to some Members in the instance which generated the inquiry by Mr. Vento was the possibility that the Senate, by retaining the papers, could then, by motion, recede from its amendment to the House bill, clearing the Reconciliation Act for the President's signature and preventing the House from taking further action—a course advocated by some Members who wished to address the issue of Social Security minimum benefits as part of the reconciliation package.

*Senate: Discharging a Matter in Conference*

17. 127 CONG. REC. 18884, 18885, 97th Cong. 1st Sess.

18. Barney Frank (Mass.).



**§ 24.8 The Senate having possession of the original papers on a House bill with Senate amendments on which it had earlier asked for and the House had agreed to a conference thereon, subsequently agreed to a motion that the Senate further insist on its amendment, thereby discharging its conferees and sending the papers back to the House for possible disposition by privileged motion, the stage of disagreement having been reached.**

Instance where the Senate insisted on its amendment to a bill already "in conference," managers from both Houses having been appointed. The message from the House and the motion offered by the senior Senate conferee on Dec. 18, 1982,<sup>(19)</sup> are carried here as illustrative of a rarely used practice.

*Parliamentarian's Note:* In Senate practice, there is a difference between "receiving a message from the House" which occurred in this instance on Dec. 13, 1982,<sup>(20)</sup> and "laying before the Senate a mes-

sage from the House," which was the incident that made the request of Mr. Strom Thurmond, of South Carolina, timely. Normally, when a matter is in conference, only the conferees can by a proper motion in the conference, make the official papers available for action.

[From the *Congressional Record* of the Senate proceedings on Dec. 13, 1982.]

#### MESSAGES FROM THE HOUSE

At 12:10 p.m. [on Dec. 13, 1982], a message from the House of Representatives, delivered by Mr. Gregory, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated; agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. Rodino, Mr. Hughes, Mr. Kastemeier, Mr. Conyers, Mr. Glickman, Mr. Sawyer, Mr. Fish, and Mr. Kindness as managers of the conference on the part of the House. . . .

On Dec. 18, 1982, the message was laid before the Senate.

#### CONTRACT SERVICES FOR DRUG DEPENDENT FEDERAL OFFENDERS ACT

MR. THURMOND: Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3963.

19. 128 CONG. REC. 32270, 97th Cong. 2d Sess.

20. *Id.* at p. 30183.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House disagree to the amendment of the Senate to the bill (H.R. 3963) entitled "An act to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated," and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon.

MR. THURMOND: Mr. President, this concerns the crime package. I move that the Senate further insist on its amendment to H.R. 3963.

THE PRESIDING OFFICER:<sup>(1)</sup> The question is on agreeing to the motion of the Senator from South Carolina (Mr. Thurmond).

The motion was agreed to.

MR. THURMOND: I move to reconsider the vote by which the motion was agreed to.

MR. [WILLIAM] PROXMIRE [of Wisconsin]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. THURMOND: Mr. President, I thank the Senator from Ohio for yielding.

### ***House Action Where Senate Discharged Its Conferees and Insisted on Disagreement***

#### **§ 24.9 The Senate, having discharged its conferees by fur-**

1. David F. Durenberger (Minn.).

**ther insisting on disagreement to its amendment to a House bill in conference, messaged this action to the House; and there the original manager of the bill offered a privileged motion to recede and concur in the Senate amendment with an amendment.**

On Dec. 20, 1982,<sup>(2)</sup> a motion was made in the House to take from the Speaker's table a House bill with a nongermane Senate amendment which had previously been sent to conference, and to recede from disagreement and concur with a further amendment. The Senate amendment—a "crime package" which had been added in the Senate to a bill dealing with drug offenders—was very long, and rather than face an arduous reading thereof, Mr. William J. Hughes, of New Jersey, withdrew his motion. The proceedings were as indicated below:

MR. HUGHES: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated, with the Senate

2. 128 CONG. REC. 32886, 97th Cong. 2d Sess.

amendment thereto, recede from disagreement to the Senate amendment, and agree to the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment.

The Clerk proceeded to read the House amendment to the Senate amendment.

MR. HUGHES: Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from New Jersey?

MR. [ROBERT S.] WALKER [of Pennsylvania]: I reserve the right to object.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan reserves the right to object to considering the amendment as being read and printed in the Record.

MR. WALKER: Mr. Speaker, I reserve the right to object. It is a little hard to tell in the House, with all the loud noise, just exactly what we are doing.

Is the gentleman considering to go to conference?

MR. HUGHES: No, if the gentleman will yield, I asked to take from the Speaker's table the bill (H.R. 3963) to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to extend the periods for which funds are authorized to be appropriated, with the Senate amendment thereto, recede from disagreement to the Senate amendment, and agree to

the Senate amendment with an amendment.

MR. WALKER: Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New Jersey to consider the amendment as read and printed in the Record?

MR. CONYERS: Mr. Speaker, might the chairman of the Subcommittee on Crime explain what is involved in the Senate amendment or amendments from which he is receding?

MR. HUGHES: Mr. Speaker, if the gentleman will yield, I am going to explain that in the text of my remarks.

MR. [JOHN] CONYERS [Jr., of Michigan]: Mr. Speaker, I object.

MR. HUGHES: Will the gentleman let me explain, if I might?

MR. CONYERS: That is all right, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will continue to read the amendment.

The Clerk continued to read the House amendment to the Senate amendment.

MR. HUGHES (during the reading): Mr. Speaker, I withdraw the motion.

#### PARLIAMENTARY INQUIRY

MR. CONYERS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. CONYERS: Mr. Speaker, does that request have to be made in the form of a motion?

3. Thomas S. Foley (Wash.).

THE SPEAKER PRO TEMPORE: No, it does not.

MR. CONYERS: Further parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. CONYERS: Does the request have to receive unanimous consent?

THE SPEAKER PRO TEMPORE: No. It is a matter of right to withdraw the motion in the House prior to action thereon.

### *Asking House May Retain Papers and Act First*

**§ 24.10 On one occasion the Senate, having asked for a conference, retained the official papers at the successful conclusion of the conference (instead of following the customary practice of surrendering them to the agreeing body) and acted first on the report.**

On Oct. 20, 1965,<sup>(4)</sup> Mr. George H. Fallon, of Maryland, called up the conference report on S. 2300, the Rivers and Harbors Authorization Act of 1965. Although the Senate had requested this conference<sup>(5)</sup> and the House had agreed

4. 111 CONG. REC. 27698-708, 89th Cong. 1st Sess.

5. 111 CONG. REC. 24841-49, 89th Cong. 1st Sess., Sept. 23, 1965.

thereto,<sup>(6)</sup> the Senate conferees retained the official papers and the Senate acted first on the report, voting its approval on Oct. 19, 1965.<sup>(7)</sup> During the debate on the conference report, Mr. William C. Cramer, of Florida, made these remarks concerning the actions of the Senate:

If we thus let them subvert the rules of this House, which are very clear, that the party asking for the conference, the other body has the right to act first on the conference report. . . .

In conference a member of the conferees asked the chairman the question: "Is it not true that the other body, the Senate, having asked for this conference, we, the House, have a right to the papers and to act first?" The answer was "Yes" by the chairman of the conference, the distinguished Senator from Michigan, Mr. McNamara.

### *Action on Amendments in Disagreement While Conference Is in Progress*

**§ 24.11 Where a conference is in progress, the House which is in possession of the official papers may unilaterally discharge its conferees and act on the amendments in disagreement.**

6. 111 CONG. REC. 25074, 89th Cong. 1st Sess., Sept. 24, 1965.

7. *Id.* at pp. 27346, 27347, 27360.

The controversial issue of whether there should be a federal employee pay cap attached to the further continuing appropriation bill, fiscal 1981 (H.J. Res. 637) could not be resolved between the Houses as the adjournment of the 96th Congress, 2d Session approached. The sequence of events leading to this impasse are shown in the Calendar of the House of Representatives for the 96th Congress, as follows:

... Senate agreed to House amendment to Senate amendment No. 7 with an amendment Dec. 13 (Legislative day of Nov. 20), 1980. Senate insisted on its amendment and asked for a further conference Dec. 13 (Legislative day of Nov. 20), 1980. House agreed to a further conference Dec. 13, 1980. Senate further insisted on its amendment to House amendment to Senate amendment No. 7 Dec. 15 (Legislative day of Nov. 20), 1980.

The unusual Senate action carried here as taken from the Record of Dec. 15, 1980,<sup>(8)</sup> was the last legislative act involving that bill.

MR. [WILLIAM] PROXMIRE [of Wisconsin]: ... Mr. President, I ask unanimous consent that the Senate further insist upon its amendment to the House amendment to the Senate

8. 126 CONG. REC. 34221, 96th Cong. 2d Sess.

amendment No. 7 to House Joint Resolution 637.

THE PRESIDING OFFICER:<sup>(9)</sup> Is there objection?

Without objection, it is so ordered.

MR. [THEODORE F.] STEVENS [of Alaska]: Mr. President, that disposes of returning House Joint Resolution 637. It does not dispose of House Joint Resolution 644. I might state we have all been involved in negotiations concerning this bill. It is my understanding that the new resolution would continue the expenditure levels of the Federal Government at the 1980 level or the House level, whichever is lower . . .

*Parliamentarian's Note:* There are few precedents for the type of action taken by the Senate. The House has taken a similar action by the adoption of a rule on at least one occasion. See 5 Cannon's Precedents § 6526.

#### *Version of Report of House Acting First*

§ 24.12 *Parliamentarian's Note:* When the Senate acts first on a conference report, it is the Senate version of the report (the copy of the conference report signed first by the Senate managers) which is messaged to the House with the other original pa-

9. George J. Mitchell (Maine).

pers and is before the House for action.<sup>(10)</sup>

*Progression of Conference  
“Official Papers”*

§ 24.13 Where conferees report in total disagreement, the papers are normally retained by the asking House so that it may act first on the matter in disagreement; but where the only matter remaining in disagreement is an amendment of the asking House, which cannot amend its own amendment, the papers may be transferred so that the agreeing House may address the disagreement by amending.

The conference agreement brought before the House on Oct. 7, 1975, was the second report dealing with amendments in disagreement on H.R. 8121, the State, Justice, Commerce, and the Judiciary appropriations for fiscal 1976. This second report dealt with the sole remaining Senate amendment in disagreement, and the conferees agreed to recommend a further amendment to

10. *Deschler's Procedure* (93d Cong.), Ch. 33 § 18.3.

that amendment. Since the Senate could not amend its own amendment, the report was filed in disagreement, the House retained the papers and acted first on the managers recommendation.

The form of the report, the Senate amendment in disagreement, and the House action thereon are shown in the *Congressional Record* excerpt and the relevant parts of the statement of the managers are carried here:<sup>(11)</sup>

CONFERENCE REPORT (H. REPT. NO.  
94-527)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 8 to the bill (H.R. 8121) “making appropriations for the Departments of State, Justice, and Commerce, the judiciary, and related agencies for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes,” having met, after further full and free conference, have been unable to agree.

JOHN M. SLACK . . .

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE . . .

TITLE I—DEPARTMENT OF STATE

*General provisions—Department of  
State*

Amendment No. 8: Reported in technical disagreement. The managers on the part of the House will offer a motion as follows:

11. 121 CONG. REC. 31510, 94th Cong. 1st Sess., Oct. 2, 1975.

Restore the matter stricken by said amendment amended to read as follows:

"SEC. 104. It is the sense of the Congress that any new Panama Canal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal."

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

When the report was called up and read on Oct. 7, 1975, the Speaker<sup>(12)</sup> laid down the amendment in disagreement.<sup>(13)</sup>

The Clerk read the Senate amendment, as follows:

Senate amendment No. 8: Page 16, line 18, strike out:

"SEC. 104. None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone."

MOTION OFFERED BY MR. SLACK

MR. [JOHN M.] SLACK [of West Virginia]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Slack moves that the House recede from its disagreement to the amendment of the Senate numbered 8 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment amended to read as follows:

"SEC. 104. It is the sense of the Congress that any new Panama Ca-

nal treaty or agreement must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property and defense of the Panama Canal."

PARLIAMENTARY INQUIRY

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FLYNT: Mr. Speaker, is a division of the question in order?

THE SPEAKER: Yes, a request for a division of the question is in order.

MR. FLYNT: Mr. Speaker, I demand a division of the question.

THE SPEAKER: The question will be divided.

## § 25. Points of Order

Prior to 1979, points of order against conference reports were raised or reserved after the report was read<sup>(14)</sup> and before the joint statement of the managers was read.<sup>(15)</sup> It was too late to raise a point of order once debate had begun on a conference report.<sup>(16)</sup> When a point of order was reserved prior to the reading of the statement it could be raised after the statement is read.<sup>(17)</sup> However,

14. §§ 25.5, 25.6, *infra*.

15. § 25.6, *infra*.

16. § 25.16, *infra*.

17. § 25.13, *infra*.

12. Carl Albert (Okla.).

13. 121 CONG. REC. 32064, 94th Cong. 1st Sess.

when a point of order was reserved pending a request that the statement be read in lieu of the report, and this request was denied, the point of order can be raised after the report is read.<sup>(18)</sup> The pertinent rule<sup>(19)</sup> now provides that a report on meeting the availability requirements in clause 2(b) of the rule is considered as read. Points of order are properly made after the title of the report is reported.

When a point of order against a conference report is sustained, this nullifies the agreements reached in conference, and the bill and amendments are again before the House for consideration.<sup>(20)</sup> Since the stage of disagreement has already been reached<sup>(1)</sup> amendments which may have required consideration in the Committee of the Whole need not be considered there again.<sup>(2)</sup>

The sustaining of a point of order on the ground that the conference report contained provisions beyond the range of disagreement as committed to the conferees does not preclude the subsequent adop-

18. § 25.14, *infra*.

19. Rule XXVIII clause 2(c), *House Rules and Manual* § 912d (1997).

20. § 25.24, *infra*.

1. *Id.*

2. § 25.4, *infra*.

tion of the identical provision when offered in a motion to concur in the Senate amendment with a germane amendment.<sup>(3)</sup>

Points of order against a conference report may be waived by the provisions of a resolution reported from the Committee on Rules,<sup>(4)</sup> and will not be entertained when a conference report is being considered under a motion to suspend the rules.<sup>(5)</sup>

### *Violation of Instructions by Conferees*

**§ 25.1 The Speaker may not rule out of order a conference report as in contravention of instructions imposed on the managers.**

On Aug. 12, 1940,<sup>(6)</sup> Mr. Clarence F. Lea, of California, called up the conference report on S. 2009, the Transportation Act of 1940. Among the several points of order raised against the conference report was the following:

MR. [JAMES W.] WADSWORTH [Jr., of New York]: Mr. Speaker, I raise a point

3. § 25.22, *infra*.

4. See §§ 26.1–26.6, *infra*.

5. §§ 26.7, 26.8, *infra*.

6. 86 CONG. REC. 10146, 10174–77, 76th Cong. 3d Sess.



of order against this conference report as now presented to the House. It will be remembered that on May 9 the House, by a majority vote, recommitted this transportation bill to the conferees with definite instructions to insist upon certain amendments. As to two of those amendments the conferees are reporting what might be termed "compromises." As to the third amendment, known generally as the Wadsworth amendment, the conferees have eliminated it entirely from this conference report. My contention is that in doing so the conferees have ignored the instructions of the House and have exceeded their power. Having been instructed by the House to insist upon this specific amendment, it was their duty, obviously, to strive earnestly in its behalf in their negotiations with the Senate conferees. Failing to persuade the Senate conferees to accept the Wadsworth amendment, it was their duty to report the amendment back to the House as being in disagreement, and to ask the House for further instructions concerning it. This the House conferees have failed to do. Instead, they have completely ignored the amendment in their report, and in doing so they have ignored the instructions of the House. I contend, sir, that the House, having once by a majority vote instructed its conferees to insist upon a certain amendment, and the Senate conferees having refused to accept it, it is the duty, under the rule, of the House conferees to report such disagreement to the House and await further instructions.

The Speaker, William B. Bankhead, of Alabama, quoted from Cannon's Precedents:

Mr. Speaker Clark, as reported in section 3248, volume VIII, of Cannon's Precedents, rendered a decision upon which the following syllabus is based:

The Speaker may not rule out of order a conference report as in contravention of instructions imposed on the managers. . . .

The Chair reads the following from the precedent he has just cited: . . .

The Speaker has not a thing to do in passing upon the question of whether the conferees did or did not comply with the instructions of the House. That question is for the House to decide. . . .

The Speaker then read section 6395 of Hinds' Precedents, and concluded:

It seems to the Chair that that opinion is as clear as crystal. This is a matter for the House to decide. The point of order is overruled, and the House has the conference report before it. If the House does not like the conference report, it can vote it down. That is its remedy.

Speaker Bankhead continued:

In other words, at the proper stage in the proceedings on this conference report, after the previous question has been ordered, if it is ordered on the adoption of the conference report, the Members making these points of order, or any other Member, may, in addition to the opportunity to vote down the conference report, have the right to offer a motion to recommit this entire bill to the conferees. . . .

In view of the decisions read, the Chair feels constrained to overrule the point of order made by the gentleman from New York [Mr. Wadsworth]. . . .

***Time for Point of Order as to Failure of Conferees To Reflect Views of Members***

**§ 25.2 A point of order that conferees appointed do not represent the attitude of the majority and minority members of the House on the disagreements in issue should be made when they are appointed, and it is too late to raise such question at the time the conferees file their report.**

On July 27, 1946,<sup>(7)</sup> Mr. Sam Hobbs, of Alabama, submitted for printing the conference report on S. 1253, a railroad reorganization measure. Mr. Francis E. Walter, of Pennsylvania, then rose:

Mr. Speaker, I make a point of order against the filing of the report.

THE SPEAKER:<sup>(8)</sup> The gentleman will state it.

MR. WALTER: Mr. Speaker, under the rules of the House, when conferees are appointed the differences in the views of the several Members should be con-

sidered in the appointment of the conferees.

In the instant case no regard was taken of seniority or the views of the Members, particularly those of the Committee on the Judiciary. An examination of the motion to recommit will disclose that those Members who did not speak on behalf of the bill voted against the motion to recommit, so that the only conferees on this tremendously important legislation were the proponents of any kind of legislation. . . .

THE SPEAKER: Of course, the Chair could enter into quite a discussion about the point the gentleman has raised, but the Chair thinks it is necessary only to say that if the point of order the gentleman contends for would lodge it comes too late. It should have been made when the conferees were appointed.

The Clerk read the title of the bill, and the Speaker ordered the bill printed.<sup>(9)</sup>

***Time for Point of Order as to Consideration in Committee of the Whole***

**§ 25.3 A point of order under Rule XX clause 1 that a particular Senate amendment included in a conference report should have been considered in the Committee of the Whole is not in order**

7. 92 CONG. REC. 10326, 79th Cong. 2d Sess.

8. Sam Rayburn (Tex.).

9. See 92 CONG. REC. 10327, 79th Cong. 2d Sess., July 27, 1946.

**when the report is called up for consideration, and must be made before the bill and Senate amendment are sent to conference.**

On Oct. 20, 1966,<sup>(10)</sup> Mr. Wilbur D. Mills, of Arkansas, called up the conference report on H.R. 13103, the Foreign Investment Tax Act of 1966. Mr. Howard W. Smith, of Virginia, rose with a point of order:

Mr. Speaker, I desire to make a point of order against title III of the conference report.

THE SPEAKER:<sup>(11)</sup> The gentleman will state his point of order.

MR. SMITH of Virginia: Mr. Speaker, this point of order is directed at title III of the conference report. That title is the one that provides for the contribution of \$1 apiece from any taxpayer who wishes to do so, to be used as a fund to be divided between the political parties in Presidential elections. The title itself has never been before the House. This is a Senate amendment to the bill that the gentleman from Arkansas has just called up. It is not germane to that bill itself and comes under the prohibition of rule XX of the rules of the House.<sup>(12)</sup>

And, Mr. Speaker, I shall read the part that is relevant to the point of order:

Any amendment of the Senate to any House bill shall be subject to the point of order that it shall first be considered in the Committee of the Whole House on the state of the Union, if originating in the House, it would be subject to that point. . . .

THE SPEAKER: The Chair is prepared to rule. . . .

Without passing upon the germaneness of the amendment, because that point was not raised, the Chair calls attention to the fact that the Senate amendment went to conference by unanimous consent. Where unanimous consent was obtained, the effect of that is to circuit rule XX, in other words, to waive or vitiate that portion of rule XX.

If objection had been made at the point when the unanimous consent request was made to send the bill to conference, then the bill could have been referred to the proper standing committee, and then, if and when reported out of the committee would have been brought up for consideration in the Committee of the Whole House on the State of the Union.

At this point, and under the parliamentary situation, the bill was sent to conference by unanimous consent; and this applies to all bills that go to conference by unanimous consent, if there be provisions therein that might be subject to the first sentence of rule XX. If there is no objection made at that time, the bill goes to conference; which in this case had the effect of suspending that portion of rule XX. Therefore, it is properly before the House at the present time as part of the conference

10. 112 CONG. REC. 28240, 28241, 89th Cong. 2d Sess.

11. John W. McCormack (Mass.).

12. Rule XX clause 1, *House Rules and Manual* § 827 (1997).

report and the Chair overrules the point of order.

**§ 25.4 Amendments between the Houses, once disagreed to, do not again require consideration in the Committee of the Whole in the event the conference report is ruled out of order.**

On Aug. 19, 1937,<sup>(13)</sup> Mr. John Taber, of New York, raised a point of order against the conference report on H.R. 7646, relating to public works for flood control, on the ground that the conferees had exceeded their authority.

THE SPEAKER:<sup>(14)</sup> The Chair is prepared to rule. . . .

There is a long and consistent line of decisions and precedents holding that such powers are clearly beyond the authority of the conferees and the Chair regretfully feels compelled to sustain the point of order.

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

THE SPEAKER: The gentleman will state it.

MR. SNELL: When a conference report has been thrown out on a point of order is it not the same as if it had been rejected by the House.

THE SPEAKER: The gentleman from New York makes a parliamentary in-

quiry as to whether when a point of order to a conference report is sustained ipso facto, the Senate amendments come before the House for further consideration. Is that the parliamentary inquiry?

MR. SNELL: Yes.

THE SPEAKER: In reply to the gentleman the Chair calls the gentleman's attention to section 3257, volume 8, Cannon's Precedents:

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

MR. SNELL: When this first came back from the Senate there was an important matter that should have gone before the committee for consideration because it entailed expenditure of large amounts of money, and is it a privileged motion to move to consider that in the House at the present time?

THE SPEAKER: It is in the opinion of the Chair, because by sending the bill and Senate amendments to conference, the provisions of the rules requiring consideration in Committee of the Whole were waived.

The Clerk will report the first amendment in disagreement.

***Time for Point of Order as to Substance of Report***

**§ 25.5 A point of order against a conference report is properly raised after the reading of the report.**

13. 81 CONG. REC. 9376-79, 75th Cong. 1st Sess.

14. William B. Bankhead (Ala.).

On the legislative day of Sept. 25, 1961,<sup>(15)</sup> Mr. Albert Thomas, of Texas, called up the conference report on H.R. 9169, supplemental appropriations for fiscal 1961, and sought unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> Is there objection to the request of the gentleman from Texas?

MR. [JOHN] TABER [of New York]: Mr. Speaker, I object.

The Clerk read the conference report.

MR. TABER: Mr. Speaker, I make a point of order against the conference report, and I refer especially to the paragraph on page 30, under the title of "Preservation of Ancient Nubian Monuments—Special Foreign Currency Program". . . .

After hearing the arguments for and against the point of order, the Speaker Pro Tempore overruled the point of order.

**§ 25.6 Points of order against conference reports are made after the reading of the report and before the reading of the joint statement of the managers.**

15. 107 CONG. REC. 21521, 87th Cong. 1st Sess., Sept. 27, 1961 (Calendar Day).

16. John W. McCormack (Mass.).

On Mar. 27, 1945,<sup>(17)</sup> the Clerk was about to read the conference report on H.R. 1752, providing for the mobilization of civilian manpower, when Mr. Forest A. Harness, of Indiana, posed a parliamentary inquiry:

I propose to make a point of order against the report. As I understand the rules, the point of order must be made after the reading of the report and before the reading of the statement.

THE SPEAKER:<sup>(18)</sup> That is correct.<sup>(19)</sup>

***Reading of Conference Report Dispensed With if Printed in Record***

**§ 25.7 In the 96th Congress, the House adopted a new rule waiving the reading requirement for any conference report (and amendment in disagreement) which has been printed in the Record for three days.**

17. 91 CONG. REC. 2838-40, 79th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

19. See also 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess., Dec. 14, 1971; 100 CONG. REC. 12399-445, 83d Cong. 2d Sess., July 28, 1954; 96 CONG. REC. 14120, 14134, 81st Cong. 2d Sess., Sept. 1, 1950; and 93 CONG. REC. 10479, 80th Cong. 1st Sess., July 26, 1947.

On Jan. 15, 1979,<sup>(20)</sup> Rule XXVIII clause 2,<sup>(1)</sup> was amended as indicated as part of the package of rules changes adopted on the opening day of the 96th Congress.

(19)(a) In Rule XXVIII, clause 2, add the following new subclause:

“(c) Any conference report and Senate amendment in disagreement which has been available as provided in paragraphs (a) and (b) of this clause shall be considered as having been read when called up for consideration.” . . .

MR. [JAMES C.] WRIGHT [Jr., of Texas]: . . . We would anticipate that all of the Members on the Democratic side, as has been the tradition unbrokenly in the past, will support the decision of the Democratic Caucus and of the majority party. Basically, the purpose of these changes is to save the time of the House, to save the taxpayers waste of that valuable time, and to save Members the harassment that has sometimes come from procedural demands that they present themselves and vote on meaningless votes.

### *Proper Time for Point of Order*

**§ 25.8 Where a conference report is considered as read, pursuant to a special order previously adopted, the proper time to raise a point of order is when the report is**

20. 125 CONG. REC. 9, 96th Cong. 1st Sess.

1. See *House Rules and Manual* § 912d (1997).

**called up for consideration and the title has been reported.**

On Oct. 6, 1978,<sup>(2)</sup> the House had adopted a special order providing, *inter alia*, that for the remainder of the second session, 95th Congress, conference reports might be considered on the same day filed (subject to the two-hour layover requirement in Rule XXVIII clause 2) and would be considered as read when called up for consideration.

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1404 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1404

*Resolved*, That it shall be in order at any time during the remainder of the second session, Ninety-fifth Congress, up to and including October 15, 1978: (1) To consider conference reports and amendments reported from conference in disagreement on the same day reported or any day thereafter notwithstanding the provisions of clause 2, Rule XXVIII (but subject to the two-hour availability requirement of that clause), and any said conference report or amendment in disagreement shall be considered as having been read when called up for consideration; (2) for the Speaker

2. 124 CONG. REC. 34085, 95th Cong. 2d Sess.

to declare recesses at any time, subject to the call of the Chair; and (3) for the Speaker to entertain motions to suspend the rules.

It was pursuant to this authority that Mr. George E. Danielson, of California, called up the conference report on S. 555, the Ethics in Government Act, on Oct. 12, 1978.<sup>(3)</sup>

CONFERENCE REPORT ON S. 555,  
ETHICS IN GOVERNMENT ACT OF  
1978

MR. DANIELSON: Mr. Speaker, I call up the conference report on the Senate bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes.

The Clerk read the title of the Senate bill.

(For conference report and statement, see proceedings of the House of October 11, 1978.)

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> Under the rule previously adopted, the conference report is considered as having been read.

**§ 25.9 Where a conference report is considered read pursuant to a special order previously adopted, the proper**

3. 124 CONG. REC. 36459, 95th Cong. 2d Sess.

4. Norman Y. Mineta (Calif.).

**time for pressing a point of order against the report is after the title has been reported.**

A parliamentary inquiry about the proper timing of a point of order was directed to the Speaker on Oct. 12, 1978.<sup>(5)</sup>

CONFERENCE REPORT ON S. 555, ETHICS  
IN GOVERNMENT ACT OF 1978

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I call up the conference report on the Senate bill (S. 555) to establish certain Federal agencies, effect certain reorganizations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions, and for other purposes.

The Clerk read the title of the Senate bill.

(For conference report and statement, see proceedings of the House of October 11, 1978.)

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Under the rule previously adopted, the conference report is considered as having been read.

PARLIAMENTARY INQUIRY

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I pose a parliamentary inquiry.

5. 124 CONG. REC. 36459, 36460, 95th Cong. 2d Sess.

6. Norman Y. Mineta (Calif.).

It is my intention to make a point of order against title VI of the conference report, and I will do so at this time if it is the appropriate time to do so.

THE SPEAKER PRO TEMPORE: This is the appropriate time. Is the gentleman designating title VI?

***Points of Order When Statement of Managers Is Read in Lieu of Report***

**§ 25.10 A point of order against a conference report must be made or reserved after the reading of the report and before the reading of the statement; and if unanimous consent is asked that the statement be read in lieu of the report, the point of order must be made or reserved before the reading of the statement.**

On Dec. 17, 1969,<sup>(7)</sup> the following occurred in the House:

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I call up the conference report on the bill (S. 2917) to improve the health and safety conditions of persons working in the coal mining industry of the United States, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

7. 115 CONG. REC. 39704, 91st Cong. 1st Sess.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Kentucky?

MR. [JOHN N.] ERLBORN [of Illinois]: Mr. Speaker, reserving the right to object, I would like to make a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. ERLBORN: It is my intention to make a point of order against the conference report. I understand that this must be made before the statement on the part of the managers is read. Am I correct?

THE SPEAKER: In response to the parliamentary inquiry, the gentleman's understanding is also the understanding of the Chair. The gentleman is correct.

MR. ERLBORN: If I do not object to the unanimous-consent request for dispensing with the reading of the report, will I be protected in my point of order before the statement of the managers is read?

THE SPEAKER: The gentleman could reserve a point of order, and he could exercise it at the conclusion of the reading of the statement of the managers on the part of the House.

MR. ERLBORN: Mr. Speaker, I reserve the point of order against the report and withdraw my reservation of objection.

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

8. John W. McCormack (Mass.).



There was no objection.  
The Clerk read the statement.<sup>(9)</sup>

**§ 25.11 A point of order against a conference report must be made after the reading of the report and before the reading of the joint statement, and where unanimous consent is granted to read the statement in lieu of the report, a point of order is properly made before the reading of the statement commences.**

On Dec. 15, 1975,<sup>(10)</sup> the chairman of the Committee on Interstate and Foreign Commerce<sup>(11)</sup> called up the report of the managers at the conference on S. 622, the Energy Policy and Conservation Act. Mr. Staggers then asked that the statement be read in lieu of the report. Numerous Members reserved the right to object to this request to question various managers at the conference about the meaning and effect of several controversial provisions and to ask

9. See also 118 CONG. REC. 20278-80, 92d Cong. 2d Sess., June 8, 1972; 118 CONG. REC. 1076, 92d Cong. 2d Sess., Jan. 25, 1972; and 93 CONG. REC. 10479, 80th Cong. 1st Sess., July 26, 1947.

10. 121 CONG. REC. 40672, 40675, 40676, 94th Cong. 1st Sess.

11. Harley O. Staggers (W. Va.).

the Chair about the proper time to lodge points of order against the report. The action of calling up the report, the proceedings, and a portion of the colloquies under the reservation of the right to object are carried herein:

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I reserved the right to object in order to ask a question of the gentleman from West Virginia, the chairman of the committee.

Mr. Speaker, I would like to ask the gentleman from West Virginia a question with respect to the inclusion in the conference substitute for S. 622, of provisions relating to application of advanced automotive technology. These provisions establish a program in the Department of Transportation to develop new automotive technologies and guarantee loans for these purposes. These provisions came from title II of S. 1883, which was referred to the Committee on Science and Technology as H.R. 9174. Is the inclusion of these provisions in the conference report an assertion of jurisdiction by the Interstate and Foreign Commerce Committee over the subject of energy or environmental research and development?

MR. STAGGERS: If the gentleman will yield, I will be very happy to say very emphatically that we have no intention of ever invading the authority of any other committee. . . .

MR. TEAGUE: Mr. Speaker, I withdraw my reservation of objection. . . .

THE SPEAKER:<sup>(12)</sup> Is there objection to the request of the gentleman from West Virginia (Mr. Staggers)?

PARLIAMENTARY INQUIRY

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, reserving the right to object, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ANDERSON of Illinois: I address the Chair with the following parliamentary inquiry: At which point would it be in order to offer or make a point of order against section 102 of the conference report?

THE SPEAKER: If objection to the reading of the statement is not made, or at any time prior to reading the statement. The Chair has promised he is going to recognize the gentleman from California first on that issue, either now or at that point.

MR. ANDERSON of Illinois: Mr. Speaker, if I still have the floor, I make a point of order against section 102 of the conference report.

THE SPEAKER: The gentleman will not be recognized because there is a unanimous-consent request pending.

MR. ANDERSON of Illinois: May I reserve a point of order against that section?

THE SPEAKER: The gentleman's rights will be protected, but the Chair has already promised the gentleman from California that he would recognize him first on his point of order.

Is there objection to the request of the gentleman from West Virginia (Mr. Staggers).

MR. [GEORGE E.] BROWN [Jr.] of California: Reserving the right to object, Mr. Speaker I reserve the right to object to inquire further with regard to the scope of the conference report and the degree to which it conforms to rule XXVIII, clause 1. I call the attention of either the chairman of the committee or the chairman of the subcommittee to the statement in the report having to do with sections 531 and 541 which state, in one sentence, that the provisions follow the House language. . . .

MR. BROWN of California: I understand that the conference report has dropped the definition of any energy action. The gentleman is, therefore, defining this as merely a technical action?

MR. [JOHN D.] DINGELL [Jr., of Michigan]: It is defined in the conference report.

MR. BROWN of California: No; the definition of any energy action is nowhere defined. It was in the House bill when it went to the Senate, but that provision was dropped for the conference report.

MR. DINGELL: I thank the gentleman for that advice.

MR. BROWN of California: Is it the gentleman's view, then, that that is purely a technical matter and that the report in that respect does conform to the requirements of clause 1, rule XXVIII?

MR. DINGELL: Let me read the language of section 551 for the benefit of the gentleman:

For purposes of this section, the term "energy action" means any matter required to be transmitted or submitted to the Congress in accor-

12. Carl Albert (Okla.).

dance with the procedures of this section. . . .

MR. DINGELL: I support the conference report.

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

There was no objection.

### *Reservation of Point of Order*

**§ 25.12 A point of order against a conference report must be made or reserved prior to the reading of the statement of the managers in lieu thereof, and when so reserved may be entertained after the reading of the statement.**

On June 23, 1959,<sup>(13)</sup> the following occurred in the House:

MR. [ALBERT] RAINS [of Alabama]: Mr. Speaker, I call up the conference report on the bill (S. 57) to extend and amend laws relating to the provision and improvement of housing and the renewal of urban communities, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from Alabama?

MR. [GRAHAM A.] BARDEN [of North Carolina]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BARDEN: Mr. Speaker, I want to make a point of order against the conference report. Should I reserve the point of order against the conference report at this point or wait until later?

THE SPEAKER: If the gentleman intends to make a point of order he has to reserve it at this time.

MR. BARDEN: Mr. Speaker, I reserve the point of order at this time.

THE SPEAKER: Is there objection to the statement of the managers on the part of the House being read in lieu of the report?

There was no objection. . . .

THE SPEAKER: The Clerk will read the statement of the Managers on the part of the House.

The Clerk read the statement. . . .

MR. BARDEN: Mr. Speaker, I make a point of order against the provisions of the conference report.

**§ 25.13 A point of order against a conference report normally is entertained after the reading of the report, or after the reading is dispensed with; but a point of order has been entertained after the reading of the statement where a clear reservation of the point of order was on the record in a timely manner.**

When a conference report on a bill was called up in the House on

13. 105 CONG. REC. 11599, 11600, 11615, 86th Cong. 1st Sess.

14. Sam Rayburn (Tex.).

Oct. 1, 1980,<sup>(15)</sup> repeated unanimous-consent requests were made to dispense with the reading of the report and then to read the statement in lieu of the report. After receiving assurances that his right to press a point of order would be protected, Mr. George E. Danielson, of California, allowed the reading of the statement to proceed and the Chair then entertained the point of order.

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I call up the conference report on the bill (H.R. 5612) to amend section 8(a) of the Small Business Act, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. DANIELSON: Mr. Speaker, I make a point of order against this conference report.

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman will be protected.

Is there objection to the request of the gentleman from Iowa?

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the report.

The Clerk proceeded to read the report.

MR. SMITH of Iowa (during the reading): Mr. Speaker, I ask unanimous

consent that the statement of the managers be read in lieu of the report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

MR. DANIELSON: Mr. Speaker, a while ago I raised a point of order against the conference report. I understood the Speaker to say that my point of order will be protected.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. DANIELSON: If I am not waiving any rights, I will withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Without objection, the statement of the managers will be read in lieu of the report.

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 30, 1980.)

### ***Reservation of Point of Order Pending Request That Statement Be Read in Lieu of Report***

**§ 25.14 When a point of order against a conference report is reserved pending a request that the statement of the managers be read in lieu of the report, and this request is denied, the point of order is made after the report is read.**

15. 126 CONG. REC. 28637, 28638, 96th Cong. 2d Sess.

16. William H. Natcher (Ky.).

On Dec. 20, 1969,<sup>(17)</sup> the following occurred in the House:

MR. [OTTO E.] PASSMAN [of Louisiana]: Mr. Speaker, I call up the conference report on the bill (H.R. 15149) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1970, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(18)</sup> The gentleman from Illinois will state his parliamentary inquiry.

MR. YATES: At what point is it in order to make a point of order against the conference report?

THE SPEAKER: The Chair will state in response to the parliamentary inquiry of the gentleman from Illinois that such a point of order would be in order after the reading of the report or the gentleman can reserve a point of order now before the reading of the statement accompanying the report.

MR. YATES: Mr. Speaker, I reserve a point of order on the conference report.

THE SPEAKER: The gentleman from Illinois reserves a point of order on the conference report.

Is there objection to the request of the gentleman from Louisiana? . . .

MR. [DONALD M.] FRASER [of Minnesota]: Mr. Speaker, I object to the unanimous-consent request.

THE SPEAKER: The Clerk will read the conference report.

The Clerk read the conference report.

MR. YATES: Mr. Speaker, I make a point of order against that portion of the conference report which provides funds for the purchase of planes for the Republic of China on the ground that it is an appropriation that is not authorized by law.

### *Consideration of Conference Report Postponed To Preserve Point of Order*

**§ 25.15 A point of order against a conference report is made following the reading of the report and is premature when only the title has been read by the Clerk.**

In response to a parliamentary inquiry during the session of the House on Sept. 30, 1976,<sup>(19)</sup> the Speaker explained the proper time for raising a point of order against a conference report.

CONFERENCE REPORT ON H.R. 12572,  
U.S. GRAIN STANDARDS ACT OF 1976

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 12572) to amend the U.S. Grain Standards Act to improve the grain inspection and weighing system, and for other purposes, and ask unanimous consent that

17. 115 CONG. REC. 40445-48, 91st Cong. 1st Sess.

18. John W. McCormack (Mass.).

19. 122 CONG. REC. 34224, 34225, 94th Cong. 2d Sess.

the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [W. HENSON] MOORE [of Louisiana]: Mr. Speaker, I make a point of order against consideration of this conference report.

THE SPEAKER:<sup>(20)</sup> The gentleman will state his point of order.

MR. MOORE: Mr. Speaker, the conference report, in particular section 8, subparagraph (5), violates clause 3 of Rule XXVIII of the rules of the House.

THE SPEAKER: Will the gentleman withhold his point of order, because the gentleman is premature. We have to read the report before the point of order would lie.

MR. MOORE: My rights will be protected to raise the point of order, Mr. Speaker?

THE SPEAKER: The gentleman's rights will be protected. . . .

Is there objection to the request of the gentleman from Washington?

There was no objection.

MR. MOORE: Mr. Speaker, I reserve my point of order on the conference report.

THE SPEAKER: The gentleman from Louisiana (Mr. Moore) reserves a point of order on the conference report.

Does the gentleman from Washington (Mr. Foley) request that this matter be put over and be made the first order of business tomorrow?

MR. FOLEY: Mr. Speaker, I ask unanimous consent that the further consideration of this conference report

be postponed, and that it be made the first order of business tomorrow.

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

There was no objection.

*During Debate on Report*

**§ 25.16 A point of order against a conference report must be made after the reading of the conference report is completed or dispensed with, and comes too late after debate has been had on the conference report.**

On Oct. 18, 1972,<sup>(1)</sup> Mr. Wilbur D. Mills, of Arkansas, called up the conference report on H.R. 16810, to provide a temporary increase in the public debt limitation, and obtained the consent of the House that the statement of the managers be read in lieu of the report.

MR. MILLS of Arkansas (during the reading): Mr. Speaker, I ask unanimous consent that the statement of the managers be considered as read.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from Arkansas?

There was no objection.

20. Carl Albert (Okla.).

1. 118 CONG. REC. 37065-67, 37073, 92d Cong. 2d Sess.  
2. Carl Albert (Okla.).

MR. MILLS of Arkansas: Mr. Speaker, I yield myself 5 minutes. . . .

Mr. Mills then began to explain the conference report, answering several questions posed by Mr. John F. Seiberling, of Ohio, Mr. Richard C. White, of Texas, and Ms. Bella S. Abzug, of New York.

MR. JAMES J. PICKLE [of Texas]: Mr. Speaker, will the gentleman yield?

MR. MILLS of Arkansas: I yield to the gentleman from Texas.

MR. PICKLE: I was off the floor when this bill was first brought up, after waiting an hour.

MR. MILLS of Arkansas: Let me tell the gentleman about it, if he wanted to make a point of order.

MR. PICKLE: I wanted to ask that question of the Speaker.

Mr. Speaker, may I make a parliamentary inquiry?

THE SPEAKER: The gentleman will state it.

MR. PICKLE: Would the gentleman from Texas be permitted to make the point of order that the title in this conference report pertaining to the unemployment benefits program is not germane under this conference report?

THE SPEAKER: That point of order would come up too late now.

### *Subsequent Point of Order*

**§ 25.17 Where a point of order against a conference report is overruled, a second point of order may be pressed against the report providing**

**that debate on the report has not intervened.**

On Dec. 20, 1969,<sup>(3)</sup> after Mr. Otto E. Passman, of Louisiana, called up the conference report on H.R. 15149, foreign assistance appropriations for fiscal 1970, Mr. Sidney R. Yates, of Illinois, raised a point of order against the report on the ground that the conferees exceeded their authority. After Speaker John W. McCormack, of Massachusetts, heard the arguments for and against the conference report, the following occurred:

THE SPEAKER: . . . The gentleman from Louisiana is recognized for 1 hour.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Louisiana yield for a parliamentary inquiry?

MR. PASSMAN: Mr. Speaker, I yield for a parliamentary inquiry.

MR. GROSS: Mr. Speaker, I desire to make a point of order against consideration of the bill.

MR. PASSMAN: Mr. Speaker, I yielded to the gentleman for a parliamentary inquiry, not for a motion.

MR. GROSS: Mr. Speaker, I make a point of order against consideration of the conference report in toto.

THE SPEAKER: The gentleman will state his point of order.

3. 115 CONG. REC. 40445-48, 91st Cong. 1st Sess.

*Several Points of Order***§ 25.18 The Speaker indicated that the Chair would rule on all points of order raised against a conference report, whether they were made separately or at one time.**

On June 8, 1972,<sup>(4)</sup> the House was considering the conference report on S. 659, the Higher Education Amendments of 1972. After further reading of the report had been dispensed with, Speaker Carl Albert, of Oklahoma, recognized Mr. Joe D. Waggoner, Jr., of Louisiana, who sought to offer separately two points of order.

THE SPEAKER: The Chair would state to the gentleman from Louisiana that the Chair would prefer the gentleman would make both points of order at this time.

MR. WAGGONNER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WAGGONNER: Mr. Speaker, my parliamentary inquiry is this, if the gentleman from Louisiana states both points of order simultaneously, for consideration simultaneously, is the gentleman hindered in any way if one point of order should have merit and the other not have merit?

4. 118 CONG. REC. 20278-80, 92d Cong. 2d Sess.

THE SPEAKER: The Chair will state that the gentleman from Louisiana would not lose his rights to have the Chair pass on both points of order.

MR. WAGGONNER: A further parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WAGGONNER: Mr. Speaker, it is my understanding then that the Chair will rule on the points of order separately?

THE SPEAKER: The Chair will rule on all points of order.

MR. WAGGONNER: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WAGGONNER: Mr. Speaker, my parliamentary inquiry is this, will the Chair rule separately on all points of order?

THE SPEAKER: The Chair will state that the Chair would like to hear the points of order first.

MR. WAGGONNER: Mr. Speaker, I prefer to make the points of order separately.

THE SPEAKER: The gentleman from Louisiana will state his first point of order.

*Order of Entertaining Points of Order Against Conference Reports***§ 25.19 The Chair attempts to entertain and rule on points of order against conference reports which, if sustained, will vitiate the entire report (as under the Congressional**



**Budget Act) before entertaining points of order under Rule XXVIII clause 4, which if sustained will merely permit motions to reject the nongermane portions of the report.**

On Sept. 23, 1976,<sup>(5)</sup> the House had before it H.R. 10339, the conference report on the Farmer-to-Consumer Direct Marketing Act of 1976. A Member challenged the report, stating that he had two points of order, one that the report provided for new entitlement authority to become prematurely effective (in violation of section 401(b)(1) of the Budget Act), and another that the conferees had agreed to a provision which was not germane to the House version of the measure (Rule XXVIII clause 4).<sup>(6)</sup> The Chair first heard argument on the Budget Act point, for if it were sustained, there would be no need to address the second point of order. The proceedings were as indicated:

MR. [JOSEPH P.] VIGORITO [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct mar-

5. 122 CONG. REC. 32099, 32100, 32104, 32108, 94th Cong. 2d Sess.

6. *House Rules and Manual* § 913b (1997).

keting of agricultural commodities from farmers to consumers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(7)</sup> Is there objection to the request of the gentleman from Pennsylvania?

POINT OF ORDER

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, I make a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. ROUSSELOT: Mr. Speaker, I have two points of order to raise against the conference report on H.R. 10339 (H. Rept. 94-1516).

The first is under the Budget Control Act. The second is under House Rule XXVIII.

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93-344) provides as follows:

(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

7. Carl Albert (Okla.).

## EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill.

This bill is effective during the so-called transition period of July 1-September 30, 1976.

In any event it is a new spending authority effective before October 1, 1976 . . . .

The second point of order is that section 8 of the conference report is not in compliance with rule XXVIII, clause 4, and if such language were offered to H.R. 10339 during its consideration in the House it would not be deemed to be germane under rule XI, clause 7.

THE SPEAKER: Does the gentleman from Pennsylvania (Mr. Vigorito) desire to be heard on the points of order?

MR. VIGORITO: Yes, Mr. Speaker, I would like to be heard on the two points of order.

THE SPEAKER: The gentleman from Pennsylvania is recognized.

MR. VIGORITO: Mr. Speaker, my understanding is that if this program is an entitlement program under section

401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substantial length of time. We have less than a week before October 1 comes about. . . .

THE SPEAKER: The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget Impoundment and Control Act, as the entitlement to those payments might vest prior to October 1. If, as the Chair understands it, the entitlement to payments only vested after October 1, 1976, there would be no violation of the Budget Control Act.

What is the gentleman's answer to that?

MR. VIGORITO: The intent is only to begin after October 1, 1976.

THE SPEAKER: Of course, the Chair sees before him language which it seems to the Chair—and the Chair is sympathetic with what the gentleman is trying to do—indicates that:

In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or

major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

This language does not say when the entitlement to payments vests and does not imply when the payments begin. It does say when the payments end. But the point is that the payments cannot begin before October 31, 1976, without violating the Congressional Budget Act. . . .

THE SPEAKER: The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order.

The Chair will not rule on the second point of order, on germaneness grounds, because one point of order against the entire conference report has been sustained.

Will the gentleman undertake to work that out within the next day or two?

MR. VIGORITO: Mr. Speaker, I ask unanimous consent to pull this off so that we can work this out.

THE SPEAKER: The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure. . . .

MR. [BOB] BERGLAND [of Minnesota]: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 10339) to encourage the direct marketing of agri-

cultural commodities from farmers to consumers, with Senate amendments thereto, and consider the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 4, strike out "1975" and insert: "1976". . . .

MR. BERGLAND (during the reading): Mr. Speaker, I ask unanimous consent that Senate amendments be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> Is there objection to the request of the gentleman from Minnesota?

MR. ROUSSELOT: Mr. Speaker, reserving the right to object, can the gentleman tell us if the problem of compliance with the budget resolution is included in the gentleman's motion?

MR. BERGLAND: If the gentleman will yield, the answer is yes. The question which the gentleman raised earlier has been met. The effective date is October 1, 1976, therefore clearing up the question of entitlement in violation of the Budget Act. . . .

MOTION OFFERED BY MR. BERGLAND

MR. BERGLAND: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bergland moves to recede from disagreement to Senate amendment No. 1 and concur therein.

The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Clerk will report the next Senate amendment:

8. John J. McFall (Calif.).

Senate amendment: Page 5, line 16, strike out "for the fiscal year beginning October 1, 1976" and insert: "for each of the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979".

MOTION OFFERED BY MR. BERGLAND

MR. BERGLAND: Mr. Speaker, I offer a motion.<sup>(9)</sup>

The Clerk read as follows:

Mr. Bergland moves to recede from disagreement to Senate amendment No. 2 and concur therein with an amendment as follows: On page 1, lines 4 and 5 of the Senate engrossed amendments, strike out "September 30, 1978, and September 30, 1979" and insert in lieu thereof "and September 30, 1978";

The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Clerk will report the last Senate amendment.

The Clerk read as follows:

9. Under a literal reading of § 401(b) of the Congressional Budget Act, a point of order lies against the consideration in the House of a Senate amendment containing new entitlement authority, and such point of order would come before a motion was offered to recede and concur with an amendment which cured the Budget Act violation. The chairman of the Budget Committee (Mr. Adams) agreed with the Parliamentarian that a point of order should not lie against the mere consideration of such a Senate amendment so as to prevent any motion to dispose of the amendment. Rather, the point of order lies against the motion when made to dispose of the Senate amendment.

Senate amendment No. 3: Page 5, after line 16, insert:

EMERGENCY HAY PROGRAM

SEC. 8. (a) In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture, at the option of the farmers and ranchers, to:

(1) Purchase hay in areas of the United States in which hay is in plentiful supply, transport such hay to the area in which such farmers or ranchers are located, and sell such hay to such farmers or ranchers as prescribed in this section, or

(2) Pay the costs to transport the cattle of farmers and ranchers from such area to a location where adequate grazing land is available and the costs of transporting such cattle back to such area.

(b) Hay shall be made available under section 305 to farmers and ranchers to help such farmers and ranchers maintain their cattle herds during any period such assistance is needed as the result of an emergency or major disaster. . . .

(g) The Secretary of Agriculture is authorized to utilize the facilities of the Commodity Credit Corporation in carrying out any emergency livestock feed program under section 305 of the Disaster Relief Act of 1974.

MOTION OFFERED BY MR. BERGLAND

MR. BERGLAND: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bergland moves to recede from its disagreement to Senate amendment no. 3 and concur therein with an amendment as follows: In lieu of the matter proposed to be inserted by

the Senate amendment, insert the following:

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977; and shall become effective on October 1, 1976, or on the date of enactment of this Act, whichever is later.

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the several motions was laid on the table.

**§ 25.20 Under Rule XXVIII clause 4, once a motion to reject a portion of a conference report has been agreed to, following a decision that the portion was not germane, a point of order against the entire conference report under clause 3 of that rule, as exceeding scope, comes too late if the Speaker has already recognized the manager of the report to offer a motion to recede and concur with an amendment under clause 4.**

On Dec. 15, 1975,<sup>(10)</sup> during a long series of "reservations of the right to object" to a unanimous-consent request to dispense with further reading of a lengthy motion that the House recede and concur in a Senate amendment in disagreement with a further amendment (the text of the conference report which had not been stricken by the ruling on the germaneness point of order), the Speaker<sup>(11)</sup> responded to several inquiries concerning the parliamentary situation.

So the motion [to reject the portion of the conference report held not to be germane] was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: The Chair recognizes the gentleman from West Virginia (Mr. Staggers).

MOTION OFFERED BY MR. STAGGERS

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I offer a motion. The Clerk read as follows:

Mr. Staggers moves that the House recede from its disagreement to the Senate amendments to the House amendment and concur with an amendment, as follows: In lieu of the matter proposed to be inserted by the

10. 121 CONG. REC. 40681, 40710-14, 94th Cong. 1st Sess. (conference report on S. 622, Standby Energy Authorities Act).

11. Carl Albert (Okla.).

Senate amendment, insert the following:

*That this Act may be cited as the  
"Energy Policy and Conservation  
Act" . . .*<sup>(12)</sup>

12. The Staggers' motion deleted two provisions from the conference report. The first was that section which had been rejected by the adoption of a motion to reject as provided under Rule XXVIII clause 4, *House Rules and Manual* § 913b (1997). The conferees had, however, adopted a provision defining "new coal mines" to include new shafts in old mines, a change not contemplated by either version of the bill and thus not within the scope of the matter committed to conference, and this was also deleted by the Staggers' motion. Rule XXVIII clause 4(d)(1), *House Rules and Manual* (1997), states that "If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be—(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected . . .". Since the Staggers' motion deleted an additional section of the conference report against which no point of order had been raised it was not technically in order under the rule, however no point of order was made against the motion.

MR. STAGGERS (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

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

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I reserve the right to object.

MR. [BARRY M.] GOLDWATER [Jr., of California]: Mr. Speaker, I reserve the right to object.

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, I reserve the right to object.

MR. STAGGERS: Mr. Speaker, I would like to explain that what we are referring to is on page 8, commencing with article 4, down to the small "d," which the gentleman from Illinois had objected to, and that has been deleted from the amendment.

MR. ANDERSON of Illinois: Mr. Speaker, reserving the right to object, as the gentleman knows, I was prepared to offer a point of order to section 102 of the bill on the grounds it violates clause 3 of rule XXVIII, in that as the conference report came back from the House it contained a proposition which was not committed to the conference committee. That objection was based on the fact that H.R. 7014, the House bill in the section dealing with incentives to developing underground coal mines, limited it to a \$750 million total program to new coal mines.

On page 8 of the conference report in subparagraph (2)(c)(4) is contained the language:

The term "developing new underground coal mines" includes expan-

sion of existing underground coal mines.

Mr. Speaker, existing mines are clearly not the same thing as new mines. . . .

MR. ANDERSON of Illinois: With the clear understanding from the gentleman from West Virginia that the provision of the conference report has now been amended to insure that these loan guarantees will not go to the owners or the operators of existing mines, I will not raise a point of order which I think otherwise would have been sustained.

MR. STAGGERS: I thank the gentleman from Illinois.

#### PARLIAMENTARY INQUIRY

MR. BROWN of Ohio: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROWN of Ohio: Mr. Speaker, I rise to inquire about the parliamentary status with reference to this amendment. Presuming the amendment offered by the gentleman from West Virginia is in order before the House and is not objected to under the unanimous consent reservation, is it then in order that the amendment would be voted on immediately? Would there be time to debate that amendment?

THE SPEAKER: It would be subject to debate.

MR. BROWN of Ohio: Subject to debate under what time limitation?

THE SPEAKER: One-hour rule.

MR. BROWN of Ohio: Mr. Speaker, assuming that it then is approved, at that point does the House then go into consideration of the conference report, as

amended, or does that infer approval of the conference report at that point?

THE SPEAKER: The conference report has been rejected by the action on the Goldwater motion pursuant to clause 4(d), rule XXVIII.

MR. BROWN of Ohio: Mr. Speaker, I am not sure that I understand the answer to my question. Once more, the question is that, if the motion of the gentleman from West Virginia is not objected to and is open to debate for 1 hour—

THE SPEAKER: Adoption of the motion to strike rejected the conference report, the pending motion is to recede and concur with an amendment.

MR. BROWN of Ohio: And that would be a vote on the whole conference report?

THE SPEAKER: Minus the parts that were stricken.

MR. BROWN of Ohio: In other words, it would be a vote on the whole conference report except that which is taken out by the amendment of the gentleman from West Virginia, is that correct?

THE SPEAKER: By the motion of the gentleman from California and the additional deletion from page 8 contained in the motion of the gentleman from West Virginia. . . .

#### PARLIAMENTARY INQUIRIES

MR. [JOE D.] WAGGONER [Jr., of Louisiana]: Mr. Speaker, let us try to clear up the parliamentary situation here, and let us try to do it on a step-by-step basis to see if we can gain an understanding of where we are.

Mr. Speaker, am I correct in saying that by voting up the Goldwater mo-

tion, the net effect is that the House has now rejected the conference report?

THE SPEAKER: The gentleman is correct.

MR. WAGGONNER: Mr. Speaker, am I further correct in saying that if there is no objection to the motion under a reservation of objection or otherwise, offered by the gentleman from West Virginia (Mr. Staggers), there will be provided 1 hour of debate, 30 minutes for and 30 minutes against, on his motion, which has the net effect of striking from section 102 that language which makes in order or authorizes loan guarantees for development of existing coal mines?

THE SPEAKER: The gentleman is partially correct.

MR. WAGGONNER: Mr. Speaker, am I further correct in saying that if there is no objection and we do debate that issue and that motion is agreed to, then the situation would have developed wherein, if that motion is agreed to, the conference would then be reconvened and the Senate would have the option of accepting the action of the House or not accepting it?

THE SPEAKER: No. Would the gentleman bear with the Chair for a moment?

All the House can do now is to send an amendment back to the Senate. The Senate can either ask for a new conference or it can accept the amendment as presented to the Senate by the House. . . .

MR. BROWN of Ohio: Mr. Speaker, I reserve the right to object.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, will the gentleman yield?

MR. BROWN of Ohio: I yield to the gentleman from California.

MR. ROUSSELOT: Mr. Speaker, could we have another explanation on why the point of order that the gentleman from Illinois made could not be made at this point, could not be in order?

THE SPEAKER: The Chair will state that the point of order raised by the gentleman from Illinois (Mr. Anderson) was to the conference report and the conference report is no longer before the House.

While, in fact, most of what the Clerk is reading is identical to the text of the conference report, it is still a motion as though it were taken out and typed up separately. The Clerk is now reading a motion. Whether we read the whole motion or whether we agree to dispense with the further reading of the motion will have nothing to do with the parliamentary situation topside or bottom.

MR. ANDERSON of Illinois: Mr. Speaker, will the gentleman yield?

MR. BROWN of Ohio: I yield to the gentleman from Illinois.

MR. ANDERSON of Illinois: Mr. Speaker, if the gentleman will yield further, as I understand and interpret the remarks as given by the Speaker, they are that once the motion offered by the gentleman from California (Mr. Goldwater) to reject certain language in the conference report was adopted, the conference report was gone. Therefore any point of order which I might otherwise have been entitled to make under rule XXVIII, clause 3, having to do with certain matters as being beyond the scope of the conference, was no longer in order. That is, as I understand, the ruling of the Chair.

THE SPEAKER: The gentleman did not seek recognition at that time, and if, under the operation of clause 4(d), rule



XXVIII, a conference report is rejected, no further points of order against the report are in order. . . .

PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Would a point of order lie at this point against the portion of the motion, section 102, a point of order based on other grounds?

THE SPEAKER: The Chair knows of no other grounds. . . .

MR. [JOHN E.] MOSS [of California]: Mr. Speaker, I insist upon regular order.

MR. BAUMAN: The gentleman from Maryland is making a point of order.

MR. MOSS: Mr. Speaker, I insist upon regular order. The reading of the motion is the order before the House at this moment.

THE SPEAKER: The Chair will state to the gentleman that no point of order, whether there is one or is not, assuming there were one, would be in order until the motion is read.

MR. BAUMAN: I thank the gentleman. I will wait for that. . . .

There was no objection.

THE SPEAKER: The gentleman from West Virginia (Mr. Staggers) will be recognized for 30 minutes, and the gentleman from Ohio (Mr. Brown) will be recognized for 30 minutes.

***Points of Order Based on Non-germane Provisions in Conference Report***

**§ 25.21 Where four points of order were raised against provisions in a conference report, on the ground that the provisions targeted contained nongermane matter in violation of Rule XXVIII clause 4,<sup>(13)</sup> the Chair ruled on each point as it was raised. Two of the provisions were held germane, two were ruled not to be germane. One motion rejecting the offending matter was voted down. No motion to reject the second item of nongermane matter having been offered, the conference report as reported from the committee of conference was agreed to.**

The conference report of the Tax Reduction Act of 1975 was filed and called up in the House on Mar. 26, 1975.<sup>(14)</sup> Since printed copies were not available when the report was filed, the report was informally debated pursuant to special orders until the chairman of the Committee on Ways and Means, Al Ullman, of Oregon,

13. *House Rules and Manual* § 913b (1997).

14. 121 CONG. REC. 8899, 8930, 94th Cong. 1st Sess.

formally called up the report.<sup>(15)</sup> At that time, four points of order were lodged, seriatim, against provisions in the conference substitute. The first, raised by Mr. Barber B. Conable, Jr., of New York, was held to be germane; the second, also argued by Mr. Conable, was ruled out as not germane but after debate on the motion to reject the provision, on a voice vote the motion was defeated. The third, by Mr. Bill Frenzel, of Minnesota, was held not germane but no motion to reject the provision was offered. The final point of order, by Mr. William A. Steiger, of Wisconsin, was held germane.

After further debate on the conference agreement, the report was adopted by the House on a roll call vote.

MR. ULLMAN: Mr. Speaker, I call up the conference report on the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes, to increase the low income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, and for other purposes, and ask unanimous

15. 121 CONG. REC. 8900, 8902, 94th Cong. 1st Sess., Mar. 26, 1975. See also § 22.23, supra

consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from Oregon?

There was no objection.

The table of contents of the conference statement and the parts of the agreement which were the object of points of order are carried here for purposes of clarity.<sup>(17)</sup>

CONFERENCE REPORT (H. REPT. 94-120)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2166) to amend the Internal Revenue Code of 1954 to provide for a refund of 1974 individual income taxes, to increase the low income allowance and the percentage standard deduction, to provide a credit for certain earned income, to increase the investment credit and the surtax exemption, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

16. Carl Albert (Okla.).

17. See 121 CONG. REC. 8900-16, 94th Cong. 1st Sess., Mar. 26, 1975, for full text of the conference report.

## SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Tax Reduction Act of 1975".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Amendment of 1954 Code.

## TITLE I—REFUND OF 1974 INDIVIDUAL INCOME TAXES

Sec. 101. Refund of 1974 individual income taxes.

Sec. 102. Refunds disregarded in the administration of Federal programs and federally assisted programs.

## TITLE II—REDUCTIONS IN INDIVIDUAL INCOME TAXES

Sec. 201. Increase in low income allowance.

Sec. 202. Increase in percentage standard deduction.

Sec. 203. Credit for personal exemptions.

Sec. 204. Credit for certain earned income. . . .

## TITLE III—CERTAIN CHANGES IN BUSINESS TAXES

Sec. 301. Increase in investment credit.

Sec. 302. Allowance of investment credit where construction of property will take more than 2 years.

Sec. 303. Change in corporate tax rates and increase in surtax exemption. . . .

## TITLE IV—CHANGES AFFECTING INDIVIDUALS AND BUSINESSES

Sec. 401. Federal welfare recipient employment incentive tax credit.

Sec. 402. Time when contributions deemed made to certain pension plans.

## TITLE V—PERCENTAGE DEPLETION

Sec. 501. Limitations on percentage depletion for oil and gas.

## TITLE VI—TAXATION OF FOREIGN OIL AND GAS INCOME AND OTHER FOREIGN INCOME

Sec. 601. Limitations on foreign tax credit for taxes paid in connection with foreign oil and gas income.

Sec. 602. Taxation of earnings and profits of controlled foreign corporations and their shareholders. . . .

## TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Certain unemployment compensation.

Sec. 702. Special payment to recipients of benefits under certain retirement and survivor benefit programs.

The provision in the conference report at which the first point of order was directed is included here.

## SEC. 208. CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE.

(a) ALLOWANCE OF CREDIT.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowed) is amended by redesignating section 44 as section 45 and by inserting after section 43 the following new section:

## "SEC. 44. PURCHASE OF NEW PRINCIPAL RESIDENCE.

"(a) GENERAL RULE.—In the case of an individual there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 5 percent of the purchase price of a new principal residence purchased or constructed by the taxpayer.

## “(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) may not exceed \$2,000.

“(2) LIMITATION TO ONE RESIDENCE.—The credit under this section shall be allowed with respect to only one residence of the taxpayer.

“(3) MARRIED INDIVIDUALS.—In the case of a husband and wife who file a joint return under section 6013, the amount specified under paragraph (1) shall apply to the joint return. In the case of a married individual filing a separate return, paragraph (1) shall be applied by substituting ‘\$1,000’ for ‘\$2,000’.

“(4) CERTAIN OTHER TAXPAYERS.—In the case of individuals to whom paragraph (3) does not apply who together purchase the same new principal residence for use as their principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals as prescribed by the Secretary or his delegate, but the sum of the amounts allowed to such individuals shall not exceed \$2,000 with respect to that residence.

“(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, and 42.

“(c) DEFINITIONS.—For purposes of this section—

“(1) NEW PRINCIPAL RESIDENCE.—The term ‘new principal residence’ means a principal residence (within the meaning of section 1034), the original use of which commences with the taxpayer, and includes, without being limited to, a single family structure, a residential unit in a condominium or cooperative housing project, and a mobile home.

“(2) PURCHASE PRICE.—The term ‘purchase price’ means the adjusted

basis of the new principal residence on the date of the acquisition thereof. . . .

## POINT OF ORDER

MR. CONABLE: Mr. Speaker, I have a point of order.<sup>(18)</sup>

THE SPEAKER: The gentleman will state his point of order.

MR. CONABLE: Mr. Speaker, I make a point of order against the conference report on the ground it contains matter which is in violation of provision 1, clause 7, of rule XVI. The nongermane matter I am specifically referring to is that section of the report dealing with the tax credit on sales of new homes. It appears in section 208 of the conference report, on page 14, as reported by the Committee on Conference.

THE SPEAKER: Does the gentleman from New York (Mr. Conable) desire to be heard further on the point of order?

MR. CONABLE: Mr. Speaker, I will add only briefly that a careful scrutiny of the titles of the House bill, as it was sent to the Senate, shows many types

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18. Synopsis of this point of order: To a House bill containing several sections amending diverse portions of the Internal Revenue Code to provide individual and business tax credits, a portion of a Senate amendment in the nature of a substitute in the form of a new section which was contained in a conference report and which added a new section relating to tax credits for new home purchases and amended a portion of the law amended by the House bill was held germane. See 121 CONG. REC. 8900, 8902, 8930, 8931, 94th Cong. 1st Sess., Mar. 26, 1975.

of tax measures, but nothing relating to the sale of homes. This clearly is an addition of a very divergent nature to the bill and deals with the nonbusiness and nonpersonal type of credit.

THE SPEAKER: Does the gentleman from Oregon (Mr. Ullman) desire to be heard on the point of order?

MR. ULLMAN: Mr. Speaker, I would like to speak against the point of order.

Mr. Speaker, this is a very broad bill. It was a broadly based bill when it left this House to go to the other body. It has many diverse sections and many different kinds of tax treatments. It does deal with tax credits. It did deal with tax credits when it left the House, both for individuals and for corporations.

Mr. Speaker, it seems to me this falls totally within the purview of the bill as we passed it in the House and should be considered germane to the bill.

THE SPEAKER: The Chair is ready to rule.

The gentleman from New York (Mr. Conable) makes the point of order against section 208 of the conference report on the bill H.R. 2166 on the ground that it would not have been germane to H.R. 2166 as passed by the House and is thus subject to the provisions of clause 4, rule XXVIII.

In passing upon any point of order against a portion of the Senate amendment in the nature of a substitute which the conferees have incorporated in their report, the Chair feels it is important to initially characterize the bill H.R. 2166 in the form as passed by the House. The House-passed bill contained four diverse titles, and contained amendments to diverse portions of the Internal Revenue Code of 1954.

Title I of the House bill provided a refund of 1974 individual income taxes. Title II provided for reductions, including credits, in individual income taxes. Title III made several changes in business taxes, and title IV further affected business taxes by providing for the repeal of the percentage depletion for oil and gas.

The Senate amendment in the nature of a substitute contained provisions comparable to all four titles in the House-passed bill, and also contained a new title IV amending other portions of the Internal Revenue Code, making further amendments to the code with respect to tax changes affecting individuals and businesses, and a new title VI and title VII, relating to taxation of foreign and domestic oil and gas income and related income, and to the tax deferral and reinvestment period extension, respectively. The provision against which the gentleman makes the point of order was contained in section 205 of title II of the Senate amendment in the nature of a substitute.

The Chair would call the attention of the House to the precedent contained in Cannon's VIII, section 3042, wherein the Committee of the Whole ruled that to a bill raising revenue by several diverse methods of taxation, including excise taxes, an amendment in the form of a new section proposing an additional method of taxation—a tax on the undistributed profits of corporations—was held germane. The Chair would emphasize that the portion of the Senate amendment included in the conference report against which the point of order has been made was in the form of a new section to the House

bill, and was not an amendment to a specific section of the House bill. As indicated in Deschler's Procedure, chapter 28, section 14.4, the test of germaneness in such a situation is the relationship between the new section or title and the subject matter of the bill as a whole.

The Chair would also point out that section 203 of the House bill, on page 10, amends the same portion of the code which this part of the conference report would amend.

For these reasons, the Chair holds that section 208 of the conference report is germane to the House-passed bill and overrules the point of order.

The portion of the conference report relevant to the second point of order was as follows:

SEC. 702. SPECIAL PAYMENT TO RECIPIENTS OF BENEFITS UNDER CERTAIN RETIREMENT AND SURVIVOR BENEFIT PROGRAMS.

(a) PAYMENT.—The Secretary of the Treasury shall, at the earliest practicable date after the enactment of this Act, make a \$50 payment to each individual, who for the month of March, 1975, was entitled (without regard to sections 202(j)(1) and 223(b) of title II of the Social Security Act and without the application of section 5(a)(ii) of the Railroad Retirement Act of 1974) to—

(1) a monthly insurance benefit payable under title II of the Social Security Act,

(2) a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement

Act of 1937, or the Railroad Retirement Act of 1974, or

(3) a benefit under the supplemental security income benefits program established by title XVI of the Social Security Act; . . .

POINT OF ORDER

MR. CONABLE: Mr. Speaker, I have another point of order against the conference report.<sup>(19)</sup>

THE SPEAKER: The gentleman from New York will state his point of order.

MR. CONABLE: I make a point of order against the conference report on the ground that it contains matter which is in violation of clause 7, rule XVI.

The nongermane matter I am specifically referring to is that section of the report dealing with a rebate to social security recipients. This section appears as section 702 of the conference report, on page 55.

Mr. Speaker, I listened very carefully to the Chair's ruling on my earlier point of order. There is clearly nothing

19. A synopsis of this point of order: To a House bill containing several diverse amendments to the Internal Revenue Code to provide individual and business tax credits, a portion of a Senate amendment in the nature of a substitute contained in a conference report which authorized appropriations for special payments to social security recipients was not related to tax benefit provisions in the Internal Revenue Code and was ruled out as not germane. See 121 CONG. REC. 8911, 8912, 8931, 94th Cong. 1st Sess., Mar. 26, 1975.

in the House bill dealing with social security matters. There is nothing relating to a trust fund or the relationship of trust fund and general fund.

For that reason, Mr. Speaker, it seems to me that this, if not the earlier one, is clearly outside the scope of the House bill.

THE SPEAKER: Does the gentleman from Oregon (Mr. Ullman) desire to be heard on the point of order?

MR. ULLMAN: Yes, Mr. Speaker, I would like to speak in opposition to the point of order.

In the House-passed bill there was a provision very specifically rebating funds to individuals under title I. The measure included in this conference report does not affect the trust fund in any way. It does not in any way amend the Social Security Code.

In the statement of the managers we say the following:

The conferees emphasize that these payments are not Social Security benefits in any sense, but are intended to provide to the aged, blind, and disabled a payment comparable in nature to the tax rebate which the bill provides to those who are working.

Therefore, in a broadly based bill such as this kind, where various kinds of rebates are passed along to different segments of the public, it seems to me that this is perfectly within the scope of the bill and should be determined germane to the bill.

MR. CONABLE: Mr. Speaker, if I may add further, these recipients of rebates are recipients of rebates solely by virtue of their entitlement to social security benefits. We are using that device to designate who will receive these

benefits. It is clearly outside the scope of a general tax law.

THE SPEAKER: The Chair is prepared to rule.

Title V of the Senate amendment in the nature of a substitute "Miscellaneous Provisions" contained sections which did not amend the Internal Revenue Code and which could not be considered germane to any portion of the House-passed bill or the bill as a whole. Specifically, section 501 of the Senate amendment providing a special payment to recipients of benefits under certain retirement and survivor benefit programs, a modification of which was incorporated into section 702 of the conference report, is not germane to the House-passed bill. That provision is not related to the Internal Revenue Code and would provide an authorization of appropriations from the Treasury.

For this reason, the Chair holds that the section 702 of the conference report is not germane to the House bill and sustains the point of order.

MOTION OFFERED BY MR. CONABLE

MR. CONABLE: Mr. Speaker, I move the House reject the nongermane amendment covered by my point of order.

THE SPEAKER: The gentleman from New York is recognized for 20 minutes in support of his motion.

The motion to reject was defeated on a voice vote.

The provisions in title VII pertinent to the third point of order were as follows:

TITLE VII—MISCELLANEOUS  
PROVISIONSSEC. 701. CERTAIN UNEMPLOYMENT  
COMPENSATION.

(a) AMENDMENT OF EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974.—Section 102(e) of the Emergency Unemployment Compensation Act of 1974 is amended—

(1) in paragraph (2) thereof by striking out “The amount” and inserting in lieu thereof “Except as provided in paragraph (3), the amount”; and

(2) by adding at the end thereof the following new paragraph:

“(3) Effective only with respect to benefits for weeks of unemployment ending before July 1, 1975, the amount established in such account for any individual shall be equal to the lesser of—

“(A) 100 percentum of the total amount of regular compensation (including the dependents’ allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

“(B) twenty-six times his average weekly benefit amount (as determined for purposes of section 202(b)(i)(C) of the Federal-State Extended Unemployment Compensation Act of 1970) for his benefit year.”

(b) MODIFICATION OF AGREEMENTS.—The Secretary of Labor shall, at the earliest practicable date after the enactment of this Act, propose to each State with which he has in effect an agreement entered into pursuant to section 102 of the Emergency Unemployment Compensation Act of 1974 a modification of such agreement designed to cause payments of emergency compensation thereunder to be made in the manner prescribed by such Act, as amended by subsection (a) of this section.

Notwithstanding any provision of the Emergency Unemployment Compensation Act of 1974, if any such State shall fail or refuse, within a reasonable time after the date of the enactment of this Act, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement. . . .

## POINT OF ORDER

MR. FRENZEL: Mr. Speaker, I make a point of order against the conference report.<sup>(20)</sup>

THE SPEAKER: The gentleman from Minnesota will state his point of order.

MR. FRENZEL: Mr. Speaker, I make a point of order against the conference report on the ground that it contains matter which is in violation of the provisions of clause 7 of rule XVI. The nongermane matter that I am specifically referring to is that section of the report dealing with section 701, providing certain unemployment compensation benefits.

THE SPEAKER: Does the gentleman desire to be heard any further?

MR. FRENZEL: I do, Mr. Speaker.

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20. A synopsis of this point of order: To a House bill amending diverse portions of the Internal Revenue Code to provide individual and business tax credits, a portion of a Senate amendment in the nature of a substitute contained in a conference report providing certain unemployment compensation benefits—a matter not within the class of tax benefits contained in the House bill—was conceded to be not germane. See 121 CONG. REC. 8911, 8933, 94th Cong. 1st Sess., Mar. 26, 1975.



I have looked over the House bill, and I can find no reference therein to unemployment compensation benefits. As nearly as I can figure it, this particular section came from a Senate nongermane amendment and has no relation whatsoever to anything that was contained in the House bill.

I, therefore, say the point of order should be sustained.

THE SPEAKER: Does the gentleman from Oregon desire to be heard upon the point of order?

MR. ULLMAN: Mr. Speaker, I concede the point of order.

THE SPEAKER: The gentleman from Oregon concedes the point of order, and the point of order is sustained.

Does the gentleman from Minnesota (Mr. Frenzel) desire to offer a motion?

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

The provisions of the conference report pertinent to the final point of order were as follows:

SEC. 602. TAXATION OF EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS AND THEIR SHAREHOLDERS.

(a) REPEAL OF MINIMUM DISTRIBUTION EXCEPTION TO REQUIREMENT OF CURRENT TAXATION OF SUBPART F INCOME.—

(1) REPEAL OF MINIMUM DISTRIBUTION PROVISIONS.—Section 963 (relating to receipt of minimum distributions by domestic corporations) is hereby repealed.

(2) CERTAIN DISTRIBUTIONS BY CONTROLLED FOREIGN CORPORATIONS TO REGULATED INVESTMENT COMPANIES TREATED AS DIVIDENDS.—Subsection (b) of section 851 (relating to limitations on definition of regulated investment company) is

amended by adding at the end thereof the following new sentence:

“For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the extent that, under section 959(a)(1), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included.” . . .

POINT OF ORDER

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I make a point of order<sup>(1)</sup> against the conference report on the ground that it contains matter which is in violation of the provisions of clause 7 of rule XVI. The nongermane matter that I am specifically referring to is that section of the report dealing with taxation of earnings and profits of controlled foreign corporations and their shareholders, in section 602 as reported by the committee of conference.

1. A synopsis of the fourth point of order: To a House bill containing several sections amending diverse portions of the Internal Revenue Code to provide certain individual and business tax credits, a new section of a Senate amendment in the nature of a substitute contained in a conference report which dealt with earnings and profits of controlled foreign corporations and which included limitations on the use of foreign tax credits from foreign oil-related income was held germane. See 121 CONG. REC. 8909, 8933, 8934, 94th Cong. 1st Sess., Mar. 26, 1975.

THE SPEAKER: Does the gentleman from Wisconsin desire to be heard on his point of order?

MR. STEIGER of Wisconsin: I do, Mr. Speaker.

As the Speaker well knows, I am sure, from listening carefully to the explanations regarding previous points of order, at no point during the consideration of the House-passed bill is there any mention of foreign taxation and the dealings of foreign taxes insofar as American corporations and their subsidiaries are concerned.

Title I of the 1975 tax bill dealt with the refund for 1974 taxes. Title II dealt with reductions in individual income taxes. Title III dealt with certain changes in business taxes, the title which dealt with the investment tax credit or income tax total, particularly as related to small business.

This particular provision, Mr. Speaker, in no way deals with a matter that was covered, mentioned, or dealt with by the bill that is presented to the House, or voted upon by the House.

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

THE SPEAKER: Does the gentleman from Oregon desire to be heard on the point of order?

MR. ULLMAN: Mr. Speaker, I do. I wish to speak against the point of order.

Mr. Speaker, the bill that the House passed had a great many diverse sections in it; it had credits. The matter that has been raised is an amendment to the Internal Revenue Code very clearly, and much of it is in the way of a credit. We have dealt with credits here both for individuals and for corpo-

rations in the bill that the House passed.

It seems to me that in a bill of this scope and in a bill that deals as broadly with tax credits and matters such as this that does involve an amendment to the Internal Revenue Code, it is very clearly within the province of the bill, and should be ruled germane.

THE SPEAKER: The Chair is prepared to rule.

For the reasons stated in the opinion of the Chair on a similar point of order made by the gentleman from New York (Mr. Conable) and for the reasons stated by the gentleman from Oregon, the Chair overrules the point of order.

### *Subsequent Inclusion of Non-germane Provision*

**§ 25.22** A conference report having been ruled out of order because the conferees had agreed on a provision which was outside the scope of the differences before them, the House proceeded to consider the Senate amendment and concurred therein with a germane amendment which included the same provision as that subject to the point of order when incorporated in the conference report.

On Dec. 11, 1967,<sup>(2)</sup> Mr. H. R. Gross, of Iowa, raised a point of order against the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967.

MR. GROSS: Mr. Speaker, I make a point of order against the conference report on the grounds that the House managers exceeded their authority and did not confine themselves to the differences committed to them, in violation of the rules and precedents of the House of Representatives.

The House bill, in section 107(a) provided a minimum charge of 3.8 cents for bulk third-class mail effective January 7, 1968. Section 107(a) of the Senate amendment provided a two-step minimum charge—the first of 3.6 cents effective January 7, 1968, and a second 4-cent rate effective January 1, 1969.

The differences committed to the conferees with respect to this postage rate and the effective dates for this rate were: A rate range between 3.6 cents and 4 cents; a January 7, 1968, effective date for a one-rate charge with no further rate provided; and January 7, 1968, and January 1, 1969, effective dates for any two-rate charges.

The conference report contains a two-rate charge—the first, 3.6 cents, effective January 7, 1968; the second, 4 cents, effective July 1, 1969.

The July 1, 1969, effective date for a second rate goes beyond the disagreements confided to the conferees. By agreeing to any effective date for a sec-

ond rate beyond January 1, 1969, the House managers have clearly exceeded their authority. . . .

THE SPEAKER:<sup>(3)</sup> Does the gentleman from New York desire to be heard on the point of order?

MR. [THADDEUS J.] DULSKI [of New York]: Mr. Speaker, I concede the point of order.

THE SPEAKER: The Chair sustains the point of order.

The Clerk will report the Senate amendment. . . .

MR. DULSKI (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment be dispensed with and that it be printed in full in the Record at this point.

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

There was no objection.

MR. DULSKI: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Dulski moves that the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 7977) and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: . . .

The provision in the conference report against which Mr. Gross addressed his point of order was included as § 107(a) of Mr. Dulski's substitute for the Senate

2. 113 CONG. REC. 35811-33, 35841, 90th Cong. 1st Sess.

3. John W. McCormack (Mass.).

amendment.<sup>(4)</sup> After the House debated Mr. Dulski's motion, the following resulted:

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The question is on the motion offered by the gentleman from New York [Mr. Dulski] that the House recede from its disagreement to the amendment of the Senate and concur therein, with an amendment. . . .

The question was taken; and there were—yeas 327, nays 63, not voting 43. . . .

***Order of Taking Points of Order Against Conference Report***

**§ 25.23 Where the Chair expects multiple points of order against a conference report, he may in his discretion require all points of order which allegedly violate one rule (e.g., Rule XXVIII clause 3) to be stated at the same time, so that he can rule on the several arguments in an order which will accommodate the schedule of the House and, where possible, save time.**

4. See 113 CONG. REC. 35824, 90th Cong. 1st Sess., Dec. 11, 1967.

5. Omar T. Burleson (Tex.).

On Sept. 28, 1976,<sup>(6)</sup> after the Speaker had overruled a Rule XXVIII clause 6 point of order against a conference report which would have, if sustained, vitiated the entire report, he entertained seven points of order under Rule XXVIII clause 3, and after hearing argument on some seven points in contention, found that each allegation of a scope violation was unfounded. The House then proceeded to the consideration of the conference report under the hour rule, with the hour being equally divided between the manager of the conference report and the minority.

POINT OF ORDER

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER:<sup>(7)</sup> The gentleman will state it.

MR. FISH: Mr. Speaker, I make a point of order against the conference report on the grounds that in section 208 the managers have exceeded their authority in several instances and in section 101 in one instance, and the report, therefore, is in violation of clause 3 of rule XXVIII.

Mr. Speaker, so as not to burden the House with unnecessary discussion, I will ask the Chair to rule on these

6. 122 CONG. REC. 33020, 94th Cong. 2d Sess.

7. Carl Albert (Okla.).

questions of scope one at a time, because as soon as one is upheld, consideration of the others will not be needed.

THE SPEAKER: The Chair must state that when more than one point of order is going to be made under a particular House rule, it is proper under the precedents for the Chair to require all such points of order to be stated and for the Chair then to make his decision on the separate points of order, and the Chair intends to follow that procedure.

MR. FISH: Very good, Mr. Speaker.

THE SPEAKER: The Chair will hear all the arguments of the gentleman.

### ***Sustaining of Point of Order as Affecting Consideration of Amendments in Disagreement***

**§ 25.24 When a conference report is ruled out of order, the bill and amendments are again before the House and, the stage of disagreement having been reached, motions relating to amendments and further conference are in order.**

On Dec. 14, 1971,<sup>(8)</sup> Mr. H. R. Gross, of Iowa, raised a point of order against the conference report on S. 2891, to amend and extend the Economic Stabilization Act of 1970, on the ground that the conferees had exceeded their

8. 117 CONG. REC. 46779, 46780, 92d Cong. 1st Sess.

authority. After the point of order was discussed, the following occurred:

THE SPEAKER:<sup>(9)</sup> The Chair is ready to rule. . . .

The Chair is compelled to hold that the conferees, by deleting the word "statutory" in the Senate bill, have broadened the coverage of the comparability adjustments beyond the scope of the Senate bill or the House amendment. The Chair therefore sustains the point of order.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I move that the House insist on its amendments to the bill (S. 2891) to extend and amend the Economic Stabilization Act of 1970, and request a further conference with the Senate thereon.

The motion was agreed to.<sup>(10)</sup>

### ***Senate Practice Where Point of Order Is Sustained Against Conference Report***

**§ 25.25 In the Senate, if a point of order is sustained against a conference report that contains new matter not committed to the conference, the report is automatically re-committed to the conference,**

9. Carl Albert (Okla.).

10. See also 97 CONG. REC. 12702-04, 82d Cong. 1st Sess., Oct. 5, 1951; 81 CONG. REC. 9376-79, 75th Cong. 1st Sess., Aug. 19, 1937; and 80 CONG. REC. 7790-92, 74th Cong. 2d Sess., May 22, 1936.

**if the Senate is acting first on the report.**

In the House, where a conference report is ruled out on a point of order, the amendments in disagreement remain before the body for disposition. The Senate practice differs, as shown by the proceedings of Aug. 12, 1982.<sup>(11)</sup>

MR. [HOWARD H.] BAKER [Jr., of Tennessee]: Mr. President, I submit a report of the committee of conference on H.R. 5930 and ask for its immediate consideration.

THE PRESIDING OFFICER:<sup>(12)</sup> The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5930) to extend the aviation insurance program for 5 years, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees. . . .

MRS. [NANCY L.] KASSEBAUM [of Kansas]: Mr. President, I raise a point of order under rule XXVIII that the conferees have exceeded their authority by including new matter not committed to them by either House.

THE PRESIDING OFFICER: Rule XXVIII states:

Conferees shall not insert in the report matter not committed to them by either House, nor shall they strike from the bill matter agreed to by both Houses. If new matter is inserted in the report, or if matter which was agreed to by both Houses is stricken from the bill, a point of order may be made against the report.

New matter has been inserted. The point of order is valid.

MR. [ROBERT W.] PACKWOOD [of Oregon]: Mr. President, I take appeal from the decision of the Chair and I ask for the yeas and nays. . . .

THE PRESIDING OFFICER: Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 59, nays 38. . . .

So the ruling of the Chair was sustained as the judgment of the Senate.

THE PRESIDING OFFICER: The conference report is recommitted.

***Senate Application of "Byrd Rule"***

**§ 25.26 In the Senate, under the so-called "Byrd rule" (section 13 of the Budget Act), a provision which produces no measurable changes in outlays or revenues is not necessarily extraneous.**

The provision in the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, which was targeted by a point of order by Senator John C. Dan-

11. 128 CONG. REC. 20886, 20897, 97th Cong. 2d Sess.

12. H. John Heinz III (Pa.).

forth, of Missouri, related to a program to provide pediatric immunizations under the Medicaid program. The point of order, the Chair's response, and the vote taken on the motion to sustain the Chair's ruling are carried here.<sup>(13)</sup>

MR. DANFORTH: Mr. President, I am concerned about the state of the Byrd rule, which is a rule that I think is extremely important in the Senate, and concerned that budgetary effects which are incapable of estimation have been used to justify what I would think to be extraneous provisions in this bill, I would like now to make two inquiries of the Chair.

First, is a provision of the budget reconciliation bill extraneous under section 313(b)(1)(A) of the Budget Act, the Byrd rule, if it produces no changes in outlays or revenues that can be estimated?

THE PRESIDING OFFICER:<sup>(14)</sup> Such a provision would not necessarily be out of order.

MR. DANFORTH: Would not necessarily be out of order.

The second question is: If the impact on outlays or revenues cannot be estimated, are they merely incidental to a nonbudgetary component under section 313(b)(1)(D) of the Byrd rule?

THE PRESIDING OFFICER: Once again, that would not necessarily be the case.

MR. DANFORTH: Mr. President, I now wish to raise a point of order, and do

raise a point of order under sections 313(b)(1)(A) and 313(b)(1)(D) of the Budget Act, known as the Byrd rule; that title XIX, section 1928(d)(4)(B) in the conference agreement, section 13631(b) is extraneous to the reconciliation bill because it produces no change in the outlays or revenues or produces changes in outlays or revenues which are merely incidental to the nonbudgetary components of the provision.

THE PRESIDING OFFICER: The point of order is not well taken.

MR. DANFORTH: Mr. President, I appeal the ruling of the Chair.

THE PRESIDING OFFICER: Under the previous order, there is a half-hour equally divided on the appeal.

MR. DANFORTH: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is this a sufficient second?

There is a sufficient second.

The yeas and nays were ordered. . . .

MR. [JAMES R.] SASSER [of Tennessee]: Mr. President, I yield myself such time as I may consume, and I will be very brief.

Mr. President, first, with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.

As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule. And we furnished our friends on the other side of the aisle, the distinguished staff colleagues on the Senate Budget Committee, copies of the draft

13. 139 CONG. REC. 19763, 19764, 19767, 103d Cong. 1st Sess., Aug. 6, 1993.

14. Herbert H. Kohl (Wis.).

language so that we would each know where we were, and there would be no surprises as we worked together to try to expunge the Byrd rule problems from the reconciliation conference report. . . .

THE PRESIDING OFFICER: All time has been yielded back.

The question is, is the appeal of the Senator from Missouri well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required for the appeal to be well taken.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

The yeas and nays resulted—yeas 43, nays 57. . . .

### *Budget Act Point of Order in Senate*

**§ 25.27 Although a point of order under section 313 of the Budget Act is not debatable in the Senate, under section 904(d) of the Budget Act an appeal of a ruling thereon is debatable for one hour, equally divided between and controlled by the moving party and the bill manager.**

On Aug. 6, 1993, during the debate on the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1994, a point of order was directed to a provision imposing domestic content requirements on U.S. cigarette

manufacturers was held by the Presiding Officer not to be “extraneous” and subject to a point of order under the Byrd rule, as expressed in section 313 of the Budget Act.

While under section 313 a point of order is not subject to debate, an appeal from the decision of the Presiding Officer under section 904 is subject to one hour of debate.

To overturn the Chair’s decision, a vote of three-fifths of the Members duly chosen and sworn is required.

A relevant portion of the proceedings is carried herein.<sup>(15)</sup>

MR. [HANK] BROWN [of Colorado]: . . . Mr. President, I raise a point of order that section 1106(a) is extraneous and violates section 313(b)(1)(D) of the Congressional Budget Act of 1974.

It violates it because it produces changes in the revenues that are clearly only incidental to the nonbudgetary components of the provision. The reality is this imposes the first domestic content provision that applies to exports. It is a tiny fraction of revenue—actually not even reducing the deficit—but only one-fourth of 1 percent of the tobacco—

THE PRESIDING OFFICER:<sup>(16)</sup> If the Senator will withhold, the Chair wishes

15. 139 CONG. REC. 19780–83, 103d Cong. 1st Sess., Aug. 6, 1993.

16. Joseph I. Lieberman (Conn.).



to advise the Senator the point of order is not debatable. So if the Senator is setting a predicate for offering a point of order, that is acceptable. If he is debating a point of order already offered, it is not.

MR. BROWN: I do raise that point of order and ask the Chair to rule on section 1106(a).

THE PRESIDING OFFICER: The Chair will not sustain the point of order. The point of order is not sustainable.

MR. BROWN: Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The vote will be taken by the yeas and nays.

MR. [WENDELL H.] FORD [of Kentucky]: Mr. President, as I understand it we have 30 minutes? Was that the gentleman's agreement? Or what is the time agreement?

THE PRESIDING OFFICER: The Chair advises the Senate the time available for debate will be 1 hour unless changed by unanimous consent. . . .

MR. [PAUL S.] SARBANES [of Maryland]: Mr. President, we ask unanimous consent the time on the appeal be limited to 10 minutes equally divided, 5 to a side.

THE PRESIDING OFFICER: Hearing no objection, that will be the order. . . .

MR. FORD: Mr. President, the Byrd rule under which my colleague from Colorado has made his appeal is very important. The individual's name who is carried on this Byrd rule does it because it is important to this institution.

Mr. President, let me explain to my colleagues, while I believe the Parliamentarian after careful review—and I underscore careful—has advised the Chair that this provision does not violate that Byrd rule.

This provision raises some \$29 million over a 5-year period for deficit reduction.

The CBO estimate for this provision analyzed each part of the provision and concluded that each had a budgetary impact on the \$29 million in savings achieved by this provision. That is the Byrd rule question, not the underlying argument. . . .

I urge my colleagues to uphold the ruling of the Chair. . . .

THE PRESIDING OFFICER:<sup>(17)</sup> All time has expired. The question is, Is the appeal of the Senator from Colorado well taken? An affirmative vote of three-fifths of the Senators duly chosen and sworn is required to overturn the decision of the Chair.

MR. BROWN: Mr. President, I ask for the yeas and nays.

THE PRESIDING OFFICER: Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

THE PRESIDING OFFICER: The clerk will call the roll. . . .

If there are no other Senators desiring to vote, on this vote the yeas are 43, the nays are 57. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the appeal is rejected.

MR. [GEORGE J.] MITCHELL [of Maine]: Mr. President, I move to recon-

17. Charles S. Robb (Va.).

sider the vote by which the appeal was rejected.

MR. [PATRICK J.] LEAHY [of Vermont]: I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## § 26. Waiving Points of Order

### *Resolution Waiving All Points of Order*

§ 26.1 A conference report may be called up pursuant to the provisions of a resolution waiving points of order thereon.

On July 31, 1963,<sup>(18)</sup> the following took place in the House:

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 453 and ask for its immediate consideration.

The Clerk read as follows:

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill, H.R. 5207, to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations, and for other purposes, and all points of order against the conference report are hereby waived. . . .

THE SPEAKER:<sup>(19)</sup> The question is on the resolution. . . .

The question was taken; and there were—yeas 234, nays 166, not voting 32. . . .

So the resolution was agreed to.

§ 26.2 Where conferees on a general appropriation bill bring back all amendments within the conference report, a special order providing a blanket waiver may be employed to protect the report from a variety of points of order.

The form of resolution carried here<sup>(20)</sup> is the most frequently utilized form since it not only protects the report from all points of order, both against consideration and content, but waives the reading of the report. Such a broad waiver protects the contents of the report from challenge because of possible violations of scope, the inclusion of legislation, and unauthorized appropriations or non-germane provisions; and in addition waives the three-day availability rule.

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 301

18. 109 CONG. REC. 13816, 13822–25, 88th Cong. 1st Sess.

19. John W. McCormack (Mass.).

20. See 139 CONG. REC. 28520, 103d Cong. 1st Sess., Nov. 10, 1993.

and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 301

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3116) making appropriations for the Department of Defense for the fiscal year ending September 30, 1994, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentleman from Texas [Mr. Frost] is recognized for 1 hour.

***Rule Protecting Conference Report Against Procedural Interruptions***

**§ 26.3 Form of a special order which provides for the immediate consideration of a conference report following adoption of the special order, waiving points of order against the report and its consideration, and ordering the previous question on its adoption without any intervening motion except one to recommit.**

1. Romano L. Mazzoli (Ky.).

This form of a resolution, reported from the Committee on Rules and called up as privileged,<sup>(2)</sup> was designed to expedite consideration and avoid the intervention of procedural motions. The conference report on S. 21, the California Desert Protection Act of 1994, had survived numerous parliamentary battles,<sup>(3)</sup> but the majority leadership used this type of special order to avoid other procedural pitfalls.

CONFERENCE REPORT ON S. 21,  
CALIFORNIA DESERT PROTECTION ACT  
OF 1994

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 568 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 568

*Resolved*, That immediately upon adoption of this resolution the House shall consider the conference report to accompany the bill (S. 21) to designate certain lands in the California Desert as wilderness, to establish Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The previous question shall be

2. See 140 CONG. REC. 28610, 103d Cong. 2d Sess., Oct. 6, 1994.

3. See §§ 2.2–2.4, 2.12, 9.9, supra.

considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The gentleman from California [Mr. Beilenson] is recognized for 1 hour. . . .

MR. BEILENSEN: . . . The rule waives all points of order against the conference report and against its consideration, provides that the conference report shall be considered as read, and provides one motion to recommit. The waivers apply to the 3-day layover rule and to the germaneness rule.

### *Special Orders Waiving All Points of Order*

#### § 26.4 Example of a special order waiving all points of order against a conference report.

Special orders waiving all points of order against a conference report and its consideration are frequently used to protect the report from possible points of order.

Certain Members of the House objected to “blanket waivers,” preferring that the rule spell out which specific points of order were being waived. The rule, and the statement by the member of the Committee on Rules<sup>(5)</sup> and the

4. Pete Peterson (Fla.).

5. Tony P. Hall (Ohio).

Member<sup>(6)</sup> protesting the formulation of the rule are carried here<sup>(7)</sup> to illustrate the approach taken by one member of the committee.

CONFERENCE REPORT ON S. 2000,  
HUMAN SERVICES AMENDMENTS OF  
1994

MR. HALL of Ohio: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 421 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 421

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (S. 2000) to authorize appropriations for fiscal years 1995 through 1998 to carry out the Head Start Act and the Community Services Block Grant Act, and for other purposes. All points of order against the conference report and against its consideration are waived.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman from Ohio [Mr. Hall] is recognized for 1 hour.

MR. HALL of Ohio: Mr. Speaker, House Resolution 421 is the rule providing for the consideration of the conference report on S. 2000, the Human Services Amendments of 1994. The rule waives all points of order against the conference report and against its consideration. Because there are several amendments that were agreed to by

6. James H. Quillen (Tenn.).

7. See 140 CONG. REC. 10030, 103d Cong. 2d Sess., May 12, 1994.

8. José E. Serrano (N.Y.).

House and Senate conferees, but are technically outside of the scope of the conference, it was necessary to waive points of order. This rule will allow us to bring this important legislation to the floor. . . .

MR. QUILLEN: . . . It has become so customary to grant a rule waiving all points of order against conference reports that the House just accepts this process as noncontroversial and routine. Even those of us who do not particularly support these blanket waivers have allowed these rules to be debated and adopted without putting up much of a fight. But not this time, Mr. Speaker, I urge my colleagues to vote against this rule.

The rule waives all points of order, but it does not specify which rules are being waived and for what purpose. We discussed this matter at some length in the Rules Committee yesterday, and we know that there are scope violations in the conference report. A list of those violations was provided to us, and we understand that the conferees all agreed to these provisions. So there is an obvious need for a waiver of clause 3 of rule 28 to protect these scope violations.

No member of the Rules Committee seemed to be aware of any other rules violation, and the minority members of the committee wanted to know why it was necessary to waive all points of order. The response was something along the lines of "just in case there's something in the conference report that we don't know about that needs protection." That is not a direct quote, Mr. Speaker, but I think it accurately describes the answer we were given.

The Rules Committee and the committees of jurisdiction of any legislation that comes to this floor have an obligation to make sure all Members are aware of any rules violations contained in any bill or conference report.

An amendment was offered in the Rules Committee to waive only the scope rule, but it was defeated on a party-line vote and the rule was adopted on a party-line vote.

*Parliamentarian's Note:* Resolutions of this type were used repeatedly during the remainder of the session. For other examples of special orders designed to protect conference reports from a variety of points of order, see 140 CONG. REC. 6076, 103d Cong. 2d Sess., Mar. 23, 1994 (H. Res. 393); 140 CONG. REC. 13552, 13553, 103d Cong. 2d Sess., June 21, 1994 (H. Res. 439); and 140 CONG. REC. 19561, 103d Cong. 2d Sess., Aug. 4, 1994 (H. Res. 505).

**§ 26.5 A resolution reported from the Committee on Rules waived all points of order against a conference report on a House amendment in the nature of a substitute where the conferees included matter outside the scope of the differences committed to conference.**

On Dec. 4, 1973,<sup>(9)</sup> the following occurred in the House after Speaker Carl Albert, of Oklahoma, recognized Mr. Morgan F. Murphy, of Illinois:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 725 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 725

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1443) to authorize the furnishing of defense articles and services to foreign countries and international organizations, and all points of order against said conference report are hereby waived. . . .

MR. [DELBERT L.] LATTA [of Ohio]: . . . Mr. Speaker, if I may just summarize, I wish to state that to adopt the rule is the only thing we can do here.

Mr. Speaker, this rule is necessary, because the Senate passed two separate foreign aid authorization bills, one dealing with military aid and the other dealing with economic aid, while the House passed only one bill covering both subjects.

In conference, the conferees technically had before them only the text of one Senate bill, and one House bill. Anything reported by the conference which was in the one Senate bill deal-

ing with military aid and the one House bill is within the scope of conference. However, anything reported by the conference which was in the second Senate bill only was not technically within the scope of conference and, therefore, a waiver of points of order is required to keep the matter from being knocked out on a point of order. . . .

The vote was taken by electronic device, and there were—yeas 265, nays 137, not voting 31. . . .

So the resolution was agreed to.

*Parliamentarian's Note:* In this instance, the Senate had passed two foreign assistance bills—one for foreign economic assistance (S. 2335) and one for foreign military assistance (S. 1443). The House struck all after the enacting clause of both Senate bills and inserted the text of H.R. 9360, which contained the House version of military and economic assistance, and both Senate bills with that House amendment were sent to different conferences. The conferees reported on S. 1443, the Senate military assistance bill. Because the Senate provisions on foreign economic aid had not been technically committed to that conference, House conferees exceeded their authority under Rule XXVIII clause 3 when they agreed to certain provisions beyond the scope of the Senate bill and House substitute.

9. 119 CONG. REC. 39311, 39312, 93d Cong. 1st Sess.

***Use of Special Rules To Waive Points of Order; Modifying Normal Rules for Debate and Amendment***

§ 26.6 In recent Congresses, the Committee on Rules has formulated and brought to the floor of the House a variety of special orders, protecting conference reports against a certain point of order or all points of order and tailoring the terms of consideration of such reports to focus the debate on particular issues addressed therein.

An early example of a complex special order protecting and providing for the consideration of a conference report under special procedures not contemplated in the standing rules of the House was brought to the floor on Dec. 11, 1975.<sup>(10)</sup>

The conference report on H.R. 3474 was flawed in several procedural respects: it contained provisions not germane to the House

10. H. Res. 919, providing for the consideration of H.R. 3474, the conference report on Energy Research and Development Administration authorization for fiscal year 1976. See 121 CONG. REC. 40081, 94th Cong. 1st Sess.

version, contained subjects beyond the scope of the matter submitted to conference, and included in the text of the report a Senate amendment carrying an appropriation on a legislative bill. The report was thus subject to points of order under Rule XXVIII clauses 3 and 4(a)(1)<sup>(11)</sup> and Rule XX clause 2.<sup>(12)</sup>

The text of the rule as it was called up on Dec. 11, 1975,<sup>(13)</sup> is carried here, as well as the procedure under the rule which permitted consideration of two motions to reject provisions of the report seriatim, so that the adoption of either would reject the entire conference agreement.

MR. [RICHARD W.] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 919 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 919

*Resolved*, That immediately upon the adoption of this resolution it shall be in order, any rule of the House to the contrary notwithstanding, to consider the conference report on the bill (H.R. 3474) to

11. *House Rules and Manual* §§ 913a, 913b (1997).

12. *Id.* at § 829.

13. 121 CONG. REC. 40081, 94th Cong. 1st Sess.

authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes, and all points of order against said conference report are hereby waived. Debate on said conference report shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Technology and the chairman and the ranking minority member of the Joint Committee on Atomic Energy. At the conclusion of said debate, it shall be in order for the Chair to entertain separate motions to strike out sections 102 and 103 of said conference report. It shall be in order to debate each such motion, if offered, for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion. At the conclusion of votes on any motion to strike offered under this procedure, and if neither of the motions to strike have been adopted, the previous question shall be considered as ordered on agreeing to the conference report.

THE SPEAKER:<sup>(14)</sup> The gentleman from Missouri is recognized for 1 hour.

Later in the same day,<sup>(15)</sup> the conference report was considered pursuant to the special order.

14. Carl Albert (Okla.).

15. 121 CONG. REC. 40087, 40135, 40136, 40146, 40167-70, 40174, 94th Cong. 1st Sess., Dec. 11, 1975.

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I call up the conference report on the bill (H.R. 3474) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

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

There was no objection. . . .

THE SPEAKER: The gentleman from Texas (Mr. Teague) is recognized for 30 minutes, and the gentleman from Ohio (Mr. Mosher) is recognized for 30 minutes.

MR. TEAGUE: . . . Mr. Speaker, H.R. 3474 authorizes appropriations for the Energy Research and Development Administration for fiscal year 1976 and the transition period. In the House, this bill has been handled jointly by the Joint Committee on Atomic Energy and the Committee on Science and Technology. The Joint Committee handled the nuclear programs and the Science Committee handled the nonnuclear ones. . . .

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The time of the gentleman has expired.

All time controlled by the Committee on Science and Technology has expired.

16. John J. McFall (Calif.).



Under the rule, 1 additional hour of debate is permitted to the Joint Committee on Atomic Energy; 30 minutes of which are allotted to the gentleman from Illinois (Mr. Price) and 30 minutes to the gentleman from Illinois (Mr. Anderson).

The Chair will now recognize the gentleman from Illinois (Mr. Price). . . .

MR. [KEN] HECHLER of West Virginia: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Hechler of West Virginia moves to strike section 103 from the conference report on the bill H.R. 3474.

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Hechler) will be recognized for 20 minutes, and the gentleman from Texas (Mr. Teague) will be recognized for 20 minutes.

#### PARLIAMENTARY INQUIRY

MR. TEAGUE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. TEAGUE: Would the Chair state what the time situation is?

THE SPEAKER PRO TEMPORE: The Chair would repeat for the benefit of the gentleman from Texas that the gentleman from West Virginia (Mr. Hechler) is recognized for 20 minutes, and the gentleman from Texas (Mr. Teague) is recognized for 20 minutes.

MR. TEAGUE: I thank the Chair.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from West Virginia (Mr. Hechler). . . .

#### PARLIAMENTARY INQUIRY

MR. HECHLER of West Virginia: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HECHLER of West Virginia: Is it correct that an "aye" vote will be in opposition to section 103 and will strike section 103 of the pending legislation?

THE SPEAKER: An "aye" vote is to strike section 103.

MR. HECHLER of West Virginia: I thank the Speaker. . . .

So the motion was agreed to.

The result of the vote was announced as above recorded.

#### MOTION OFFERED BY MR. HECHLER OF WEST VIRGINIA

MR. HECHLER of West Virginia: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Hechler of West Virginia moves to strike section 102 of the conference report on the bill H.R. 3474.

THE SPEAKER: The gentleman from West Virginia (Mr. Hechler) is recognized for 20 minutes, and the gentleman from Texas (Mr. Teague) is recognized for 20 minutes.

MR. TEAGUE: Mr. Speaker, I ask unanimous consent that the debate be limited to 10 minutes, with 5 minutes for each side.

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

There was no objection. . . .

## PARLIAMENTARY INQUIRY

MR. HECHLER of West Virginia: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HECHLER of West Virginia: Would an "aye" vote on the pending motion strike section 102 of the conference report?

THE SPEAKER: The gentleman is correct.

MR. HECHLER of West Virginia: I thank the Speaker.

THE SPEAKER: The question is on the motion offered by the gentleman from West Virginia (Mr. Hechler).

The question was taken; and the Speaker announced that the noes appeared to have it. . . .

So the motion was agreed to.

So the conference report was rejected.

The result of the vote was announced as above recorded.

## MOTION OFFERED BY MR. TEAGUE

MR. TEAGUE: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Teague moves that the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 3474), and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: . . .

MR. TEAGUE (during the reading): Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

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

MR. [CHARLES A.] MOSHER [of Ohio]: Mr. Speaker, reserving the right to object, may I ask, will the gentleman state what his motion contains?

MR. TEAGUE: Mr. Speaker, this motion sends this bill back to the other body without the sections 102 and 103 in the form it was voted on back in June. The vote was about 317 to 9. That is all the amendment does.

MR. MOSHER: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

MR. TEAGUE: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Texas (Mr. Teague).

The motion was agreed to.

A motion to reconsider was laid on the table.

***Special Order Waiving Certain Points of Order Against Conference Report, Preserving Others***

**§ 26.7 The Committee on Rules may report a special order which selectively waives points of order against a conference report and may preserve one point of order while waiving all others.**

An example of a special order for the consideration of a conference report is carried here.<sup>(17)</sup>

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 999 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 999

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5247) to authorize a local public works capital development and investment program, and all points of order against said conference report are hereby waived, except that it shall be in order to consider points of order against title II of said conference report under the provisions of rule XXVIII, clause 4.

THE SPEAKER:<sup>(18)</sup> The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

MR. PEPPER: . . . House Resolution 999 provides that all points of order against the conference report are waived, except that it shall be in order to consider points of order against title II of the conference report under the provisions of rule XXVIII, clause 4. Thus, if a point of order made under the provisions of rule XXVIII, clause 4 is sustained a motion shall then be in order that the House reject the non-germane matter covered by the point of

order. It shall be in order to debate such motion for 40 minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

*Selective Waivers of Points of Order Against Conference Report*

**§ 26.8 The Committee on Rules has sometimes recommended selective waivers of points of order under Rule XXVIII clause 3, permitting points of order to lie against only specified sections of the report which might go beyond the scope of differences submitted to conference.**

On Feb. 27, 1974,<sup>(19)</sup> the Committee on Rules called up a special order for consideration of the conference report on S. 2589, the Energy Emergency Act. The rule waived points of order against the report, but permitted points of order to be raised against two sections therein which arguably contained matter beyond the scope of the managers' authority under Rule XXVIII clause 3.

The previous question on the rule was defeated, an amendment was offered and adopted which

17. 122 CONG. REC. 1579, 94th Cong. 2d Sess., Jan. 29, 1976.

18. Carl Albert (Okla.).

19. 120 CONG. REC. 4397, 4407, 4408, 93d Cong. 2d Sess.

provided for a blanket waiver but permitted a separate vote on the controversial sections.

The rule as reported, and the amendment offered after defeat of the previous question, are carried here.

PROVIDING FOR CONSIDERATION OF  
CONFERENCE REPORT ON S. 2589,  
ENERGY EMERGENCY ACT

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 901 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 901

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report except against sections 105 and 110 thereof for failure to comply with the provisions of clause 3, rule XXVIII are hereby waived. Debate on said conference report shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of

any Member, for a separate vote to be had on a motion to strike out section 104 of the conference report. At the conclusion of any separate vote demanded under this procedure, and if section 104 has not been stricken out by such separate vote, the previous question shall be considered as ordered on agreeing to the conference report.

THE SPEAKER:<sup>(20)</sup> The gentleman from Florida (Mr. Pepper) is recognized for 1 hour.

MR. PEPPER: . . . House Resolution 901 provides that all points of order against the conference report are waived except against sections 105 and 110 for failure to comply with the provisions of clause 3, rule XXVIII of the Rules of the House of Representatives—pertaining to amendments accepted by the conferees which are beyond the scope of the House and Senate bills. . . .

Mr. Speaker, I yield 1 minute for the purpose of discussion only to the distinguished gentleman from West Virginia, the chairman of the Committee on Interstate and Foreign Commerce (Mr. Staggers). . . .

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I take the floor to urge the defeat of the previous question on this rule. As I am sure my colleagues are aware, the rule would permit a single Member of this House to assert a point of order against two sections of the bill—section 105 dealing with energy conservation plans and section 110, the so-called price rollback provision. In so doing the Rules Committee has provided an opportunity for

<sup>20</sup> Carl Albert (Okla.).

a single opponent of this legislation to defeat it. Such a result most certainly would not be in the public interest. . . .

I know that the conference agreement remains controversial. I would expect legislation this important and complex to be so. But I urge that we permit the conference agreement to stand the test of a vote by the 435 Members of this House.

If the previous question is defeated, I will offer an amendment to the rule in the nature of a substitute which waives points of order on the entirety of the conference agreement, but permits separate votes on its most controversial sections. Accordingly, Members would have an opportunity to specifically express their assent or dissent to sections 104, 105, and 110 of the bill. If the House defeats the conference agreement then so be it. But at least let us give the House the chance to vote on it. Accordingly, I respectfully ask you to defeat the previous question on this rule. . . .

MR. PEPPER: Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER: The question is on ordering the previous question.

MR. PEPPER: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 144, noes 259, answered “present” 3, not voting 25. . . .

So the previous question was not ordered.

The Clerk announced the following pairs:

On this vote: . . .

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A  
SUBSTITUTE OFFERED BY MR.  
STAGGERS

MR. STAGGERS: Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Staggers: Strike out all after the resolving clause of House Resolution 901 and insert in lieu thereof the following:

“That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2589) to declare by congressional action a nationwide energy emergency; to authorize the President to immediately undertake specific actions to conserve scarce fuels and increase supply; to invite the development of local, State, National, and international contingency plans; to assure the continuation of vital public services; and for other purposes, and all points of order against said conference report for failure to comply with the provisions of clause 3, Rule XXVIII, are hereby waived. Debate on said conference report shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce. At the conclusion of the debate, it shall be in order, on the demand of any Member for a separate vote to be had on motions to strike out the following provisions of the conference report: Sections 110, 105, and 104, and such separate votes, if demanded, shall be taken in the foregoing order. At the conclusion of all of the separate votes demanded under this procedure, and if none of the sections have been stricken by such separate votes, the previous question shall be considered as ordered on agreeing to the conference report.”

THE SPEAKER: The gentleman from West Virginia is recognized for 1 hour. . . .

MR. STAGGERS: Mr. Speaker, I thank the gentleman from Illinois for his comments. I am certain he is very sincere.

Mr. Speaker, I move the previous question on the amendment and on the resolution.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the amendment.

The amendment was agreed to.

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

***Provisions Outside Scope of Disagreement Protected by Waiver***

**§ 26.9 The Speaker overruled a point of order against a conference report containing a provision not included in either the Senate bill or House amendment in the nature of a substitute, where the House had adopted a resolution waiving points of order against the inclusion of additional matter in the conference report in violation of Rule XXVIII clause 3.<sup>(1)</sup>**

1. *House Rules and Manual* § 913(a) (1997).

On Jan. 25, 1972,<sup>(2)</sup> the following occurred in the House:

MR. [THOMAS E.] MORGAN [of Pennsylvania: Mr. Speaker, I call up the conference report on the bill (S. 2189) to provide foreign military and related assistance authorizations for fiscal year 1972 and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(3)</sup> Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

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

THE SPEAKER: The gentleman will state his point of order.

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

SEC. 658. LIMITATION ON USE OF FUNDS.—(a) Except as otherwise provided in this section, none of the funds appropriated to carry out the provisions of this Act or the Foreign Military Sales Act shall be obligated or expended until the Comptroller General of the United States certifies to the Congress that all funds previously appropriated and thereafter impounded during the fiscal year

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

3. Carl Albert (Okla.).

1971 for programs and activities administered by or under the direction of the Department of Agriculture, the Department of Housing and Urban Development, and the Department of Health, Education and Welfare have been released for obligation and expenditure.

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

After addressing himself to another issue raised in the point of order, the Speaker stated,

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

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

For these reasons, the Chair overrules the point of order.

**§ 26.10 The House adopted a resolution reported from the Committee on Rules which waived points of order against a conference report where House conferees had: (1) included provisions beyond the scope of the differences between the House bill and Senate amendment; and (2) agreed to an appropriation in the Senate substitute.**

On July 27, 1972,<sup>(4)</sup> the following occurred in the House after Speaker Carl Albert, of Oklahoma, recognized Mr. John A. Young, of Texas:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1057 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1057

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 12931) to provide for improving the economy and living conditions in rural America, and all points of order against the conference report for failure to comply with the provisions of clauses 2 and 3, rule XX<sup>(5)</sup> and clause 3, rule XXVIII<sup>(6)</sup> are hereby waived.

MR. YOUNG of Texas: . . . Mr. Speaker, House Resolution 1057 provides for waiving points of order against the conference report on H.R. 12931, the Rural

4. 118 CONG. REC. 25822, 25830, 92d Cong. 2d Sess.
5. Rule XX clause 2, *House Rules and Manual* § 829 (1997). The provisions of Rule XX clause 3 were substantially modified late in the 92d Congress pursuant to H. Res. 1153 (Oct. 13, 1972) which became effective immediately prior to the beginning of the 93d Congress. See Rule XXVIII clause 4(a), *House Rules and Manual* § 913(b) (1997).
6. *House Rules and Manual* § 913(a) (1997).

Development Act, for failure to comply with the provisions of clauses 2 and 3 of rule XX, and clause 3 of rule XXVIII. Clause 2 of rule XX has to do with a Senate amendment to an appropriation bill which lacks authorization; clause 3 of rule XX has to do with nongermane Senate amendments; clause 3 of rule XXVIII has to do with a nongermane modification of a matter in disagreement. . . .

Mr. Speaker, I move the previous question on the resolution.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> The question is on ordering the previous question. . . .

The question was taken; and there were—yeas 214, nays 162, not voting 56. . . .

So the previous question was ordered. . . .

THE SPEAKER: The question is on the resolution.

The resolution was agreed to.

### ***Special Order Waiving “Scope” Point of Order***

**§ 26.11 Example of a special order reported from the Committee on Rules, specifically waiving points of order against a conference report where conferees had exceeded “scope” by including a new “topic” (a Presidential reporting requirement) not in either the Senate bill or the House amendment.**

7. Richard Bolling (Mo.).

The proceedings of Aug. 2, 1977,<sup>(8)</sup> are illustrative of the practice of the Committee on Rules in anticipating possible points of order and providing a specific waiver to protect a conference report.

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 731 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 731

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 826) to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes, said conference report shall be considered as having been read, and all points of order against said conference report for failure to comply with the provisions of clause 3, rule XXVIII are hereby waived.

THE SPEAKER:<sup>(9)</sup> The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

MR. BOLLING: . . . It provides that the conference report shall be considered as read and all points of order against the

8. 123 CONG. REC. 26103, 26104, 95th Cong. 1st Sess.

9. Thomas P. O'Neill, Jr. (Mass.).



rule that deals with scope be waived. . . .

MR. [TRENT] LOTT [of Mississippi]: . . . Mr. Speaker, this rule waives points of order against the conference report to accompany S. 826, the Department of Energy Organization Act, for failure to comply with clause 3 of rule XXVIII. The waiver is necessary because title X is a variation of the House sunset provision for which the Senate had no comparable language.

The House version states that the act will expire on December 31, 1982. The Senate version is silent on this matter. So the conferees substituted a requirement that the President submit to Congress a comprehensive review of each program in the Department by January 15, 1982. This report is to be made available to the House and Senate committees having jurisdiction over annual authorizations for such programs for fiscal year 1983.

Since there is no similar Senate provision and since the House's version is different, title X of the conference report appears to be beyond the scope of the conference. Hence, the waiver of rule XXVIII, clause 3.

### *Waiving Specific Points of Order Against a Conference Report*

§ 26.12 **The House considered a special order waiving all points of order against a conference report which would have been subject to points of order under Rule XXVIII clauses 3 and 4, because of**

### **violations of the rules on the scope of conference and the inclusion of provisions not germane to the House text.**

The rule and some of the debate preceding its adoption are carried as excerpted from the Record of Dec. 4, 1980,<sup>(10)</sup> and as illustrative of the problems faced by conferees in resolving differences in text.

MR. [RICHARD W.] BOLLING [of Missouri]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 820 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 820

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1159) to authorize appropriations for the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act, and for other purposes, and all points of order against said conference report for failure to comply with the provisions of clauses 3 and 4, rule XXVIII are hereby waived.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour. . . .

MR. [JAMES H.] SCHEUER [of New York]: Mr. Speaker, I rise in support of the rule providing for consideration of

10. 126 CONG. REC. 32145, 32147, 96th Cong. 2d Sess.

11. John Joseph Moakley (Mass.).

the conference report on S. 1159, the Motor Vehicle Safety and Cost Savings Authorization Act of 1980. . . .

Before concluding, I would like to address the concern that this conference report contains provisions which are beyond the scope of the conference or which are nongermane.

Certainly, there are such provisions and much has been made of that fact.

However, such provisions were included by the conferees neither lightly nor carelessly. . . .

Let me cite a few examples.

The seven germaneness problems in the conference report resulted because the House bill contained only a 1-year authorization.

The Senate bill ran for 3 years and contained permanent amendments to the act.

Thus, any Senate provision adopted by the conferees was automatically nongermane to the House bill.

For instance, section 2 of the conference report is nongermane because it authorizes NHTSA through fiscal year 1982.

As I mentioned before, the House bill only authorized the agency through fiscal year 1980. . . .

Unfortunately, the conference did not convene until July of this year.

At that point, 2 months remained of the House authorization period.

I would note that by now, the House authorization would have expired.

Rather than follow the letter of House rules and produce an absurd result, the conferees adopted the Senate provision which authorized NHTSA through fiscal year 1982. . . .

These are also some provisions in S. 1159 which are outside the scope of the conference.

Section 8 dealing with passive restraints is a good example of this problem.

### *Amending Special Rule To Allow Germaneness Point of Order*

**§ 26.13 In an unusual sequence of events, the House: (1) considered a special order providing for the consideration of two measures (a conference report and a separate bill identical to a nongermane amendment included in the report); (2) rejected the previous question on the special order; and (3) then adopted an amendment providing for consideration of the report but modifying the application of Rule XXVIII clause 4 with respect to the nongermane amendment.**

The Elementary and Secondary Education Act had been passed by the House on May 27, 1987. The Senate amended the bill including as a new section 5 thereof a nongermane provision relating to "dial-a-porn," a matter not within the jurisdiction of the Committee on Education and Labor, but within the province of the Com-

mittee on Energy and Commerce. The matter went to conference, managers on the part of the House including members from the Committees on Education and Labor and from Energy and Commerce. The conferees reported a text which included a modification of the nongermane Senate amendment on telecommunications policy. The proceedings leading to the rejection of the conference report on April 19, 1988,<sup>(12)</sup> and motions which followed are shown here.

CONFERENCE REPORT ON H.R. 5,  
ELEMENTARY AND SECONDARY EDUCATION

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 427 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 427

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5) to improve elementary and secondary education, and all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for

consideration. A motion to recommit the conference report may not contain instructions.

SEC. 2. At any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of a bill containing the text printed in section three of this resolution, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed thirty minutes, equally divided and controlled by a proponent and an opponent, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order in the House or in the Committee of the Whole. At the conclusion of the consideration of the bill, the Committee shall rise and report the bill to the House, and the previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to commit, which may not contain instructions.

SEC. 3. The text of the bill as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

“Section 223(b) of the Communications Act of 1934 is amended—

“(1) in paragraph (1)(A), by striking out ‘under eighteen years of age or to any other person without that person’s consent’;

“(2) by striking out paragraph (2);

“(3) in paragraph (4), by striking out ‘paragraphs (1) and (3)’ and inserting in lieu thereof ‘paragraphs (1) and (2)’; and

“(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.”.

12. 134 CONG. REC. 7345-47, 7353-55, 7446, 7448, 7484, 7485, 100th Cong. 2d Sess.

THE SPEAKER:<sup>(13)</sup> The gentleman from Texas [Mr. Frost] is recognized for 1 hour.

MR. FROST: Mr. Speaker, House Resolution 427 is a rule waiving all points of order against the conference report on H.R. 5, the School Improvement Act of 1987, and waiving all points of order against its consideration. The rule provides that the conference report shall be considered as having been read when called up for consideration and that a motion to recommit the conference report may not contain instructions.

Mr. Speaker, the conference agreement on H.R. 5, named the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, is the result of months of work on the part of both the House and the Senate and both the majority and the minority. . . .

MR. [TRENT] LOTT [of Mississippi]: . . . The rule also provides for consideration at any time of a bill which is identical to the one we just passed under suspension of the rules under a sudden change in scheduling. I think this is the first time I can recall in which we passed a bill before adopting the rule making it in order. I think it says something about the extent of the leadership's concern that Congress might actually enact a meaningful dial-a-porn provision as part of the conference report. . . .

MR. [THOMAS J.] BLILEY [Jr., of Virginia]: Mr. Speaker, I rise in strong opposition to the rule before us today. I oppose this rule because it represents

just one more attempt to sidestep the issue of dial-a-porn through clever procedural gimmicks. It's precisely this type of gimmickry that has put us in the situation we're in today.

That is precisely the thrust of the language that is included in the conference report—language that was included in the conference report without the conferees on that issue ever having met in open public session as required by rule 28 clause 6. . . .

MR. FROST: . . . Mr. Speaker, I move the previous question on the resolutions.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The question is on ordering the previous question.

The question was taken. . . .

So the previous question was not ordered.

The result of the vote was announced as above recorded.

AMENDMENT IN THE NATURE OF A  
SUBSTITUTE OFFERED BY MR. LOTT

MR. LOTT: Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Lott: Strike all after the resolving clause and insert in lieu thereof the following:

"That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 5) to improve elementary and secondary education, and all points of order against the conference report and against its consideration, except as provided by section 2 of this reso-

13. James C. Wright, Jr. (Tex.).

14. Dale E. Kildee (Mich.).

lution, are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

"SEC. 2. It shall be in order pursuant to clause 4 of rule XXVIII of the rules of the House to raise a point of order against sec. 6101 of the conference report. If, pursuant to such clause, the point of order is sustained and the section is then rejected by a vote of the House, it shall immediately be in order, without intervening motion, for any Member to offer a preferential motion to take from the Speaker's table the bill H.R. 5, together with the Senate amendment thereto, and to recede and concur in the Senate amendment with an amendment which shall consist of the text of that portion of the conference report not rejected together with the text of sec. 7003 of said Senate amendment as a substitute for sec. 6101 of the conference report as rejected by the House, said motion shall be considered as having been read, and all points of order against said motion are hereby waived."

THE SPEAKER: The gentleman from Mississippi [Mr. Lott] is recognized for 1 hour.

MR. LOTT: Mr. Speaker, I see no reason to prolong this debate any further. There is no need to take any longer than a couple minutes.

I would like to urge the adoption of this substitute rule which would provide for the consideration of the ban on dial-a-porn language in the conference report and also, of course, the conference report on H.R. 5, the education bill.

We all know what is involved in the debate. We know what is in the rule. . . .

Mr. Speaker, I would be happy to yield to anyone for purposes of debate

only, but I think we have debated this issue at length for the last hour and 5 minutes, so I am ready to move the previous question.

Mr. Speaker, I move the previous question on the amendment in the nature of a substitute and the resolution.

THE SPEAKER: The question is on ordering the previous question.

The previous question was ordered.

THE SPEAKER: The question is on the amendment in the nature of a substitute offered by the gentleman from Mississippi [Mr. Lott].

The amendment in the nature of a substitute was agreed to.

THE SPEAKER: The question is on the resolution, as amended.

The resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

MR. [AUGUSTUS F.] HAWKINS [of California]: Mr. Speaker, pursuant to House Resolution 427, I call up the conference report on the bill (H.R. 5) to improve elementary and secondary education, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER: Pursuant to the rule, the conference report is considered as having been read. . . .

#### POINT OF ORDER

MR. BLILEY: Mr. Speaker, pursuant to the rule just adopted and clause 4 of rule XXVIII, I make a point of order against section 6101 of the conference report, and ask to be heard on my point of order.

THE SPEAKER: The gentleman's point of order is well-taken, the modification of the Senate provision in question is

not germane to the bill as passed by the House. The point of order is sustained.

MOTION OFFERED BY MR. BLILEY

MR. BLILEY: Mr. Speaker, I offer a privileged motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Bliley moves pursuant to clause 4 of rule XXVIII and House Resolution 427 as adopted by the House that the House do now reject section 6101 of the conference report on the bill H.R. 5.

THE SPEAKER: The gentleman from Virginia [Mr. Bliley] will be recognized for 20 minutes and a Member, of opposed, will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia [Mr. Bliley].

MR. BLILEY: Mr. Speaker, we have been over this ground all day and in deference to the time of the Members and in the light of the vote we just had on voting down the ordering of the previous question, I would urge the Members to adopt this motion so that we can get on with the business at hand.

Mr. Speaker, I have no requests for time, and I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from Virginia [Mr. Bliley].

The motion was agreed to. . . .

MOTION OFFERED BY MR. BLILEY

MR. BLILEY: Mr. Speaker, I offer a privileged motion.

THE SPEAKER: The Clerk will report the motion.

The Clerk read as follows:

Mr. Bliley moves to take from the Speaker's table the bill H.R. 5, together with the Senate amendment thereto, and recede and concur in the Senate amendment with an amendment consisting of the text of that portion of the conference report on the bill H.R. 5 not rejected by the House together with the text of section 7003 of the Senate amendment in place of section 6101 as rejected by the House, as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—*This Act may be cited as the "Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988".*

(b) *TABLE OF CONTENTS.*— . . .

PART B—PROHIBITION OF DIAL-A-PORN

SEC. 6101. AMENDMENTS TO THE COMMUNICATIONS ACT OF 1934.

*Section 223(b) of the Communications Act of 1934 is amended—*

(1) *in paragraph (1)(A), by striking out "under eighteen years of age or to any other person without that person's consent";*

(2) *by striking out paragraph (2);*

(3) *in paragraph (4), by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraphs (1) and (2)"; and*

(4) *by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively. . . .*

THE SPEAKER: The gentleman from Virginia [Mr. Bliley] will be recognized for 30 minutes and the gentleman from California [Mr. Hawkins] or his desig-

nee from the majority party will be recognized for 30 minutes.

The Chair recognizes the gentleman from Virginia [Mr. Bliley]. . . .

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The question is on the motion offered by the gentleman from Virginia [Mr. Bliley] that the House recede and concur in the Senate amendment with an amendment consisting of the text of that portion of the conference report on the bill H.R. 5 not rejected by the House together with the text of section 7003 of the Senate amendment in place of section 6101 as rejected by the House.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. BLILEY: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 397, nays 1, not voting 34, as follows: . . .

The result of the vote was announced as above recorded.

***Special Order Protecting Conference Report From Point of Order and Self-executing Adoption of Concurrent Resolution Correcting Enrollment***

**§ 26.14 Special order, waiving points of order against a conference report, and “self-executing” the adoption in the House of a concurrent resolution correcting the en-**

15. Richard J. Durbin (Ill.).

**rollment, thus giving the Senate two options: to accept the conference report as filed and agreed to by the House or to modify its provisions in the enrollment process by adoption of the concurrent resolution.**

The resolution reported by the Committee on Rules, a portion of the explanation thereof, and the proceedings for adopting the concurrent resolution made in order in the resolution, as excerpted from the Record of Sept. 30, 1992,<sup>(16)</sup> are carried here.

MR. [BART] GORDON [of Tennessee]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 581 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 581

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 5503) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1993, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. Upon the adoption of the conference report the

16. 138 CONG. REC. 29064, 29077, 102d Cong. 2d Sess.

House shall be considered to have adopted a concurrent resolution introduced by Representative Yates of Illinois (for himself and Representative Miller of California) on or before September 30, 1992, directing the Clerk of the House to make corrections in the enrollment of the bill (H.R. 5503) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1993, and for other purposes.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> The gentleman from Tennessee [Mr. Gordon] is recognized for 1 hour.

MR. GORDON: . . . Mr. Speaker, House Resolution 581 provides for the consideration of the conference report on H.R. 5503, the Interior and related agencies appropriations for fiscal year 1993. The conference report is debatable for 1 hour.

The rule waives all points of order against the conference report and against its consideration. The rule also provides that the conference report will be considered as read.

Finally, upon adoption of the conference report, the House will be considered as having adopted a concurrent resolution jointly introduced by Representative Yates of Illinois and Representative Miller of California. The concurrent resolution directs the Clerk of the House to make corrections in the conference report on H.R. 5503.

Immediately after adoption of the special order, the concurrent resolution, introduced by Mr. George Miller, of California, and

17. G. V. (Sonny) Montgomery (Miss.).

Mr. Sidney R. Yates, of Illinois, was "considered to have been adopted."

The conference report was agreed to.

A motion to reconsider was laid on the table.

ADOPTION OF HOUSE CONCURRENT RESOLUTION 365, MAKING CORRECTIONS IN ENROLLMENT OF H.R. 5503

THE SPEAKER PRO TEMPORE: Pursuant to House Resolution 581, House Concurrent Resolution 365, introduced today by the gentleman from Illinois [Mr. Yates], on behalf of himself and the gentleman from California [Mr. Miller], is considered to have been adopted.

The text of House Concurrent Resolution 365 is as follows:

H. CON. RES. 365

*Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 5503) entitled "An Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1993, and for other purposes", the Clerk of the House of Representatives shall make the following corrections, namely:*

In the paragraph under the heading "Land Acquisition", Bureau of Land Management, after the figure "\$28,034,000" insert ", of which \$5,000,000 is for the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation and \$23,034,000 is"; . . .

Under the heading "Administrative Provisions, Forest Service" delete the following paragraph:

"As a pilot effort, for the purpose of achieving ecologically defensible management practices, the Kaibab,



Dixie, Idaho Panhandle, and Cocino National Forests and the Lake Tahoe Basin Management Unit are authorized to apply the value or a reasonable portion of the value of timber removed under a stewardship end result contract as an offset against the cost of stewardship services received including, but not limited to, site preparation, replanting, silviculture programs, recreation, wildlife habitat enhancement, and other multiple-use enhancements on selected projects: *Provided*, That timber removed shall count toward meeting the Congressional expectations for the annual timber harvest.”.

*Parliamentarian's Note:* The Senate had insisted, in the conference on the Interior Department appropriation bill, fiscal 1993, that certain unauthorized items and legislative provisions, added to the bill by the Senate, be included in the report. Members of the House authorizing committee, (at that time the Committee on Interior and Insular Affairs), objected to the inclusion of unauthorized appropriations. This “compromise rule” protected the conference report from a point of order but signaled the opposition of certain Members of the House to the Senate amendments and the action of the conferees in seeking a rule protecting the inclusion of the items which would otherwise have been subject to a point of order.

***Special Orders Sending Bill to Conference; Protecting Specific Motion To Amend Senate Bill***

§ 26.15 The House can, by means of a special order, provide for the consideration in the House of a Senate bill, protect a particular motion to amend from any point of order (leaving alternative motions unprotected) and specify that if the protected motion is adopted, and the bill as amended is passed, it shall be in order to move to insist on the House amendment and request a conference.

House Resolution 374 was designed to “hook up” the Senate numbered bill with the text of a related House bill, H.R. 796, which had passed the House in the previous session of the Congress. The so-called “Freedom of Access to Clinic Entrances Act of 1993” was not without controversy, and the rule was designed to permit a variety of points for debate and for motions to test the will of the House on how to proceed. Some of these procedural alternatives were

mentioned in the debate on the rule.<sup>(18)</sup>

MR. [JOHN JOSEPH] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 374 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 374

*Resolved*, That upon the adoption of this resolution it shall be in order to take from the Speaker's table the bill (S. 636) to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes, and to consider the Senate bill in the House. All points of order against the Senate bill and against its consideration are waived. It shall be in order to move to strike all after the enacting clause of the Senate bill and to insert in lieu thereof the provisions of H.R. 796 as passed by the House. All points of order against that motion are waived. If the motion is adopted and the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendments to S. 636 and request a conference with the Senate thereon.

THE SPEAKER:<sup>(19)</sup> The gentleman from Massachusetts [Mr. Moakley], is recognized for one hour. . . .

MR. [ANTHONY C.] BEILENSEN [of California]: . . . The rule makes it in order to take the Senate bill, S. 636, from the Speaker's table and consider it in the House. All points of order

against the Senate bill and its consideration are waived.

The rule also makes in order a motion to strike out all after the enacting clause of the Senate bill and insert the provisions of H.R. 796 as passed by the House. All points of order against that motion are waived. . . .

MR. [JAMES H.] QUILLEN [of Tennessee]: . . . Mr. Speaker, as the gentleman from California, Mr. Beilenson, has explained, this rule provides for the consideration of S. 636, the Senate-passed version of the Freedom of Access to Clinic Entrances Act.

The rule makes in order motions to consider the Senate bill, to substitute the text of the House-passed version, H.R. 796, to pass the amended bill, to insist on the amendments and to request a conference. All points of order are waived against S. 636 and its consideration, as well as the motion to amend the bill.

Now, that may seem simple enough, but let me describe the potential debate and votes that this rule would allow. First, we have up to 1 hour of debate on the rule, a possible vote on the previous question and a vote on adoption of the rule.

Then we have up to 1 hour of debate on the Senate bill. There could be a vote on the motion to strike the text of S. 636 and insert the language of H.R. 796 as passed by the House. That might be followed by a vote on the motion to commit the Senate bill to the appropriate House committee. Then there could be a vote on passage of the Senate bill as amended.

There is still more, Mr. Speaker. After passage, we have up to 1 hour of debate on the motion to go to confer-

18. See 140 CONG. REC. 5389, 5390, 5398, 103d Cong. 2d Sess., Mar. 17, 1994.

19. Thomas S. Foley (Wash.).

ence, followed by a possible vote on that motion. And finally, we have up to 1 hour of debate on the motion to instruct conferees to agree to the Hatch amendment providing protection to places of worship. I strongly support the Hatch amendment, and there may be a vote on the motion to instruct conferees. I hope my explanation clears up any existing questions or confusion about this rule, and I am strongly opposed to this bill. . . .

MS. [LOUISE M.] SLAUGHTER [of New York]: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a simple house-keeping procedure to get to conference. It is not an unusual device or a closed rule. We have considered rules to hook up with a Senate bill and go to conference 19 times in the 102d Congress and several times already in this Congress, as recently as last month on the Independent Counsel bill. . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* The waivers specified in the rule were designed to protect the Senate bill and the motion to amend with the text of the House bill from possible points of order under the Budget Act. Both the bill and the amendment provided for criminal penalties and there was some question whether increases in penalties should be scored as new budget authority. Points of order had been

waived against such provisions on previous occasions.

### *Sending Bill to Conference and Waiving Points of Order Against Report*

§ 26.16 In an effort to facilitate the passage of a House bill with Senate amendments before an impending adjournment, the House adopted a special order both sending the matter to conference and waiving the two-thirds requirement for same-day consideration of a subsequent rule providing for consideration of the conference report if filed later on that same legislative day.

Where it would be difficult either to get unanimous consent to send a bill to conference or to schedule a meeting of the appropriate legislative committee to authorize a motion to accomplish that result, the Committee on Rules may be called upon to expedite the process by a special order. Under the form of resolution utilized in this instance,<sup>(20)</sup> no motion to send the bill to conference was necessary from the floor since the

20. See 139 CONG. REC. 31810, 31814, 103d Cong. 1st Sess., Nov. 22, 1993.

adoption of the rule placed the matter in conference. A motion to instruct conferees was thus in order immediately after the adoption of the resolution, before the Speaker named conferees.

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 322 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 322

*Resolved*, That upon the adoption of this resolution the House shall be considered to have taken the bill (H.R. 1025) to provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm, with a Senate amendment thereto, from the Speaker's table, to have disagreed to the Senate amendment, and to have agreed to the request of the Senate for a conference thereon. The requirement of clause 4(b) of rule XI for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to a resolution reported on the legislative day of November 22, 1993, providing for the consideration or disposition of a conference report to accompany that bill.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentleman from South Carolina [Mr. Derrick] is recognized for 1 hour. . . .

So the resolution was agreed to.

1. Thomas H. Andrews (Maine).

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PARLIAMENTARY INQUIRY

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. SENSENBRENNER: Does the gentleman from Texas [Mr. Brooks] have to make the motion to send the bill to conference provided for under this rule?

THE SPEAKER PRO TEMPORE: No, the adoption of the rule accomplishes that.

MR. SENSENBRENNER: I thank the Chair.

APPOINTMENT OF CONFEREES ON  
H.R. 1025

MR. SENSENBRENNER: Mr. Speaker, I offer a motion to instruct conferees.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Sensenbrenner moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill, H.R. 1025, be instructed to accept section 302(d) of the Senate amendment, and subsection (i)(1)(A) of the matter proposed to be added by section 302(e) of the Senate amendment.

***Special Orders Protecting Conference Reports Where Disagreements are Bundled Inside the Report***

§ 26.17 In the 104th Congress, many of the conference reports on general appropriation bills were protected from points of order by privileged resolutions granting “blanket waivers,” a necessity since amendments in disagreement were routinely brought back “inside the conference report” instead of being reported in disagreement for disposition by separate motions.

The standard form of the special orders reported from the Committee on Rules is set forth below.<sup>(2)</sup> By waiving “[a]ll points of order against the report and its consideration” items in the report containing legislative or unauthorized items in violation of Rule XX clause 2,<sup>(3)</sup> were protected. Matters included by the conferees which were beyond the differences committed to conference were also safe from attack under Rule XXVIII clause 3.<sup>(4)</sup> Reading was usually dispensed with so the report could be considered prior to the expira-

2. See 141 CONG. REC. 32601, 104th Cong. 1st Sess., Nov. 15, 1995 (H. Res. 253).

3. *House Rules and Manual* § 829 (1997).

4. *Id.* at § 913a.

tion of the three-day availability requirement in Rule XXVIII clause 2(c).<sup>(5)</sup>

WAIVING POINTS OF ORDER AGAINST FURTHER CONFERENCE REPORT ON H.R. 1977, DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

MS. [DEBORAH] PRYCE [of Ohio]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 253 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 253

*Resolved*, That upon adoption of this resolution it shall be in order to consider the further conference report to accompany the bill (H.R. 1977) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentlewoman from Ohio [Ms. Pryce] is recognized for 1 hour.

MS. PRYCE: . . . The blanket waiver includes a waiver of clause 2 of rule XX as well as a waiver of clause 3 of rule XXVIII which permits the House to discuss provisions which may exceed the scope of differences between the House and Senate. Under the normal

5. *Id.* at § 912d.

6. Dan Burton (Ind.).

rules of the House, we will have 1 hour of debate on the conference report itself in addition to the minority's customary right to offer a motion to recommit with or without instructions. . . .

***Special Order Placing Before House a Corrected Version of a Conference Report Originally Filed With an Error***

**§ 26.18 Form of a special order vacating the filing and printing of a conference report on a preceding day, authorizing the refileing of the report in a corrected form as delineated in the resolution, accepting original signature sheets as valid for purposes of second report, waiving points of order against the report and its consideration, and permitting one motion to recommit without instructions.**

House Resolution 272 in the 104th Congress provided for the consideration of a corrected version of a conference report on the bill H.R. 2491.

The resolution, a portion of the explanation of the special order by its proponent from the Committee on Rules, David Dreier, of Califor-

nia, and the filing of the corrected report are carried below.<sup>(7)</sup>

AUTHORIZING CORRECTION IN CONFERENCE REPORT AND WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2491, SEVEN-YEAR BALANCED BUDGET RECONCILIATION ACT OF 1995

MR. DREIER: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 272 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 272

*Resolved*, That the proceedings of the legislative day of November 15, 1995, by which the conference report to accompany the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996 was presented to the House and ordered printed, are hereby vacated, to the end that the managers on the part of the House may immediately present the conference report in the form actually ordered reported to the House as a product of the meeting and signatures of the committee of conference and actually to be presented in the Senate, in pertinent corrected part as depicted in section 3 of this resolution. The existing signatures of the committee of conference shall remain valid as authorizing the presentation of the conference report to the House in corrected form.

SEC. 2. Upon adoption of this resolution it shall be in order to consider the conference report presented to the House pursuant to the first

7. See 141 CONG. REC. 33741, 104th Cong. 1st Sess., Nov. 17, 1995.

section of this resolution. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. After such debate the previous question shall be considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit, which may not contain instructions and on which the previous question shall be considered as ordered. After disposition of the conference report, no further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

SEC. 3. The correction described in section 2 of this resolution is to insert between subtitles J and L of title XII a subtitle K (as depicted in the table of contents) as follows:

“Subtitle K—Miscellaneous

“SEC. 13101. FOOD STAMP ELIGIBILITY.

“Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended by striking the third sentence and inserting the following: ‘The State agency shall, at its option, consider either all income and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection, or such income, less a pro rata share, and the financial resources of the ineligible individual, to determine the eligibility and the value of the allotment of the household of which such individual is a member.’

“SEC. 13102. REDUCTION IN BLOCK GRANTS FOR SOCIAL SERVICES.

“Section 2003(c) of the Social Security Act (42 U.S.C. 1397b) is amended—

“(1) by striking ‘and’ at the end of paragraph (4); and

“(2) by striking paragraph (5) and inserting the following:

“(5) \$2,800,000,000 for each of the fiscal years 1990 through 1996; and

“(6) \$2,240,000,000 for each fiscal year after fiscal year 1996.’”.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman from California [Mr. Dreier] is recognized for 1 hour. . . .

MR. DREIER: Mr. Speaker, due to a technical error committed during the filing of the conference report on H.R. 2491, this rule vacates the proceedings by which the conference report on H.R. 2491, the Seven-Year Balanced Budget Act, was filed. The rule authorizes the managers to immediately refile the report in the form actually signed and ordered reported, with the corrected part printed in section 3 of the rule. The rule further provides that the existing signatures of the conferees shall remain valid as authorizing the presentation of the conference report to the House in its corrected form.

The rule then provides for the consideration of the newly filed conference report to accompany H.R. 2491. The rule waives all points of order against the conference report and against its consideration. The rule provides for two hours of debate equally divided and controlled by the chairman and ranking member of the Budget Committee.

The rule provides for one motion to recommit the conference report which may not contain instructions. Finally, the rule provides that following disposition of the conference report, no fur-

8. Ray LaHood (Ill.).

ther action on the bill is in order except by subsequent order of the House. . . .

CONFERENCE REPORT ON H.R. 2491,  
SEVEN-YEAR BALANCED BUDGET  
RECONCILIATION ACT OF 1995

Mr. Kasich submitted the following conference report and statement on the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996:

(For conference report and statement see proceedings of the House of November 15, 1995, as corrected by the following:)

SEC. 3. The correction described in section 2 of this resolution is to insert between subtitles J and L of title XII a subtitle K (as depicted in the table of contents) as follows:

“Subtitle K—Miscellaneous

“SEC. 13101. FOOD STAMP ELIGIBILITY.

“Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended by striking the third sentence and inserting the following: ‘The State agency shall, at its option, consider either all income and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection, or such income, less a pro rata share, and the financial resources of the ineligible individual, to determine the eligibility and the value of the allotment of the household of which such individual is a member.’

“SEC. 13102. REDUCTION IN BLOCK GRANTS FOR SOCIAL SERVICES.

“Section 2003(c) of the Social Security Act (42 U.S.C. 1397b) is amended—

“(1) by striking ‘and’ at the end of paragraph (4); and

“(2) by striking paragraph (5) and inserting the following:

‘(5) \$2,800,000,000 for each of the fiscal years 1990 through 1996; and

‘(6) \$2,240,000,000 for each fiscal year after fiscal year 1996.’”

MR. [JOHN R.] KASICH [of Ohio]: Mr. Speaker, pursuant to House resolution 272, I call up the conference report on the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Pursuant to the rule, the conference report is considered as having been read.

*Parliamentarian’s Note:* This special order, putting a corrected version of the conference report before the House, was possible since the original conference report had not been filed in the Senate. The other parliamentary steps which might have been used to correct the error in the report—to call up the original report and then recommit it to conference or to call up the original report and then have a concurrent resolution correcting the enrollment—would have been more cumbersome and would have involved more procedural steps than the method utilized here.



While Rule XI clause 4(b)<sup>(9)</sup> precludes a special order from preventing a motion to recommit under Rule XVI clause 4<sup>(10)</sup> with instructions (if offered by the Minority Leader or his designee), that restriction on the authority of the Committee on Rules does not cover a conference report where the motion to commit or recommit is made pursuant to Rule XVII clause 1<sup>(11)</sup> and not Rule XVI.

***Special Rule Waiving Three-fifths Vote Requirement on Tax Increase***

**§ 26.19 A special rule waiving points of order against a conference report on a budget reconciliation bill may also waive the applicability of Rule XXI clause 5(c),<sup>(12)</sup> requiring a three-fifths vote on any measure carrying an income tax increase.**

The Committee on Rules, in reporting H. Res. 495, waiving points of order against the conference report on the bill H.R. 3734,

<sup>9.</sup> *House Rules and Manual* § 729a (1997).

<sup>10.</sup> *Id.* at § 782.

<sup>11.</sup> *Id.* at § 804.

<sup>12.</sup> *House Rules and Manual* § 846c (1997).

the Welfare and Medicaid Reform Act of 1996, included the waiver of the super-majority vote in Rule XXI out of caution. No income tax rate increase was noted in the measure but because of the complicated legislation involved and the ambiguity of the rule, the waiver was thought prudent. The relevant proceedings of July 31, 1996,<sup>(13)</sup> are carried below.

CONFERENCE REPORT ON H.R. 3734,  
PERSONAL RESPONSIBILITY AND WORK  
OPPORTUNITY RECONCILIATION ACT  
OF 1996

Mr. Solomon, from the Committee on Rules, submitted a privileged report (Rept. No. 104-729) on the resolution (H. Res. 495) waiving points of order against the conference report to accompany the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997, which was referred to the House Calendar and ordered to be printed.

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I call up the resolution (H. Res. 495) waiving points of order against the conference report to accompany the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997 and ask for its immediate consideration.

<sup>13.</sup> 142 CONG. REC. 20697, 104th Cong. 2d Sess.

The Clerk read the resolution, as follows:

H. RES. 495

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The yeas and nays shall be considered as ordered on the question of adoption of the conference report and on any subsequent conference report or motion to dispose of an amendment between the houses on H.R. 3734. Clause 5(c) of rule XXI shall not apply to the bill, amendments thereto, or conference reports thereon.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The gentleman from New York [Mr. Solomon] is recognized for 1 hour.

MR. SOLOMON: . . . Additionally, the rule provides that the conference report shall be considered as read. The rule also orders the yeas and nays on the adoption of the conference report and on any subsequent conference report or motion to dispose of an amendment between the Houses.

Finally, the rule provides that the provisions of clause 5(c) of rule XXI requiring a three-fifths vote on any income tax rate increase shall not apply to the bill, amendments thereto, or to the conference report thereon.

14. Joel Hefley (Colo.).

***Waiving Points of Order Against Motions To Dispose of Amendments in Disagreement Reported From Conference Committee***

§ 26.20 The House adopted a resolution waiving points of order against a conference report, and making in order motions to recede from disagreement to any Senate amendment (reported from this conference still in disagreement) and concur therein with amendments not otherwise in order.<sup>(15)</sup>

On Aug. 2, 1955,<sup>(16)</sup> the following occurred in the House:

Mr. [James W.] Trimble [of Arkansas], from the Committee on Rules, reported the following privileged resolution (H. Res. 337) which was referred to the House calendar and ordered to be printed:

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill H.R. 7117, making appropriations for the legislative branch for the fiscal year ending June 30, 1956, and for other purposes, and all

15. For a more detailed discussion of the unusual procedure utilized during the consideration of these amendments reported in disagreement, see § 29.38, *infra*.
16. 101 CONG. REC. 13051-56, 84th Cong. 1st Sess.

points of order against the conference report are hereby waived; that during the consideration of the amendments of the Senate to the bill H.R. 7117 reported from the conference committee in disagreement it shall be in order, notwithstanding any rule of the House to the contrary, to move that the House recede from its disagreement to any such amendment and concur therein with an amendment inserting in the proper place in the bill any or all of the parts of the provisions of the bill H.R. 7440 and any amendments thereto as agreed upon by the House conferees on the bill H.R. 7117. . . .

THE SPEAKER:<sup>(17)</sup> The question is on the resolution.

The resolution was agreed to.

Mr. [John J.] Rooney [of New York] submitted the following conference report and statement on the bill (H.R. 7117) making appropriations for the legislative branch for the fiscal year ending June 30, 1956, and for other purposes: . . .

MR. ROONEY: Mr. Speaker, I call up the conference report on the bill (H.R. 7117) making appropriations for the legislative branch for the fiscal year ending June 30, 1956, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House may be read in lieu of the report.

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

There was no objection.

The Clerk read the statement.

THE SPEAKER: The question is on agreeing to the conference report.

The conference report was agreed to.

THE SPEAKER: The Clerk will report the first amendment in disagreement. . . .

After the Clerk read Senate amendment No. 52, Mr. Rooney offered the following motion:

Mr. Speaker, I move that the House recede and concur in the Senate amendment with an amendment. . . .

After the Clerk read Mr. Rooney's motion, Mr. Rooney explained,

Mr. Speaker, this is the amendment which was discussed just prior to the adoption of the rule. This is where the provisions of H.R. 7440 reported by the House Administration Committee and for which a rule was granted about a week ago, as amended by the House conferees, are inserted in this appropriation bill. . . .

THE SPEAKER: The question is on the motion.

The motion was agreed to.

A motion to reconsider was laid on the table.

**§ 26.21 The House adopted a resolution waiving points of order against a conference report, and which made in order and waived points of order against a motion to be made by the chairman of the managers on the part of the House to recede from disagreement to a Senate amendment reported in disagree-**

17. Sam Rayburn (Tex.).

**ment and to concur therein with an amendment.**<sup>(18)</sup>

On Dec. 24, 1963,<sup>(19)</sup> the following occurred in the House:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I call up House Resolution 600 and ask for its immediate consideration.

THE SPEAKER:<sup>(20)</sup> The Clerk will report the resolution.

The Clerk read the resolution, as follows:

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

THE SPEAKER: The gentleman from Virginia [Mr. Smith] is recognized for 1 hour. . . .

MR. SMITH of Virginia: Mr. Speaker, I hope we may adopt this resolution unanimously and get through with this matter.

18. See also § 29.38, *infra*.

19. 109 CONG. REC. 25520, 25528, 88th Cong. 1st Sess.

20. John W. McCormack (Mass.).

Mr. Speaker, I move the previous question.

The previous question was ordered.

The resolution was agreed to.

*Parliamentarian's Note:* Since the motion that would be offered to recede and concur in the Senate amendment with an amendment would have been subject to a point of order on the grounds that the language proposed was legislation on an appropriation bill, the resolution was prepared to waive points of order against the motion.

***Special Order Protecting Conference Report and Amendment in Disagreement***

§ 26.22 The House adopted a resolution reported from the Committee on Rules, waiving points of order against a Senate amendment in disagreement (the conferees having reported in total disagreement) and against a motion to recede from disagreement and concur in the amendment with a further amendment.

On July 1, 1976,<sup>(1)</sup> Mr. Richard W. Bolling, of Missouri, from the

1. 122 CONG. REC. 21829, 21830, 21832, 21834, 21835, 21840, 94th Cong. 2d Sess.

Committee on Rules, called up House Resolution 1393, waiving all points of order against a conference report, the Senate amendment in disagreement, and a motion to recede and concur therein with an amendment.

The conferees on the bill H.R. 12455, which amended title XX of the Social Security Act, had agreed informally on an agreement in conference which would have, if filed, been subject to a point of order as exceeding the scope of the matters committed to conference. The Senate amendment and the agreed upon motion to recede and concur were also vulnerable to points of order under the Congressional Budget Act. By waiving points of order against the conference report, the Senate amendment and the motion, the path was cleared to resolve the difference between the two Houses:

MR. BOLLING: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1393 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1393

*Resolved*, That immediately upon the adoption of this resolution it shall be in order to consider, any rule of the House to the contrary notwithstanding, the conference report, the

Senate amendments reported from conference in disagreement, and the motions to dispose of said Senate amendments, on the bill (H.R. 12455) to extend from April 1 to October 1, 1976, the maximum period during which recipients of services on September 30, 1975, under titles IV-A and VI of the Social Security Act, may continue to receive services under title XX of that Act without individual determinations, and all points of order against said motions to dispose of the Senate amendments reported from conference in disagreement are hereby waived.

THE SPEAKER:<sup>(2)</sup> The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour. . . .

So the resolution was agreed to. . . .

MR. [AL] ULLMAN [of Oregon]: Mr. Speaker, pursuant to House Resolution 1393, I call up the conference report on the bill (H.R. 12455) to extend from April 1 to October 1, 1976, the maximum period during which recipients of services on September 30, 1975, under titles IV-A and VI of the Social Security Act, may continue to receive services under title XX of that act without individual determinations, and ask for its immediate consideration.

The Clerk read the title of the bill.

THE SPEAKER: The Clerk will read the conference report. . . .

The Chair lays before the House the Senate amendments, which the Clerk will read.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That (a)(1) section 2002(a) of the Social Security Act is amended by

2. Carl Albert (Okla.).

striking out paragraphs (4), (5), and (6) thereof.

(2) The amendments made by paragraph (1) shall be effective on and after October 1, 1975. . . .

MOTION OFFERED BY MR. CORMAN

MR. [JAMES C.] CORMAN [of California]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Corman moves that the House recede from its disagreement to the amendment of the Senate to the text of the bill, and concur therein with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

That (a) section 2002(a) of the Social Security Act is amended by adding at the end thereof the following new paragraph: . . .

THE SPEAKER: The gentleman from California (Mr. Corman) will be recognized for 30 minutes and the gentleman from Michigan (Mr. Vander Jagt) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. Corman). . . .

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. CORMAN

MR. CORMAN: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Corman moves that the House recede from its disagreement to the Senate amendment to the title of the bill and concur therein.

The motion was agreed to.

A motion to reconsider was laid on the table.

***Form of Resolution Protecting Motions To Dispose of Certain Amendments in Disagreement***

**§ 26.23 Form of resolution waiving points of order against a conference report which had not been printed in the Record for the three days required by the rule, and protecting certain motions (printed in the statement of the managers) to dispose of certain Senate amendments reported in disagreement which would be subject to a point of order under Rule XVI clause 7, as not germane to the Senate amendment, if not protected.**

The special order noted here was adopted by the House on Nov. 14, 1989.<sup>(3)</sup> The specific waivers against the motions to dispose of some of the amendments in disagreement were included in the rule at the request of the Committee on Appropriations.

3. 135 CONG. REC. 28738, 101st Cong. 1st Sess.

CONFERENCE REPORT ON H.R. 2939,  
FOREIGN OPERATIONS, EXPORT FI-  
NANCING, AND RELATED PROGRAMS  
APPROPRIATIONS ACT, 1990

MS. [LOUISE MCINTOSH] SLAUGHTER of New York: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 288 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 288

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 2939) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1990, and for other purposes, and all points of order against consideration of the conference report for failure to comply with the provisions of clause 2 of rule XXVIII are hereby waived. All points of order against the motions printed in the joint statement of the managers to dispose of Senate amendments numbered 22, 23, 44, 69, 122, 201, 289, and 295 for failure to comply with the provisions of clause 7 of rule XVI are hereby waived.

***Special Orders Related to  
Budget Resolutions***

**§ 26.24 While a conference report on a concurrent resolution on the budget is privileged for consideration un-**

**der the Budget Act,<sup>(4)</sup> special orders are often used to expedite consideration, to curtail and apportion the debate time, to waive points of order, and to defuse the provisions of the rule<sup>(5)</sup> which automatically creates a debt limit, to have passed the House.**

House Resolution 418, governing the consideration of the conference report on the concurrent resolution on the budget for fiscal years 1995–99, is more or less typical of several which have been used to protect such conference reports.<sup>(6)</sup>

CONFERENCE REPORT ON H. CON. RES.  
218, CONCURRENT RESOLUTION ON  
THE BUDGET FOR FISCAL YEAR 1995

MR. [ANTHONY C.] BEILENSON [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 418 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 418

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to ac-

4. § 305(a); *House Rules and Manual* § 1007 (1997).
5. Rule XLIX, *House Rules and Manual* § 945 (1997).
6. See 140 CONG. REC. 9411, 9412, 103d Cong. 2d Sess., May 5, 1994.

company the concurrent resolution (H. Con. Res. 218) setting forth the congressional budget for the United States Government for the fiscal years 1995, 1996, 1997, 1998, and 1999. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

SEC. 2. Rule XLIX shall not apply with respect to the adoption by the Congress of the conference report to accompany the concurrent resolution (H. Con. Res. 218) setting forth the congressional budget for the United States Government for the fiscal years 1995, 1996, 1997, 1998, and 1999.

MR. BEILENSON: . . . Mr. Speaker, at this point I do wish to advise the Members that the conference report was filed only yesterday and that it does, therefore, violate the 3-day layover requirement. The committee generally does not like waiving the 3-day layover rule. Members usually do need time to read the conference report to become fully informed about it. In this case, however, the Committee on Rules felt that there were simple and persuasive reasons to waive that particular requirement. First is that the broad outline of the conference committee agreement has been known, with the exception of some details about Senate budget rules, since Monday, and the change provided from the report originally passed in the House are relatively minor. But more important, if we do not take up the conference report today, we will not be able to take it up again until next Thursday. The Com-

mittee on Appropriations has been waiting on the budget appropriation to make their allocation and be able, therefore, to begin moving on their bills and another week's delay would push the appropriations bill past the Memorial Day recess.

Therefore, we felt that there was substantial and good reason to waive that particular layover rule for that particular reason.

The rule before the Members also provides that rule XLIX will not apply upon adoption of the conference report. House rule XLIX provides for the automatic adoption by the House of a joint resolution changing the statutory limit on the public debt to conform to amounts in the budget resolution.

***Special Order Addressing Conference Report and Remaining Amendment in Disagreement***

**§ 26.25 Form of special order waiving all points of order against a conference report and its consideration, as well as against a specified motion to recede and concur, with amendment, in the only Senate amendment remaining in disagreement outside of the conference report, providing for one hour of debate on the motion, ordering the previous question thereon, and prohibiting any intervening**



**motion or demand for division of the question.**

The motion to recede and concur protected by this special order was set forth in the report of the Committee on Rules accompanying the resolution. It could only be offered by the chairman of the Subcommittee on Foreign Operations of the Committee on Appropriations, Porter J. Goss, of Florida.<sup>(7)</sup>

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 1868, FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996

MR. GOSS: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 249 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 249

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 1868) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes. All points of order against the conference report and against its consideration are waived. The motion printed in the report of the Committee on Rules accompanying this resolution to dispose of the amendment of the Senate numbered 115

may be offered only by Representative Callahan of Alabama or his designee. That motion shall be considered as read and shall be debatable for one hour equally divided and controlled by the proponent and an opponent. All points of order against that motion are waived. The previous question shall be considered as ordered on that motion to final adoption without intervening motion or demand for division of the question.

***Special Order Making in Order One Motion To Adopt Conference Report and To Dispose of Remaining Disagreement***

**§ 26.26 Example of a special order protecting a conference report, waiving all points of order against the report and its consideration, and then "self-executing" the adoption of a motion to disagree with the only Senate amendment in disagreement remaining outside the conference agreement.**

The special order was designed to bring to a final conclusion the dispute over an item in H.R. 2020, Treasury and postal appropriations for fiscal year 1996. The conferees had reached agreement on all the amendments in disagreement and had placed them inside the conference report, thus necessitating a special order protecting the conference report from

7. See 141 CONG. REC. 30973, 104th Cong. 1st Sess., Oct. 31, 1995.

challenge under Rule XX clause 2,<sup>(8)</sup> (legislative provision and unauthorized items of appropriation) and Rule XXVIII clause 3,<sup>(9)</sup> provisions going beyond the scope of difference committed to conference. The one remaining amendment in disagreement dealt with a restriction on the use of federal grant funds for political advocacy. Since both Houses had provisions on this topic that were irreconcilable, the special order provided that if the conference report were adopted, the House would automatically inform the Senate of its disagreement to this controversial amendment.

The rule and a portion of the debate are carried here.<sup>(10)</sup>

MR. [LINCOLN] DIAZ-BALART [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 267 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 267

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2020) making appropriations for the Treasury De-

partment, the United States Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1996, and for other purposes. All points of order against the conference report and against its consideration are waived. If the conference report is adopted, then a motion that the House insist on its disagreement to the amendment of the Senate numbered 132 shall be considered as adopted.

MR. DIAZ-BALART: Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. Beilenson], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only. . . .

The rule waives points of order against the conference agreement and its consideration. In addition, the rule disposes of the amendment in disagreement by including a provision which considers the House's insistence on its disagreement to the amendment of the Senate, numbered 132, as adopted with the conference report's adoption. In other words, to demonstrate the resolve of the House, the rule self-executes out the amendment in disagreement so that the conference report can be passed expeditiously by both Chambers and sent to the President without further delay.

The amendment in disagreement concerned language prohibiting the use of funds for political advocacy by certain Federal grant recipients, and the conferees were unable to decide on advocacy language between Senator Simpson's version and Congressman Istook's proposed compromise. The

8. *House Rules and Manual* § 829 (1997).

9. *Id.* at § 913a.

10. 141 CONG. REC. 32583, 32584, 104th Cong. 1st Sess., Nov. 15, 1995.

President has indicated that a veto would be likely if this political advocacy language were to be included with the Treasury, Postal bill, and, in a spirit of compromise and in order to get this bill signed as soon as possible, without risking another trip back from the Senate in the interim, this lone amendment in disagreement is disposed of in the rule.

### *Effect of Suspension of the Rules on Points of Order*

#### **§ 26.27 Points of order may not be raised against a conference report which is being considered under a motion to suspend the rules.**

On Aug. 20, 1937,<sup>(11)</sup> Mr. Marvin Jones, of Texas, called up the conference report on H.R. 7667, the Sugar Act of 1937, and asked unanimous consent that the statement of the managers be read in lieu of the report. Mr. Millard F. Caldwell, of Florida, was then recognized:

Mr. Speaker, I reserve the right to object in order to make a point of order against the conference report. I have no objection to the statement being read in lieu of the report, but I do not want to lose the opportunity to make the point of order to the report.

MR. JONES: Mr. Speaker, in order to save time I move to suspend the rules

11. 81 CONG. REC. 9463-69, 75th Cong. 1st Sess.

and adopt the conference report on the bill H.R. 7667, the sugar bill of 1937.

THE SPEAKER:<sup>(12)</sup> The gentleman from Texas moves to suspend the rules and adopt the conference report, which the Clerk will report. . . .

After the Clerk read the report, the Speaker again recognized Mr. Caldwell:

Mr. Speaker, as I stated, I don't want to waive any rights that I have to make a point of order on the conference report.

MR. JONES: If the House agrees to suspend the rules, that suspends all rules and does away with points of order.

MR. CALDWELL: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CALDWELL: Am I to understand that if the rules are suspended the point of order will not lie to the conference report?

THE SPEAKER: A motion to suspend the rules, if agreed to, suspends all rules. It must be adopted by a two-thirds vote. That would include a point of order against the conference report.

MR. CALDWELL: Then, Mr. Speaker, if this report actually exceeds the authority of the conferees by including matters neither in the House nor the Senate bill, am I given to understand that the suspending of the rules will prevent the making of a point of order on that account?

THE SPEAKER: The motion to suspend the rules, if adopted by a two-thirds

12. William B. Bankhead (Ala.).

vote, waives the right of any Member to make a point of order against the conference report. . . .

After 40 minutes of debate had transpired on the motion to suspend the rules and adopt the conference report, the proceedings concluded with the following:

The House divided and there were—  
ayes 198, noes 23.

So, two-thirds having voted in favor thereof, the rules were suspended and the conference report was agreed to.

***Use of Suspension Motion To Consider Conference Report Previously Ruled Out on Point of Order***

**§ 26.28 Instance where the Speaker recognized a Member to move to suspend the rules and agree to a conference report which had been ruled out on a point of order because the managers had included a provision which was beyond the scope of the matter in disagreement in violation of Rule XXVIII clause 3.**

On Dec. 20, 1974,<sup>(13)</sup> the House rejected a motion to suspend the rules and agree to a conference

13. 120 CONG. REC. 41860, 41861, 93d Cong. 2d Sess.

report, two-thirds not supporting the motion.

MR. [LLOYD] MEEDS [of Washington]: Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 620) to establish within the Department of the Interior an additional Assistant Secretary of the Interior for Indian Affairs and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(14)</sup> Is a second demanded?

MR. [DON] YOUNG of Alaska: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement, see proceedings of the House of December 7, 1974.)

THE SPEAKER: The gentleman from Washington (Mr. Meeds) will be recognized for 20 minutes, and the gentleman from Alaska (Mr. Young) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Washington (Mr. Meeds).

MR. MEEDS: Mr. Speaker, first of all I apologize for taking the time of the Members at this late hour, but this bill was knocked out just a little while ago as a conference report on a very technical little matter, and I think the House should have the opportunity to consider it on its merits. The purpose of this legislation is to provide for an Assistant Secretary of the Interior for Indian Affairs . . . .

14. Carl Albert (Okla.).

THE SPEAKER: The question is on the motion offered by the gentleman from Washington (Mr. Meeds) to suspend the rules and agree to the conference report on the bill H.R. 620.

The question was taken.

MR. MEEDS: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken by electronic device, and there were—yeas 109, nays 132, not voting 193.

### § 27. Time for Consideration; the Three-day Rule

Prior to the 92d Congress, a conference report was eligible for consideration once it and the accompanying statement of the managers had been printed in the *Congressional Record*. As a practical matter this meant that a conference report could not be considered until the day after it had been filed, since the daily edition of the *Congressional Record* for a particular day is not printed and published until the following day. This restriction was not in effect during the last six days of a session.<sup>(15)</sup>

The Legislative Reorganization Act of 1970 amended the rules of the House in this regard and im-

15. Rule XXVIII clause 2, *House Rules and Manual* § 912 (1969).

posed a three-day layover period before conference reports could be considered in the House. This qualification of the privilege of considering conference reports is inapplicable during the last six days of a session.<sup>(16)</sup> This provision was perfected late in the 92d Congress to clarify the method for calculating the three-day period.<sup>(17)</sup> However, this three-day layover requirement is often waived by the House, either by a suspension of the rules,<sup>(18)</sup> by unanimous consent,<sup>(19)</sup> or pursuant to a resolution reported by the Committee on Rules.<sup>(20)</sup> Such a waiver may provide for consideration on the day after the report is

16. 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(2) (Oct. 26, 1970), the provisions of which became part of the rules of the House pursuant to H. Res. 5, 92d Cong. 1st Sess. (Jan. 22, 1971); Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997).

17. See § 27.1, *infra*, especially *Parliamentarian's Note*.

18. § 27.3, *infra*.

19. §§ 27.3, 27.4, 27.7-27.9, *infra*. See also §§ 22.2, 22.6, 22.7, 22.19, *supra*, for comparable precedents which predate the three-day rule.

20. §§ 27.5, 27.6, *infra*. See also §§ 22.8, 22.18, *supra*, for comparable precedents which predate the three-day rule.

filed<sup>(1)</sup> or at any time after filing,<sup>(2)</sup> and may be effective for a specified time period<sup>(3)</sup> or even for the remainder of a session.<sup>(4)</sup> Rule XXVIII clause 2(b)<sup>(5)</sup> does not require separate unanimous consent for the consideration of numbered Senate amendments reported in disagreement after unanimous consent has been obtained for consideration of the conference report.<sup>(6)</sup>

A rule adopted in the 94th Congress specifies that the availability of conference reports for two hours is a prerequisite for their consideration. This requirement may also be waived.<sup>(7)</sup>

### ***Consideration Three Days After Filing***

1. § 27.7, *infra*.
2. §§ 27.7–27.9, *infra*. See also §§ 22.6–22.8, 22.18, *supra*, for comparable precedents which predate the three-day rule.
3. § 27.4, *infra*. See also §§ 22.16, 22.18, *supra*, for comparable precedents which predate the three-day rule.
4. § 27.11, *infra*. See also §§ 22.19, 22.20, *supra*, for comparable precedents which predate the three-day rule.
5. *House Rules and Manual* § 912b (1997).
6. *Deschler's Procedure* (93d Cong.), Ch. 33 § 21.7.
7. See § 27.10, *infra*.

**§ 27.1 In the 92d Congress, the House adopted a privileged resolution reported from the Committee on Rules amending the rules of the House to permit consideration of conference reports, including reports in complete disagreement, on the third day following the filing thereof in the House, provided that such reports had been printed in the daily edition of the Record for the day on which they had been filed.**

On Oct. 13, 1972,<sup>(8)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. B. F. Sisk, of California, to call up House Resolution 1153, to amend the rules of the House. Mr. Sisk explained that the resolution provided, *inter alia*, for the following change:

First, it changes the wording of the 3-day rule on conference reports and the 3-day rule on committee reports to make it clear that what we mean is 3 days and not 4. As the rules are presently interpreted, a conference report filed on a Monday is not eligible for floor consideration until Friday. We think this is unreasonable. So we suggest changing the language of the rule to make sure that a conference report filed on Monday could be considered on

8. 118 CONG. REC. 36014, 36021–23, 92d Cong. 2d Sess.

Thursday. Surely, this should give Members enough time to study the report.

Mr. Sisk then proposed and the House approved an amendment to the resolution making its provisions effective immediately before noon, Jan. 3, 1973, after which the House adopted the resolution as so amended.

*Parliamentarian's Note:* House Resolution 1153 amended Rule XXVIII clause 2 (applying to conference reports) and added clause 2(b) (applying to amendments reported from a conference still in disagreement) to clarify the manner for calculating the three-day layover period that must precede the consideration of such reports. The original "three-day rule" was in effect a four-day rule, since pursuant thereto, a conference report became privileged for consideration three days after it and the accompanying statement had been printed in the daily edition of the *Congressional Record*. However, as a practical matter, the daily edition of the Record for a given day is not published until the next day. Hence, a report filed on Monday would be printed on Tuesday (in Monday's Record), and therefore would not be eligible for consideration until Friday.

House Resolution 1153 took cognizance of this fact and specified that the three-day layover period would begin on the day of filing, and that consideration of the report would be in order only if the report and statement had been printed in the daily edition of the *Congressional Record* for the day on which such report had been filed.

***Saturdays, Sundays, and Legal Holidays (Under Rule in Effect in 1974)***

**§ 27.2 Saturdays, Sundays, and legal holidays are not counted in computing the three-day layover period after which conference reports become privileged for consideration.<sup>(9)</sup>**

On Tuesday, Oct. 17, 1972,<sup>(10)</sup> Mr. Wilbur D. Mills, of Arkansas, called up the conference report on H.R. 16810 (providing for a temporary increase in the public debt limitation), which had been filed in the House the previous Saturday, Oct. 14.<sup>(11)</sup>

9. See Rule XXVIII clause 2, *House Rules and Manual* § 912a (1972).

10. 118 CONG. REC. 36938, 92d Cong. 2d Sess.

11. *Id.* at p. 36520.

MR. MILLS of Arkansas (during the reading): Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(12)</sup> The gentleman will state it.

MR. MILLS of Arkansas: Mr. Speaker, is it true that this conference report not having laid over for 3 days cannot be called up except by unanimous consent?

THE SPEAKER: That is correct.

MR. MILLS of Arkansas: Mr. Speaker, I withdraw my request for consideration of the conference report.

THE SPEAKER: The gentleman from Arkansas withdraws his request for consideration of the conference report.

### *Consideration Prior to Expiration of Three Days*

**§ 27.3 Prior to the expiration of three calendar days (not including Saturdays, Sundays, and legal holidays) from the filing of a conference report in total disagreement, the report and Senate amendment in disagreement may be considered by unanimous consent or under suspension of the rules on suspension days.**

On June 29, 1973,<sup>(13)</sup> the following occurred in the House:

<sup>12</sup>. Carl Albert (Okla.).

<sup>13</sup>. 119 CONG. REC. 22381, 22382, 22384, 93d Cong. 1st Sess.

MR. [WILBUR D.] MILLS of Arkansas: Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report and the Senate amendment reported from the conference in disagreement on the bill (H.R. 8410) to continue the existing temporary increase in the public debt limit through November 1973, and for other purposes. . . .

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, reserving the right to object, may I propound a parliamentary inquiry?

THE SPEAKER:<sup>(14)</sup> The gentleman from Wisconsin may propound a parliamentary inquiry.

MR. STEIGER of Wisconsin: Mr. Speaker, my parliamentary inquiry is this: that if an objection is heard to the request made by the gentleman from Arkansas, is it in order for the gentleman from Arkansas, the distinguished chairman of the Committee on Ways and Means, to move to suspend the rules to bring this to the floor of the House?

THE SPEAKER: The Chair will state that the Chair has the authority to recognize the gentleman for such a motion.

**§ 27.4 By unanimous consent, the consideration of a conference report was made in order during the following week on a day prior to the expiration of the three cal-**

<sup>14</sup>. Carl Albert (Okla.).



**endar days required by Rule XXVIII clause 2.**<sup>(15)</sup>

On June 24, 1971,<sup>(16)</sup> Mr. George H. Mahon, of Texas, made the following request:

Mr. Speaker, I ask unanimous consent that the managers on the part of the House on the bill (H.R. 7016) making appropriations for the Office of Education and related agencies, for the fiscal year ending June 30, 1972, and for other purposes, may have until midnight Monday next to file the conference report and that it may be in order on Wednesday next to consider the conference report in the House.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

**§ 27.5 Resolutions reported from the Committee on Rules have provided for the consideration of conference reports prior to the expiration of three calendar days as required by Rule XXVIII clause 2.**<sup>(18)</sup>

15. See *House Rules and Manual* § 912a (1997).

16. 117 CONG. REC. 21905, 92d Cong. 1st Sess.

17. Hale Boggs (La.).

18. See *House Rules and Manual* § 912a (1997).

On Feb. 24, 1972,<sup>(19)</sup> the following occurred in the House:

MR. [JOHN A.] YOUNG of Texas: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 838 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 838

*Resolved*, That it shall be in order to consider a conference report on the bill (H.R. 12067) making appropriations for foreign assistance and related programs for the fiscal year ending June 30, 1972, and for other purposes, notwithstanding the provisions of clause 2, rule XXVIII.

THE SPEAKER:<sup>(20)</sup> The gentleman from Texas is recognized for 1 hour.

MR. YOUNG of Texas: . . . Mr. Speaker, House Resolution 838 merely provides for consideration of the conference report on H.R. 12067, the foreign assistance and related programs appropriation bill, 1972, notwithstanding the provisions of clause 2, rule XXVIII, which is the so-called 3-day rule. . . .

MR. YOUNG of Texas: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.<sup>(1)</sup>

19. 118 CONG. REC. 5495, 92d Cong. 2d Sess.

20. Carl Albert (Okla.).

1. See also 118 CONG. REC. 29128, 29129, 92d Cong. 2d Sess., Aug. 18, 1972.

**§ 27.6 At the end of a session, the House often adopts a special order permitting the same day consideration of conference reports and amendments in disagreement, waiving the necessity for a three-day layover but retaining the requirement of two-hour availability.**

The special order called up in the House on Sept. 29, 1976,<sup>(2)</sup> is illustrative of those often used to facilitate business as *sine die* adjournment approaches.

MR. [B. F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1582 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1582

*Resolved*, That it shall be in order at any time during the remainder of this session to consider conference reports and amendments reported from conference in disagreement on the same day reported or any day thereafter notwithstanding the provisions of clause 2, rule XXVIII (but subject to the two-hour availability requirement of that clause).

2. 122 CONG. REC. 33518, 94th Cong. 2d Sess.

THE SPEAKER:<sup>(3)</sup> The gentleman from California (Mr. Sisk) is recognized for 1 hour. . . .

MR. SISK: . . . The Rules Committee decided to report three separate resolutions rather than one omnibus resolution to permit Members a separate vote on each of the questions.

House Resolution 1582 permits the same-day consideration of conference reports. It waives the provisions of clause 2, rule XXVIII, the 3-day layover rule. However, the 2-hour availability requirement of that clause, adopted by this Congress, is retained.

### *Consideration on Day After Filing*

**§ 27.7 By unanimous consent, the consideration of a conference report was made in order on the day after it was filed, notwithstanding the requirement of Rule XXVIII clause 2<sup>(4)</sup> that the conference report be printed in the Record three calendar days prior to its consideration.**

On June 29, 1971,<sup>(5)</sup> the following occurred in the House:

MR. [GEORGE W.] ANDREWS of Alabama: Mr. Speaker, I ask unanimous consent that the managers on the part

3. Carl Albert (Okla.).

4. See *House Rules and Manual* § 912a (1997).

5. 117 CONG. REC. 22568-70, 92d Cong. 1st Sess.

of the House may have until midnight tonight to file a conference report on the bill (H.R. 8825) making appropriations for the legislative branch for the fiscal year ending June 30, 1972, and for other purposes.

THE SPEAKER:<sup>(6)</sup> Is there objection to the request of the gentleman from Alabama?

There was no objection. . . .

MR. ANDREWS of Alabama: Mr. Speaker, I ask unanimous consent that it may be in order on tomorrow, June 30, 1971, to consider the conference report on the bill (H.R. 8825) making appropriations for the legislative branch for the fiscal year ending June 30, 1972, and for other purposes.

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

There was no objection.<sup>(7)</sup>

### *Consideration Immediately After Filing*

#### **§ 27.8 Consideration of a conference report was, by unanimous consent, made in order at any time following the filing of the report.**

On May 20, 1971,<sup>(8)</sup> the following occurred in the House regarding H.R. 8190, the second supple-

6. Carl Albert (Okla.).

7. See also 116 CONG. REC. 24030, 91st Cong. 2d Sess., July 14, 1970.

8. 117 CONG. REC. 16148, 92d Cong. 1st Sess.

mental appropriation bill for fiscal 1971:

MR. [GEORGE H.] MAHON [of Texas]: . . . My purpose is to ask unanimous consent that it may be in order at any time after the filing of the conference report on the second supplemental appropriation bill to call up the conference report for consideration. . . .

THE SPEAKER:<sup>(9)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

#### **§ 27.9 By unanimous consent, the House considered a conference report and Senate amendments in disagreement immediately following their submission to the House.**

On June 30, 1973,<sup>(10)</sup> Mr. George H. Mahon, of Texas, submitted the conference report and statement of the managers on House Joint Resolution 636, and immediately made the following request:

Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report and of the Senate amendments reported from conference in disagreement on the joint resolution (H.J. Res. 636), making continuing appropriations for the fiscal year 1974, and for other purposes.

9. Carl Albert (Okla.).

10. 119 CONG. REC. 22632, 22633, 93d Cong. 1st Sess.

THE SPEAKER:<sup>(11)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

### *Availability of Conference Report*

**§ 27.10 In the second session of the 94th Congress the House amended Rule XXVIII clause 2, to require that conference reports and amendments reported from conference in disagreement to be available to Members at least two hours prior to consideration, but permitting a waiver of this rule by a two-thirds vote.**

On Feb. 26, 1976, a resolution amending the rules of the House, reported from the Committee on Rules, was called up for consideration in the House.<sup>(12)</sup> The purpose of this rules change was to impose a two-hour availability on bills reported from standing committees, on conference reports, and on amendments reported from conference in disagreement. The new rule also permitted the immediate consideration of a resolution reported from the Committee on Rules waiving this requirement

11. Carl Albert (Okla.).

12. H. Res. 868. See 122 CONG. REC. 4625, 94th Cong. 2d Sess.

but requiring a two-thirds vote for the adoption of such a waiver.

The resolution was reported with a committee amendment which was adopted. The text of the resolution, together with portions of the debate on the new rules, are carried herein.<sup>(13)</sup>

MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 868 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 868

*Resolved*, That Rule XI of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

"7. It shall not be in order to consider any report of a committee unless copies or reproductions of such report have been available to the Members on the floor for at least two hours before the beginning of such consideration. The provisions of this clause shall not be construed to supersede any other rule of the House requiring a longer period of time before such consideration is in order. The provisions of this clause shall not apply to any report of the Committee on Rules dealing with the consideration of a bill."

SEC. 2. Rule XXII of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

"7. It shall not be in order to consider any bill or resolution unless

13. 122 CONG. REC. 4625-27, 4629, 94th Cong. 2d Sess., Feb. 26, 1976.

copies or reproductions of such bill or resolution have been available to Members on the floor for at least two hours before the beginning of such consideration. The provisions of this clause shall not be construed to supersede any other rules of the House requiring a longer period of time before such consideration is in order. The provisions of this clause shall not apply to any resolution reported by the Committee on Rules dealing with the consideration of a bill.”

SEC. 3. Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

“7. It shall not be in order to consider any report of a committee of conference unless copies or reproductions of such report have been available to Members on the floor for at least two hours before the beginning of such consideration. The provisions of this clause shall not be construed to supersede any other rules of the House requiring a longer period of time before such consideration is in order. The provisions of this clause shall not apply to any resolution or report of the Committee on Rules relating to any report of a committee of conference.”

With the following committee amendment:

Strike all after the resolving clause and insert in lieu thereof:

That rule XI, clause 2(1)(6) of the Rules of the House of Representatives is amended by inserting after the first sentence the following: “Nor shall it be in order to consider any measure or matter reported by any committee (except the Committee on Rules in the case of a resolution making in order the consideration of a bill, resolution, or other order of business, or any other committee in the case of a privileged resolution), unless copies of such report and the reported measure or matter have

been available to the Members for at least two hours before the beginning of such consideration; *provided, however*, that it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b), rule XI, a report from the Committee on Rules specifically providing for the consideration of a reported measure or matter notwithstanding this restriction.”

SEC. 2. The second sentence of rule XXVIII, clause 2(a) of the House of Representatives is amended by striking all after the word “statement” and inserting in lieu thereof the following: “have been available to Members for at least two hours before the beginning of such consideration; *provided, however*, that it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b). Rule XI, a report from the Committee on Rules only making in order the consideration of a conference report notwithstanding this restriction.”

SEC. 3. The second sentence of rule XXVIII, clause 2(b) of the Rules of the House of Representatives is amended by striking all after the second comma and inserting in lieu thereof the following: “have been available to Members for at least two hours before the beginning of such consideration; *provided, however*, that it shall always be in order to call up for consideration, notwithstanding the provisions of clause 4(b), rule XI, a report from the Committee on Rules only making in order the consideration of such an amendment notwithstanding this restriction.”

#### PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:<sup>(14)</sup> The gentleman will state it.

MR. BAUMAN: Mr. Speaker, this resolution is to be considered in the House which would preclude an amendment from being offered by any Member.

THE SPEAKER: It is a rule that comes from the Committee on Rules. It is under the charge of the gentleman handling the resolution.

MR. BAUMAN: So unless the gentleman yields for the purpose of an amendment, none would be in order?

THE SPEAKER: The gentleman is correct. . . .

MR. BAUMAN: If the gentleman would yield further, I would say that when we amended the rules the last time I seem to recall the resolution was considered in the House as in the Committee of the Whole and all the Members had the right to offer amendments. What was the reason for precluding individuals from offering amendments today?

MR. PEPPER: This resolution comes out from the Rules Committee in the exercise of its jurisdiction relative to the rules of the House and it comes out as a closed rule and therefore I have no authority in handling the rule to yield to Members except for the purposes of debate. . . .

Mr. Speaker, I yield 30 minutes to the able gentleman from Illinois (Mr. Anderson), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 868, as amended by the Committee on Rules, proposes to amend two rules of the House in order to insure that Mem-

bers have an adequate opportunity, no less than 2 hours, to review reported measures, conference reports, and Senate amendments in disagreement.

House Resolution 868, as reported, would amend rule XI, clause 2(1)(6), the 3-day layover rule, to provide that no measure or matter reported by any committee—except the Committee on Rules with respect to order of business resolutions, and other committees with respect to privileged resolutions—may be considered unless copies of the measure have been available for at least 2 hours prior to consideration. The requirements of rule XI, clause 2(1)(6) do not apply to measures for the declaration of war, the declaration of a national emergency by Congress, or to congressional actions with respect to executive decisions or determinations which would become or continue to be effective unless disapproved or otherwise invalidated by one or both Houses of Congress. The proposed 2-hour availability requirement would likewise not be applicable to the consideration of such measures.

House Resolution 868 also amends rule XXIII, clause 2 (a) and (b), relating to conference reports, to prohibit consideration both of conference reports and of any amendment of the Senate to any measure reported in disagreement, unless copies of the report and statement of the managers have been available for at least 2 hours prior to consideration.

The amendments to these rules contain a proviso which states that the 2-hour requirement may be waived by the Committee on Rules and a resolution to that effect may be considered on the same day reported notwithstanding

14. Carl Albert (Okla.).

rule XI, clause 4(b) prohibiting consideration of a resolution from rules on the same day reported unless so determined by a two-thirds vote. The requirement could also be dispensed with by unanimous consent or under suspension of the rules. . . .

MR. [JOHN B.] ANDERSON of Illinois: . . . As the gentleman from Florida (Mr. Pepper) has already explained, the main purpose of these rules changes is to insure that Members will have advance access to written copies of bills, reports, and conference reports at least 2 hours before they are called up for consideration. . . . The only exceptions, in the case of bills, are if they are: brought up under unanimous consent, to which any Member may object; under suspension of the rules, which requires a two-thirds vote; through a waiver of the 3-day rule by the Committee on Rules, which must first be adopted by a majority vote; or through a blanket waiver of the 3-day rule applying to all bills brought up during a certain period of time, again which must first be adopted by a majority vote. Moreover, the House is doubly protected by clause 3 of rule XVI which reads, and I quote:

When any motion or proposition is made, the question, Will the House now consider it? shall not be put unless demanded by a Member. . . .

In other words, Mr. Speaker, even if the House should adopt a special rule which waives the 3-day rule against a bill or conference report, any Member may still raise the question of consideration on the motion to resolve into the Committee of the Whole to consider the bill, and it takes a majority vote of

the House to proceed with consideration.

The same situation applies with respect to the consideration of conference reports when the 3-day rule has been waived. Even though conference reports are highly privileged, the precedents are quite clear, and I quote:

The question of consideration may be demanded against a matter of the highest privilege.

The only apparent exceptions being veto messages and reports and orders of business out of the Committee on Rules. So again, any Member who is not satisfied that the conference report has been available for a sufficient amount of time prior to consideration, whether 2 hours or 1 day, may force a vote on the question of consideration, and that conference report cannot be considered until a majority of the House votes to proceed with consideration.

MR. PEPPER: Mr. Speaker, I would just add this. The Committee on Rules had 4 days of hearings on this matter and concluded that, after fair consideration of the measure by the House, it should be adopted.

Mr. Speaker, I move the previous question on the committee amendment and the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the committee amendment.

The committee amendment was agreed to.

THE SPEAKER: The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 258, nays 107, not voting 67. . . .

### ***Consideration on Same Day Reported for Remainder of Session***

#### **§ 27.11 A resolution reported from the Committee on Rules made in order the consideration of conference reports on the same day reported during the remainder of the session of Congress.**

On Dec. 9, 1971,<sup>(15)</sup> Speaker Carl Albert, of Oklahoma, recognized Mr. William M. Colmer, of Mississippi, to call up and explain House Resolution 729:

Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 729 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 729

*Resolved*, That during the remainder of the first session of the Ninety-second Congress it shall be in order to consider conference reports the same day reported, notwithstanding the provisions of clause 2, rule XXVIII.

MR. COLMER: . . . Mr. Speaker, I assure the Speaker and the Members of the House that I do not intend to use anything like the time that is permitted under the rule.

Mr. Speaker, this is a very simple resolution.

Under the rules of the House conference reports on bills must lay over, for a period of 3 days and be printed in the Record.

Now, under the standing rules of the House, for the last 6 days of the session, the House can take such action.

Mr. Speaker, since we are in the drive for adjournment and since no one can predict accurately when the 6 days begins, this is a simple resolution to expedite the consideration of the conference reports. Otherwise we would be forced to await the joint adoption of a *sine die* resolution before this waiver could become effective.<sup>(16)</sup>

### ***Immediate Consideration for Remainder of Week***

#### **§ 27.12 The House rejected a resolution reported from the Committee on Rules which would have provided for the immediate consideration of**

15. 117 CONG. REC. 45873, 92d Cong. 1st Sess.

16. See *House Rules and Manual* § 912a (1997).



### conference reports for the remainder of that week.

On Aug. 16, 1972,<sup>(17)</sup> the following occurred in the House:

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1094 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 1094

*Resolved*, That during the remainder of this week it shall be in order to consider conference reports the same day reported, notwithstanding the provisions of clause 2, rule XXVIII.<sup>(18)</sup> . . .

The previous question was ordered.

THE SPEAKER:<sup>(19)</sup> The question is on the resolution. . . .

The question was taken; and there were—yeas 159, nays 223, not voting 50. . . .

So the resolution was rejected.

## § 28. Debating Reports

Time for debate on a conference report is under the hour rule<sup>(20)</sup> and since 1971 has been divided between the majority and minority

17. 118 CONG. REC. 28351–57, 92d Cong. 2d Sess.

18. See *House Rules and Manual* § 912a (1997).

19. Carl Albert (Okla.).

20. §§ 28.1, 28.2, *infra*.

parties.<sup>(1)</sup> An additional 40 minutes of debate has been allowed on each of several specified sections of a conference report which contained Senate amendments which were alleged to be nongermane to the House bill,<sup>(2)</sup> and this time was divided in each instance between a Member supporting the section at issue and a Member opposed thereto.<sup>(3)</sup> This procedure was expanded and included in the standing rules of the House pursuant to House Resolution 1153, 92d Cong. 2d Sess. (Oct. 13, 1972) and became effective immediately before noon on Jan. 3, 1973.<sup>(4)</sup> The hour of debate on a conference report may be divided three ways, with 20 minutes allotted to a Member opposed, if both managers support the report.<sup>(5)</sup> The standing rules governing debate time can be abrogated or altered by special order.<sup>(6)</sup>

1. § 28.6, *infra*, especially footnote, and § 28.8, *infra*.

2. §§ 28.11–28.13, *infra*.

3. §§ 28.11–28.13, *infra*, and Rule XXVIII clause 4(b), *House Rules and Manual* § 913(b) (1997).

4. See Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).

5. See §§ 28.7, 29.24, *infra*.

6. See §§ 28.3, 28.13, *infra*.

***Hour Rule*****§ 28.1 Debate on conference reports and amendments in disagreement is under the hour rule.<sup>(7)</sup>**

On Mar. 16, 1942,<sup>(8)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. Hatton W. Sumners, of Texas, to call up the conference report on S. 2208, the Second War Powers Bill of 1942. After the statement of the managers was read in lieu of the report, the following occurred:

MR. SUMNERS of Texas: Mr. Speaker, let me inquire in regard to the time. How much time is allowed for the entire disposition of the conference report, including amendment No. 32?

THE SPEAKER: The gentleman is entitled to 1 hour on the conference report. He can yield such time as he desires. Then, if he desires, an hour may be taken on each amendment in disagreement.

***Extending Hour-rule Debate Time***

7. Rule XIV clause 2, *House Rules and Manual* § 758 (1997) states, *inter alia*, that "... no Member shall occupy more than one hour in debate on any question in the House. . . ."

8. 88 CONG. REC. 2502-04, 77th Cong. 2d Sess.

**§ 28.2 Debate on a conference report is under the hour rule, and the Speaker has indicated, in response to a parliamentary inquiry, that such time could be extended by unanimous consent.<sup>(9)</sup>**

On June 8, 1972,<sup>(10)</sup> Mr. Carl D. Perkins, of Kentucky, called up the conference report on S. 659, the Higher Education Amendments of 1972. Before the Clerk began reading the report, the following occurred:

MR. PERKINS: Mr. Speaker, I ask unanimous consent that 1 additional hour of debate on the conference report be provided and that the time be equally divided between the gentleman from Minnesota (Mr. Quie), the ranking minority member, and me.

THE SPEAKER:<sup>(11)</sup> Is there objection to the request of the gentleman from Kentucky? . . .

MR. [WILLIAM L.] CLAY [of Missouri]: I object, Mr. Speaker.

THE SPEAKER: Objection is heard.

MR. [ROMAN C.] PUCINSKI [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. PUCINSKI: Mr. Speaker, is it in order under the rules of the House to

9. But see §§ 28.12, 28.14, *infra*.

10. 118 CONG. REC. 20278-80, 92d Cong. 2d Sess.

11. Carl Albert (Okla.).

move that an additional hour be afforded for this discussion?

THE SPEAKER: It requires unanimous consent.<sup>(12)</sup>

### ***Debate on Conference Report Under Special Order***

**§ 28.3 Where a special order providing for consideration of a conference report allocates the debate time thereon, the provisions of Rule XXVIII, concerning the allocation of debate time to a Member opposed, no longer apply to the debate on that report.**

Where the House had adopted a special order providing for the consideration of the conference report on a concurrent resolution on the budget, which provided for two hours of debate "equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget," the normal allocation of time and the opportunity to gain one-third of the time for a Member opposed to the report, are abrogated.

12. See also 115 CONG. REC. 40217, 91st Cong. 1st Sess., Dec. 19, 1969 and 88 CONG. REC. 2502-04, 77th Cong. 2d Sess., Mar. 16, 1942.

The rule and the ensuing debate and inquiries related thereto, as excerpted from the proceedings of Oct. 4, 1990,<sup>(13)</sup> are carried here.

SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEARS 1991, 1992, 1993, 1994, AND 1995

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 488 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 488

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report on the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration. Debate on the conference report shall be limited to not more than 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

SEC. 2. Following disposition of the conference report, on motion with respect to disposition of H. Con. Res. 310 shall be in order except pursuant to a subsequent order of the House.

SEC. 3. The allocations of spending and credit responsibility to the com-

13. 136 CONG. REC. 27590, 27599, 27600, 101st Cong. 2d Sess.

mittees of the House, to be printed in the *Congressional Record* by the chairman of the Committee on the Budget as soon as practicable, shall be considered to be the allocations required to be printed in the joint statement of managers on H. Con. Res. 310 pursuant to section 302(a) of the Congressional Budget Act of 1974.

SEC. 4. Rule XLIX shall not apply with respect to the adoption by the Congress of the conference report on the concurrent resolution (H. Con. Res. 310). . . .

PARLIAMENTARY INQUIRY

MR. [BUD] SHUSTER [of Pennsylvania]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(14)</sup> The gentleman will state it.

MR. SHUSTER: Mr. Speaker, rule XXVIII provides that the time shall be divided between the proponents and the opponents of a report; however, it is my understanding that that rule has been waived.

Does that mean, therefore, that even though a large number, if not possible a majority of the Members of this House oppose this legislation, those in opposition will not be permitted to control any of the time?

THE SPEAKER PRO TEMPORE: Under the rule, if adopted, the debate on the conference report will be controlled by the chairman representing the majority, and the ranking minority member of the Committee on the Budget. They will be able to yield time to whomever they see fit.

MR. SHUSTER: So that means, Mr. Speaker, that those in opposition will

not be able to control any of the time, is that my understanding?

THE SPEAKER PRO TEMPORE: That is correct. They would not be able to control the time, but certainly could get time from either of the two gentlemen. . . .

PARLIAMENTARY INQUIRY

MS. [MARY ROSE] OAKAR [of Ohio]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentlewoman will state it.

MS. OAKAR: Mr. Speaker, could I inquire as to the manner in which the time is allocated? Is there any allocation? Is the time equally divided for those who are for the budget resolution and those who are opposed?

THE SPEAKER PRO TEMPORE: The Chair will announce that under House Resolution 488 the time is controlled, 1 hour by the gentleman from California [Mr. Panetta], and 1 hour for the gentleman from Minnesota [Mr. Frenzel].

MS. OAKAR: Mr. Speaker, that did not answer my question, though.

I merely want to inquire whether there is an equal division of time for those who are for the budget resolution and those who have a different opinion of it.

THE SPEAKER PRO TEMPORE: The rule provides that one-half of the time will be allocated to the gentleman from California [Mr. Panetta], and one-half will be allocated to the gentleman from Minnesota [Mr. Frenzel]. They will be able to yield time.

***Following Adoption of Conference Report***

14. John P. Murtha (Pa.).

**§ 28.4 The House granted unanimous consent to permit 40 minutes of debate on a conference report which had just been adopted without debate, and to include the debate in the Record preceding the adoption of the report.**

On May 22, 1968,<sup>(15)</sup> Mr. Wright Patman, of Texas, called up the conference report on S. 5, the Consumer Credit Protection Act, and Speaker John W. McCormack, of Massachusetts, immediately put the question thereon. The report was agreed to, and a motion to reconsider laid on the table. Mr. Patman then obtained unanimous consent that all Members might have five legislative days in which to extend their remarks regarding the conference report. After a call of the House and the granting of a unanimous-consent request concerning another matter, the following occurred:

MR. [WILLIAM T.] CAHILL [of New Jersey]: Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks, and to include extraneous matter.

15. 114 CONG. REC. 14375-98, 14402-05, 90th Cong. 2d Sess.

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

There was no objection.

MR. CAHILL: Mr. Speaker, it may come to you as it did to me as a great surprise to learn that the conference report on the very important truth-in-lending bill has passed the House. . . .

MR. GERALD R. FORD [of Michigan]: . . . It is my understanding from what I have heard from others that the chairman of the committee, the gentleman from Texas, did not ask for time at the time he brought the matter to the floor of the House, and it is our feeling that by his failure to ask for time—and he is the only one who can officially ask for such time—that Members on our side, and I suspect others, were deprived of an opportunity to discuss in person the very important legislation which went through the House in a matter of seconds. I regret that this unfortunately took place. . . .

I think it would be helpful if the record were full and complete for the benefit of those individuals who have to interpret what the Congress intended in some of these very difficult areas. . . .

THE SPEAKER: . . . [T]he gentleman from Texas called up the conference report and had asked that the statement of the managers on the part of the House be read and after the Clerk had proceeded to read the statement, the gentleman from Texas asked unanimous consent that the further reading of the statement of the managers on the part of the House be dispensed with and that it be placed in the Record.

The gentleman from Texas was standing and the Chair rose and said—

“The question is on agreeing to the conference report.” The Chair did it deliberately—and the report was agreed to. The Chair acted most deliberately. . . .

After objection was heard to a unanimous-consent request to vacate the proceedings by which the conference report was adopted, the Speaker recognized Mr. Carl Albert, of Oklahoma:

Mr. Speaker, I ask unanimous consent that 40 minutes of debate may be had on this matter, to be equally divided between the gentleman from Texas and the gentleman from New Jersey, and that it appear in the Record prior to the adoption of the conference report.

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

There was no objection.

THE SPEAKER: The gentleman from Texas [Mr. Patman] is recognized for 20 minutes and the gentleman from New Jersey [Mr. Widnall] will be recognized for 20 minutes.

**§ 28.5 An agreement to permit discussion of a conference report, even though the report had already been agreed to, and to insert the debate in the Record preceding that point where the conference report was agreed to, does not reopen the report to permit the making of any motions, such as the motion**

**to recommit, the adoption of which would alter the prior action of the House in agreeing to the report.**

On May 22, 1968,<sup>(16)</sup> after a controversy arose concerning the adoption without debate of the conference report on S. 5, the Consumer Credit Protection Act, Majority Leader Carl Albert, of Oklahoma, made the following request:

Mr. Speaker, I ask unanimous consent that 40 minutes of debate may be had on this matter, to be equally divided between the gentleman from Texas and the gentleman from New Jersey, and that it appear in the Record prior to the adoption of the conference report.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from Oklahoma? . . .

MR. [RICHARD H.] POFF [of Virginia]: Mr. Speaker, I reserve the right to object.

THE SPEAKER: The gentleman from Virginia reserves the right to object.

MR. POFF: Mr. Speaker, I reserve the right to object in order to propound a question to the distinguished majority leader. In the event the House agrees to the request of the gentleman, would the minority maintain the right under the rules of the House to offer motions to recommit if it were so disposed?

16. 114 CONG. REC. 14398–14405, 90th Cong. 2d Sess.

17. John W. McCormack (Mass.).

THE SPEAKER: The gentleman ought to address his question to the Chair. That question should be addressed to the Chair, and, assuming that the gentleman did address the Chair, the Chair will state that point has gone by, and a motion to recommit under those circumstances would not be in order.

MR. POFF: . . . Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

### *Division of Time*

**§ 28.6 One hour of debate, equally divided between the majority and minority parties, is permitted on a conference report; and where conferees have been appointed from two committees of the House, the Speaker recognizes one of the minority members (not necessarily a member of the same committee as the Member controlling the majority time) to control 30 minutes of debate.<sup>(18)</sup>**

18. Prior to 1971 all debate on conference reports was controlled by the Member calling up the report. However, the Legislative Reorganization Act of 1970, 84 Stat. 1140, Pub. L. No. 91-510, § 125(b)(2) (Oct. 26, 1970), amended Rule XXVIII clause 2(a),

On Jan. 19, 1972,<sup>(19)</sup> the following occurred in the House:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, I call up the conference report on the bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report. . . .

Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I hope that the gentleman on the other side, the gentleman from Illinois (Mr. Springer) and the gentleman from Ohio (Mr. Devine) will use some time. . . .

MR. [WILLIAM L.] SPRINGER: Mr. Speaker, I yield myself such time as I may consume. . . .

MR. [SAMUEL L.] DEVINE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(20)</sup> The gentleman will state it.

MR. DEVINE: Mr. Speaker, how is the time allocated, and how much time is left?

THE SPEAKER: The Chair assumes the gentleman was using time from the 30 minutes allocated to his side.

MR. DEVINE: Does the 30 minutes represent the time of both committees, the Committee on House Administra-

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*House Rules and Manual* § 912a (1997), to provide that the time for debate on conference reports be equally divided between the majority and minority parties.

19. 118 CONG. REC. 319, 320, 324, 92d Cong. 2d Sess.

20. Carl Albert (Okla.).

tion and the Committee on Interstate and Foreign Commerce?

THE SPEAKER: The total time allowable is 1 hour, 30 minutes to each side.

*Parliamentarian's Note:* Mr. Springer, the ranking minority member of the Committee on Interstate and Foreign Commerce, who had resigned as a conferee, nevertheless controlled 30 minutes for the minority party, although Mr. Devine, the ranking minority member of the Committee on House Administration was on the floor and participated in the debate.

***Member Signing Conference Report Presumed To Be in Favor***

**§ 28.7 Where the Chair is dividing the hour's debate on a conference report among three Members, one third of the time having been claimed by a Member opposed under Rule XXVIII clause 2(a), the Chair may assume that one of the party managers who is temporarily not on the floor would want time in favor of the report if his signature appears thereon.**

On Oct. 12, 1995,<sup>(1)</sup> the conference report on H.R. 1976, the Agriculture appropriations bill for fiscal year 1996, was called up for consideration. One Member demanded time in opposition and the Chair proceeded to allot the time in 20-minute segments as provided in the cited rule.<sup>(2)</sup>

The proceedings were as indicated below.

MR. [JOSEPH R.] SKEEN [of New Mexico]: Mr. Speaker, pursuant to the rule just adopted, I call up the conference report on the bill (H.R. 1976) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1996, and for other purposes.

The Clerk read the title of the bill.

GENERAL LEAVE

MR. SKEEN: Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and that I be permitted to include tables, charts, and other extraneous material.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is there objection to the request of the gentleman from New Mexico?

There was no objection.

1. 141 CONG. REC. 27795, 104th Cong. 1st Sess.
2. *House Rules and Manual* § 912a (1997).
3. Steven C. LaTourette (Ohio).



THE SPEAKER PRO TEMPORE: Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 28, 1995, at page H9628.)

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, it is my understanding that since the gentleman from New Mexico [Mr. Skeen] is in support of the conference report as it now stands, as is the gentleman from Illinois [Mr. Durbin], the ranking Democratic member on the subcommittee, that the rule provides that the time be allocated with at least one-third being given to a Member who is at this point opposed to the proposal. Given that rule, I would ask that one-third of the time be assigned to me.

THE SPEAKER PRO TEMPORE: Since the gentleman from Illinois [Mr. Durbin] does not appear to be present, the Chair is going to assume that the gentleman from Illinois [Mr. Durbin] is in favor of the conference report because he signed it. Therefore, pursuant to the rule, the time will be allocated 20 minutes to the gentleman from New Mexico [Mr. Skeen], 20 minutes to the gentleman from Illinois [Mr. Durbin], and 20 minutes to the gentleman from Wisconsin [Mr. Obey].

### *Who May Control*

**§ 28.8 Debate on a conference report is equally divided between the majority and minority parties; and while the Members controlling the time for such debate on the**

**floor are normally among those who served as House managers at the conference, this is not invariably the case.**

On Jan. 19, 1972,<sup>(4)</sup> Wayne L. Hays, of Ohio, Chairman of the Committee on House Administration, called up the conference report on S. 382:

Mr. Speaker, I call up the conference report on the bill (S. 382) to promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report. . . .

Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I hope that the gentleman from Illinois (Mr. Springer) and the gentleman from Ohio (Mr. Devine) will use some time. . . .

After Mr. Hays used his allotted time, Speaker Carl Albert, of Oklahoma, recognized William L. Springer, ranking minority member of the Committee on Interstate and Foreign Commerce, to control 30 minutes of debate.

MR. SPRINGER: Mr. Speaker, I yield myself such time as I may consume.

4. 118 CONG. REC. 319, 320, 324, 92d Cong. 2d Sess.

*Parliamentarian's Note:* Mr. Springer had resigned as a conferee.

***Recognition To Control Debate in Opposition to Conference Report***

**§ 28.9 It is within the discretion of the Speaker as to whom he will recognize to control 20 minutes in opposition to a conference report, where both the managers are in favor thereof, and such recognition does not depend on party affiliation.**

On Dec. 16, 1985,<sup>(5)</sup> the chairman of the Committee on Appropriations, Jamie L. Whitten, of Mississippi, called up the conference report on the continuing appropriation bill for fiscal year 1986, House Joint Resolution 465. Inquiries followed about which Member would be entitled to control one-third of the time in opposition.

MR. WHITTEN: Mr. Speaker, pursuant to the order of the House of today, I call up the conference report on the joint resolution (H.J. Res. 465) making further continuing appropriations for the fiscal year 1986, and for other pur-

5. 131 CONG. REC. 36716, 36717, 99th Cong. 1st Sess.

poses, and ask for its immediate consideration.

PARLIAMENTARY INQUIRY

MR. [JAMES M.] JEFFORDS [of Montana]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentleman will state his parliamentary inquiry.

MR. JEFFORDS: Mr. Speaker, I would ask the Chair as to whether or not there is a rule on this particular resolution.

THE SPEAKER PRO TEMPORE: This conference report is being considered pursuant to the unanimous-consent request granted earlier today, which the Clerk will read.

The Clerk read as follows:

Mr. Whitten asked unanimous consent that it shall be in order, any rule of the House to the contrary notwithstanding, at any time on Monday, December 16, or any day thereafter, to consider the conference report and amendments in disagreement and motions to dispose of said amendments on House Joint Resolution 465 subject to the availability of said conference report and motions to dispose of amendments in disagreement for at least 1 hour, that all points of order be waived against the conference report and amendments in disagreement and motions to dispose of said amendments, and that said conference report and amendments in disagreement be considered as having been read when called up for consideration.

MR. JEFFORDS: Mr. Speaker, I have a further parliamentary inquiry.

6. Dale E. Kildee (Mich.).

If I had a point of order, in that a legislative matter was contained herein that would make permanent the temporary law denying States their highway funds if they refused to raise their drinking age to 21, under this rule is that point of order now waived?

THE SPEAKER PRO TEMPORE: All points of order were waived, pursuant to the unanimous-consent request.

MR. JEFFORDS: I thank the Chair.

Mr. Speaker, I think this is a terrible process and a terrible thing for the young people of this country to be treated in this manner.

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi [Mr. Whitten] will be recognized for 30 minutes and the gentleman from Massachusetts [Mr. Conte] will be recognized for 30 minutes.

MR. [BARNEY] FRANK [of Massachusetts]: Mr. Speaker, is the gentleman from Massachusetts [Mr. Conte] opposed to the bill?

MR. [SILVIO O.] CONTE [of Massachusetts]: No. I signed the conference report.

MR. FRANK: Mr. Speaker, I ask for 20 minutes recognition in opposition because the gentleman from Massachusetts [Mr. Conte] is for the bill.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, I ask for 20 minutes, under the rule.

THE SPEAKER PRO TEMPORE: The Chair can hear only one Member at a time. Members will speak in order after they are recognized.

MR. FRANK: Mr. Speaker, since the gentleman from Massachusetts is for the bill, under the rule I ask for the 20 minutes to be allotted to a Member in opposition, when both the chairman

and the ranking minority Member are in support of the bill.

THE SPEAKER PRO TEMPORE: The gentleman has that right.

The time will be divided in this fashion: The gentleman from Mississippi [Mr. Whitten] will be recognized for 20 minutes; the gentleman from Massachusetts [Mr. Conte] will be recognized for 20 minutes; and the gentleman from Massachusetts [Mr. Frank] will be recognized for 20 minutes.

#### PARLIAMENTARY INQUIRY

MR. WALKER: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. WALKER: Mr. Speaker, the minority has just been effectively frozen out of controlling any of the time, when I was seeking recognition to take the 20 minutes. The Chair has denied, then, the minority the opportunity to control our portion of the time.

Can the Chair explain why Members on this side were not recognized? I, too, am opposed to the bill and should have been entitled to the 20 minutes.

THE SPEAKER PRO TEMPORE: The Chair will state that recognition of one Member who is opposed is in the Speaker's discretion, and the Speaker tries always to be fair.

The gentleman from Massachusetts [Mr. Frank] may yield time as he wishes.

MR. WALKER: Mr. Speaker, I have a further parliamentary inquiry.

Under the procedure, we now have a bill that has been brought to us in this form, and the minority has been totally denied any time under this procedure

to debate this particular resolution because the Chair recognized two Members on the other side of the aisle to control all of the time. . . .

THE SPEAKER PRO TEMPORE: . . . The gentleman from Massachusetts [Mr. Conte], on the minority side, will be recognized for 20 minutes; the gentleman from Massachusetts [Mr. Frank], who is opposed, will be recognized for 20 minutes; and the gentleman from Mississippi [Mr. Whitten] will be recognized for 20 minutes.

The procedure under which we are proceeding was agreed upon earlier today, and the Chair will be guided by the will of the House, which was stated earlier today.

The Chair recognizes the gentleman from Mississippi [Mr. Whitten].

### *Subsequent Yielding of Time*

**§ 28.10 It is contrary to the usual practice for a Member in charge of a conference report to yield time to other Members to be in turn yielded by them.**

On July 27, 1939,<sup>(7)</sup> the House was considering the conference report on H.R. 6984, relating to construction charges on federal reclamation projects. The following occurred:

MR. [COMPTON I.] WHITE of Idaho: Mr. Speaker, I yield to the gentleman

7. 84 CONG. REC. 10220, 76th Cong. 1st Sess.

from Wisconsin [Mr. Hawks] 5 minutes.

MR. [CHARLES] HAWKS [Jr.]: I would like to have 20 minutes for the rest of the committee.

MR. WHITE of Idaho: I will give the gentleman 20 minutes if he will allocate it on his side.

THE SPEAKER:<sup>(8)</sup> It is contrary to the usual practice for the chairman of a conference to yield time to other Members to be in turn yielded by them. The gentleman may yield such times as he desires to individual Members.

MR. WHITE of Idaho: Then I withdraw that, Mr. Speaker, and I yield 5 minutes to the gentleman from Wisconsin [Mr. Hawks].

### *Debate After Demand for Separate Vote on Specified Section*

**§ 28.11 Where a Member demanded a separate vote on a section of a conference report pursuant to a special rule permitting such procedure, that Member (who was opposed to the section) and the Member calling up the conference report were each recognized for 20 minutes of debate.**

On Nov. 10, 1971,<sup>(9)</sup> the House adopted House Resolution 696, which provided for the considera-

8. William B. Bankhead (Ala.).

9. 117 CONG. REC. 40479, 40483, 40489, 92d Cong. 1st Sess.

tion of the conference report on H.R. 8687, military procurement authorizations, fiscal 1972. F. Edward Hébert, of Louisiana, Chairman of the Committee on Armed Services, called up the report and obtained consent of the House that the statement of the managers be read in lieu of the report. In response to another request by Mr. Hébert, the House dispensed with the further reading of the statement, and the following occurred:

THE SPEAKER:<sup>(10)</sup> House Resolution 696 provides that a separate vote may be demanded on those individual parts of the conference report numbered as sections 503, 505, and 601.

Is a separate vote demanded on any of these sections?

MR. [DONALD M.] FRASER [of Minnesota]: Mr. Speaker, pursuant to the rule adopted, and pursuant to clause 1, rule XX, I demand a separate vote on section 503.

THE SPEAKER: Is a separate vote demanded on any other amendment? The Chair hears none.

Under clause 1 of rule XX<sup>(11)</sup> 40 minutes of debate are permitted before a

separate vote is taken on a nongermane Senate amendment, one-half of such time in favor of, and one-half in opposition to the amendment.

Pursuant to that rule, the gentleman from Louisiana (Mr. Hébert) will be recognized for 20 minutes, and the gentleman from Minnesota (Mr. Fraser) will be recognized for 20 minutes.

### *Additional Debate on Specified Section*

**§ 28.12 When a pending resolution made in order demands for separate votes on three designated sections of a Senate amendment in the nature of a substitute which were not germane to the House bill and had been included in a conference report, the Speaker indicated that the 40 minutes of debate allowable on each nongermane Senate amendment could be further limited only by the two Members controlling the time.**

On Nov. 10, 1971,<sup>(12)</sup> Mr. Richard Bolling, of Missouri, called up House Resolution 696, providing for the consideration of the conference report on H.R. 8687, military

to Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).

12. 117 CONG. REC. 40479-82, 92d Cong. 1st Sess.

10. Carl Albert (Okla.).

11. The provisions of Rule XX clause 1, upon which Mr. Fraser relied in the 92d Congress were contained in the *House Rules and Manual* § 827 (1971). The comparable provisions were transferred in the 93d Congress

procurement authorizations, fiscal 1972. The resolution provided, *inter alia*, that

It shall also be in order, pursuant to clause 1 of rule XX,<sup>(13)</sup> for a separate vote to be had upon demand on those individual parts of the Senate amendment now contained in the conference report and numbered as sections 503, 505, and 601. . . .

During debate on the resolution, Mr. Charles M. Teague, of California, posed two parliamentary inquiries.

MR. TEAGUE of California: As I understand, the rule<sup>(14)</sup> would make three nongermane amendments in order for debate with 40 minutes of time given to

each. I address this question to the Chair: Under the rule could the time be shortened by unanimous consent or by motion?

THE SPEAKER:<sup>(15)</sup> The Members in charge of debate could use or not use the time as they see fit.

MR. TEAGUE of California: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. TEAGUE of California: Since the rule provides 40 minutes on each of the nongermane amendments, under the circumstances of each amendment, would the amendment be subject to a limitation of debate?

THE SPEAKER: No, except by those Members who have charge of the time.

**§ 28.13 The House agreed to the language of a section of a conference report under a special rule permitting such procedure following 40 minutes of debate, and then considered the entire conference report, the Member calling up the report and a member of the minority party each being recognized for 30 minutes under Rule XXVIII clause 2.<sup>(16)</sup>**

13. The provisions of Rule XX clause 1 referred to in the resolution provided that, on demand of any Member, 40 minutes of debate and a separate vote were in order on any Senate amendment which would have been nongermane if offered in the House as an amendment to the House bill. In the 92d Congress these provisions were contained in the *House Rules and Manual* § 827 (1971). The comparable provisions were transferred in the 93d Congress to Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).

14. The "rule" referred to here was H. Res. 696, the "special rule" for the consideration of H.R. 8687. The procedure set out in this special rule was in accordance with the purpose of House Rule XX clause 1.

15. Carl Albert (Okla.).

16. See *House Rules and Manual* § 912a (1997).

On Nov. 10, 1971,<sup>(17)</sup> the House adopted House Resolution 696, providing for the consideration of the conference report on H.R. 8687, Military Procurement Authorizations, fiscal 1972. After F. Edward Hébert, of Louisiana, the Chairman of the Committee on Armed Services, called up the conference report, and after the House dispensed with the reading of the statement of the managers, Mr. Donald M. Fraser, of Minnesota, pursuant to House Resolution 696 and Rule XX clause 1,<sup>(18)</sup> demanded a separate vote on § 503 of the report. After 40 minutes of debate on this section, with the time divided between Mr. Hébert and Mr. Fraser, the following occurred:

MR. HÉBERT: Mr. Speaker, I move the previous question.<sup>(19)</sup>

17. 117 CONG. REC. 40483, 40489, 92d Cong. 1st Sess.
18. The provisions of Rule XX clause 1, upon which Mr. Fraser relied in the 92d Congress were contained in the *House Rules and Manual* § 827 (1971). The comparable provisions were transferred in the 93d Congress to Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).
19. *Parliamentarian's Note*: The motion for the previous question was technically not in order at this point, since 20 minutes of debate were permitted to each side under Rule XX clause 1,

The previous question was ordered.

THE SPEAKER:<sup>(20)</sup> The question is, Will the House agree to the language contained in section 503 of the conference report? . . .

The House divided, and the tellers reported that there were—ayes 251, noes 100, not voting 80. . . .

So the House agreed to the language contained in section 503 of the conference report.

THE SPEAKER: The gentleman from Louisiana (Mr. Hébert) will be recognized for 30 minutes and the gentleman from Illinois (Mr. Arends) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Louisiana.

### *Length of Debate on Budget Resolution Reported in Disagreement From Conference*

**§ 28.14 Where conferees on a concurrent resolution on the budget report in total disagreement, the five hour statutory period for debate specified in the Congressional Budget Act does not apply; and a motion to concur in a Senate amendment to a House amendment is debated under the hour rule.**

and because nothing could have been accomplished by voting down the previous question (amendments and further debate would not be in order).

20. Carl Albert (Okla.).

Section 305(a)(4) of the Congressional Budget Act provides for not more than five hours of debate in the House on a conference report on a concurrent resolution on the budget; but since under House rules, a report in total disagreement is called up and read but not acted on, the statutory time does not apply, and an amendment in disagreement is debated under the general rules of the House.

The conferees on S. Con. Res. 80, the First Concurrent Resolution on the Budget for fiscal year 1979, was reported in technical but complete disagreement because the compromise reached by the managers included aggregate figures beyond those proposed in the Senate resolution or the House amendment.

The conference report, filed in the House on May 15, 1978,<sup>(1)</sup> is carried, in part, below:

CONFERENCE REPORT ON SENATE  
CONCURRENT RESOLUTION 80

Mr. Giaimo submitted the following conference report and statement on the concurrent resolution (S. Con. Res. 80) setting forth the congressional budget for the U.S. Government for the fiscal year 1979:

1. 124 CONG. REC. 13615, 95th Cong. 2d Sess.

CONFERENCE REPORT (H. REPT. NO.  
95-1173)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 80) setting forth the congressional budget for the United States Government for the fiscal year 1979, having met, after full and free conference have been unable to agree on a conference report because the conference decisions have reduced certain budget figures, including the deficit and the public debt, below the provisions enacted by either House. As set forth in the accompanying Joint Explanatory Statement, the conferees do propose a congressional budget, containing the lower figures, incorporated in a further amendment for the consideration of the two Houses.

ROBERT N. GIAIMO,  
ELIZABETH HOLTZMAN,  
BUTLER DERRICK,  
WILLIAM LEHMAN,  
PAUL SIMON,  
JOSEPH L. FISHER,  
JIM MATTOX. . . .

The House proceedings of May 17, 1978,<sup>(2)</sup> when the report was called up, are carried here.

CONFERENCE REPORT ON SENATE  
CONCURRENT RESOLUTION 80, FIRST  
CONCURRENT RESOLUTION ON THE  
BUDGET, FISCAL YEAR 1979

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I call up the conference report on the Senate concurrent resolution (S. Con. Res. 80)

2. 124 CONG. REC. 14116, 14117, 95th Cong. 2d Sess.



setting forth the congressional budget for the U.S. Government for the fiscal year 1979, and ask for its immediate consideration.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> The Clerk will read the conference report.

The Clerk read the conference report.

THE SPEAKER PRO TEMPORE: The Clerk will report the Senate amendment to the House amendment.

The Clerk read the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment, insert:

That the Congress hereby determines and declares, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1978

.....

MR. GIAIMO (during the reading): Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Connecticut?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, could the gentleman tell us in what parliamentary form this budget comes before us? Are we dealing with a conference report or a motion to agree to the Senate amendment with an amendment?

MR. GIAIMO: We are in technical disagreement on the conference report, because of the questions of scope, both

as to the aggregates and as to the functional categories.

We have before us an amendment to the House amendment to the original Senate resolution. The amendment to the House amendment is the substitute amendment which was agreed upon in conference by the conferees.

It is our intention to move to concur in the Senate amendment to the House amendment. . . .

MR. [BARBER B.] CONABLE [Jr., of New York]: Mr. Speaker, does this result in us not having the statutory period of time to debate the conference report?

MR. BAUMAN: The full 5 hours the Budget Act allows.

MR. GIAIMO: Mr. Speaker, if the gentleman will yield, not 5 hours, we have 1 hour, as I understand the parliamentary situation.

MR. CONABLE: Why is it brought up in this way, Mr. Chairman?

MR. GIAIMO: As I understand the rules, this is the only way it can be brought up and it has been done in this way in the past.

MR. CONABLE: Why do we have the 5-hour rule statutorily, if it has been brought up under a 1-hour rule in the past?

MR. GIAIMO: The 5-hour rule provides where the conference report is not in technical disagreement, because of questions of scope. . . .

MOTION OFFERED BY MR. GIAIMO

MR. GIAIMO: Mr. Speaker, I offer a motion.

The Clerk read as follows:

3. Dan Rostenkowski (Ill.).

Mr. Giaimo moves that the House concur in the Senate amendment to the House amendment.

THE SPEAKER PRO TEMPORE: The gentleman from Connecticut (Mr. Giaimo) is recognized for 1 hour.

MR. GIAIMO: Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. Latta), for the purposes of debate only, pending which I yield myself such time as I may consume.

### § 29. Disposition of Reports and Amendments in Disagreement

A conference report may reflect an agreement to all amendments submitted to conference, some of the amendments (a partial conference report or partial agreement), or none of the amendments (a report of total disagreement). When the conferees report a partial agreement, the amendments remaining in disagreement are considered after the consideration of the report itself.<sup>(4)</sup> However, in unusual circumstances, these amendments have been considered before the vote on the conference reports.<sup>(5)</sup> Since the 93d Congress, the “three-day rule”<sup>(6)</sup> has applied

4. § 29.3, *infra*.

5. § 29.4, *infra*.

6. Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997). This rule

to reports of total disagreement as well as amendments in disagreement accompanying a partial conference report. This includes a disagreement reported by the conferees to an amendment in the nature of a substitute.<sup>(7)</sup> A two-hour availability requirement was added to Rule XXVIII in the 94th Congress.<sup>(8)</sup> The older practice was to consider amendments in disagreement the same day a report was submitted.<sup>(9)</sup>

delays the consideration of a conference report until the third day after the report and statement of the managers have been filed in the House, and requires that the report and statement be printed in the daily edition of the *Congressional Record* for the day on which they are filed (except during the last six days of a session). See generally § 27, *supra*.

7. Rule XXVIII clause 2(b)(1), *House Rules and Manual* § 912b (1997), as amended pursuant to H. Res. 1153, § 2(b)(2), 92d Cong. 2d Sess. (Oct. 13, 1972). The provisions of this clause became effective immediately prior to the beginning of the 93d Congress. See § 29.1, *infra*.
8. 122 CONG. REC. 4625, 94th Cong. 2d Sess., Feb. 26, 1976 (H. Res. 868). Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997); Rule XXVIII clause 2(b)(1), *House Rules and Manual* § 912b (1997).
9. See § 29.12, *infra*, and 107 CONG. REC. 8892–94, 87th Cong. 1st Sess., May 25, 1961, for examples of the old

Each amendment reported in disagreement from a conference committee may be debated under the hour rule.<sup>(10)</sup> Since the beginning of the 93d Congress, control of this debate has been divided between the majority and minority parties<sup>(11)</sup> and, since the 94th Congress, may be divided three ways to give an opponent time if both the majority and minority managers support the motion offered by the floor manager.<sup>(12)</sup>

Through the first session of the 93d Congress, the rules of the House<sup>(13)</sup> provided for a separate vote (a two-thirds vote) on any Senate amendment which, if offered in the House, would be subject to a point of order on a question of germaneness. If the amendment were held not to be

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procedure whereby amendments accompanying reports in total disagreement were considered immediately after the report was filed.

10. § 29.18, *infra*.
11. § 29.22, *infra*. See *Parliamentarian's Note* in § 29.19, *infra*.
12. Rule XXVIII clause 2(b)(1), *House Rules and Manual* § 912(b) (1997).
13. See Rule XX clause 1, *House Rules and Manual* § 827 (1971), adopted as part of the Legislative Reorganization Act of 1970, adopted Jan. 22, 1971. For historical treatment, see *House Rules and Manual* §§ 827, 913c (1997).

germane under that test, its adoption required a two-thirds vote. The mechanism for permitting points of order against provisions in a conference report or an amendment reported in disagreement which would have been subject to a point of order if offered in the House was shifted to Rule XXVIII clauses 4 and 5 in 1974. If the Chair sustains such a point of order, the amendment is not stricken but a motion to reject the provision is then in order. This new rule permits separate votes on parts of a Senate amendment in the nature of a substitute if the Chair rules the provision to come within the rule. However, the general practice of requiring consideration of Senate amendments in their entirety still applies, and the rejection of any section of any amendment pursuant to these rules results in the rejection of the entire amendment.<sup>(14)</sup>

When the amendment in disagreement is a House amendment, the House may recede therefrom and the bill returns to the position it had when last considered by the

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14. The reader is urged to consult later editions of this volume as they are published for further modifications of the rules concerning this subject.

Senate.<sup>(15)</sup> However, in accordance with Jefferson's Manual, the House may not recede from its own amendment and concur therein with an amendment.<sup>(16)</sup>

When considering a Senate amendment reported from conference in disagreement, the House is not bound by the restrictions placed on the conferees, and it may recede and concur in the amendment with a germane amendment which is beyond the range of disagreement between the House and Senate versions.<sup>(17)</sup> The House may concur in a non-germane Senate amendment, and by so doing makes that matter germane to the House bill, and this matter may be included in a further conference report on that bill.<sup>(18)</sup> Also, where the conferees require specific additional authority to agree to a Senate legislative amendment to a House general appropriation bill, when such an amendment is reported from conference in disagreement the House

15. § 29.47, *infra*.

16. *House Rules and Manual*, Jefferson's Manual § 526 (1997). See Ch. 32, § 7.15, *supra*. See, generally, Ch. 32, §§ 7-12, *supra*.

17. §§ 29.31, 29.32, *infra*.

18. § 29.30, *infra*.

may consider it<sup>(19)</sup> and may concur therein with an amendment which adds new legislation, provided that this amendment is germane to the Senate amendment.<sup>(20)</sup> The House may also agree to an amendment reported from conference in disagreement which carries an appropriation on a bill other than a general appropriation bill.<sup>(1)</sup>

An example of the wide latitude the House may exercise when considering an amendment reported from conference in disagreement occurred when the House acted to incorporate many legislative provisions into the last general appropriation bill of a session.<sup>(2)</sup>

### *Three-day Rule*

**§ 29.1 Rule XXVIII clause 2(b)<sup>(3)</sup> requires that all amendments reported from conference in disagreement as well as reports in complete disagreement and the joint statement**

19. § 29.33, *infra*.

20. § 29.35, *infra*.

1. See § 29.33, *infra*.

2. See § 29.38, *infra*.

3. *House Rules and Manual* § 912b (1997).

**of the conferees must be printed in the Record on the day they are filed and be available for three calendar days before the amendment(s) in disagreement may be considered in the House.**

On Oct. 13, 1972,<sup>(4)</sup> Mr. B. F. Sisk, of California, by direction of the Committee on Rules called up House Resolution 1153, to amend the rules of the House. He explained that section 2 of House Resolution 1153 accomplished two objectives:

First, it changes the wording of the 3-day rule on conference reports and the 3-day rule on committee reports to make it clear that what we mean is 3 days and not 4. As the rules are presently interpreted, a conference report filed on a Monday is not eligible for floor consideration until Friday. We think this is unreasonable. So we suggest changing the language of the rule to make sure that a conference report filed on Monday could be considered on Thursday. Surely, this should give Members enough time to study the report. . . .

Section 2 of the resolution also takes care of a problem that arose recently concerning situations in which House conferees report they cannot come to an agreement with the Senate. The Chair has ruled that in situations of this

kind, the normal rules on conference reports do not apply. The report of the conferees need not be available for 3 days before consideration; the report need not be available on the floor; and the debate time does not have to be equally divided for and against.

The Committee on Rules believes that all reports of conferees should be subject to these conditions, even when the conferees have not come to an agreement. House Resolution 1153 will accomplish this goal. . . .

Consideration of the resolution was concluded in the following manner:

MR. SISK: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Sisk: On page 8, immediately below line 5 insert the following:

"Sec. 6. The amendments made by the foregoing sections of this resolution shall become effective immediately before noon on January 3, 1973." . . .

THE SPEAKER:<sup>(5)</sup> The question is on the amendment offered by the gentleman from California (Mr. Sisk.).

The amendment was agreed to.

MR. SISK: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the resolution. . . .

The question was taken; and there were—yeas 281, nays 57, not voting 93. . . .

So the resolution was agreed to. . . .

4. 118 CONG. REC. 36013-15, 36021-23, 92d Cong. 2d Sess.

5. Carl Albert (Okla.).

A motion to reconsider was laid on the table.

### *Waiver of Three-day Rule*

**§ 29.2 Prior to the expiration of three calendar days (not including Saturdays, Sundays, and legal holidays) from the filing of a conference report in total disagreement, the report and Senate amendment in disagreement may be considered if the House waives Rule XXVIII clause 2(b).**

On June 29, 1973,<sup>(6)</sup> Mr. Wilbur D. Mills, of Arkansas, requested unanimous consent for the immediate consideration of the conference report and amendment reported from conference in disagreement on H.R. 8410, providing for a continuation of a temporary increase in the public debt limit. Speaker Carl Albert, of Oklahoma, recognized Mr. William A. Steiger, of Wisconsin, to pose a parliamentary inquiry:

Mr. Speaker, my parliamentary inquiry is this: that if an objection is heard to the request made by the gentleman from Arkansas, is it in order for the gentleman from Arkansas, the distinguished chairman of the Committee

6. 119 CONG. REC. 22381, 22382, 22384, 93d Cong. 1st Sess.

on Ways and Means, to move to suspend the rules to bring this to the floor of the House?

THE SPEAKER: The Chair will state that the Chair has the authority to recognize the gentleman for such a motion.

### *Amendments in Disagreement Considered—After Consideration of Conference Report*

**§ 29.3 When a conference report is being considered, the vote first occurs on agreeing to the conference report; the amendments reported therein in disagreement are reported and acted on thereafter.**

On Dec. 24, 1963,<sup>(7)</sup> the House was considering the conference report and amendments still in disagreement on H.R. 9499, foreign aid appropriations.

MR. [JOHN J.] RHODES of Arizona: Mr. Speaker, I would first like to propound a parliamentary inquiry, if I may.

THE SPEAKER:<sup>(8)</sup> The gentleman will state his parliamentary inquiry.

MR. RHODES of Arizona: Mr. Speaker, it is my understanding that the first vote which will occur will be on the conference report.

THE SPEAKER: That is correct.

7. 109 CONG. REC. 25532, 88th Cong. 1st Sess.

8. John W. McCormack (Mass.).

MR. RHODES of Arizona: And amendment No. 20 which is the so-called wheat amendment is not part of the conference report?

THE SPEAKER: That is correct. That will be considered by the House separately.

MR. RHODES of Arizona: If I may inquire further, Mr. Speaker, amendment No. 20 will be brought up in disagreement and on proper motion by the gentleman from Louisiana, a separate vote will occur at that time on amendment No. 20.

THE SPEAKER: The Chair understands that a motion will be made with respect to that amendment which is in disagreement.

— *Prior to a Vote on a Conference Report*

**§ 29.4 Where adoption of a conference report is postponed pursuant to a special order putting over roll call votes to another day, the House proceeds immediately to the consideration of amendments reported back in disagreement.**

On Sept. 18, 1962,<sup>(9)</sup> Mr. Jamie L. Whitten, of Mississippi, called up the conference report on H.R. 12648, agriculture appropriations, fiscal 1963. After debate was held

9. 108 CONG. REC. 19708, 19714, 87th Cong. 2d Sess.

on the report, the following took place:

MR. WHITTEN: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The question is on the conference report.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [RALPH F.] BEERMANN [of Nebraska]: Mr. Speaker, I objected to the vote on the ground that a quorum is not present.

THE SPEAKER PRO TEMPORE: Further proceedings on this matter will be deferred until tomorrow.

The Clerk will report the first amendment in disagreement.

The House then proceeded to dispose of all the amendments in disagreement.

*Consideration of Amendment in Disagreement Before Proceeding to Conference Report (Senate)*

**§ 29.5 In the Senate, where a conference report was pending and the conferees had reported certain amendments in disagreement, the Senate by unanimous consent amended one of those amendments, then proceeded to adopt the conference re-**

10. Carl Albert (Okla.).

**port, and finally disposed of the remaining amendments in disagreement.**

Where a conference report on a continuing appropriation bill had been rejected by the Senate, perhaps because there had been no opportunity to offer and vote on an amendment involving a cap on federal comparability pay, the Majority Leader asked that the vote on adoption of the conference report be reconsidered and then suggested a procedure to allow a vote on the controversial provision by attaching it as an amendment to one of the amendments in disagreement. The request of Majority Leader Robert C. Byrd, of West Virginia, together with the proceedings of Dec. 13, 1980,<sup>(11)</sup> that followed, are carried here.

So the conference report (H.J. Res. 637) was rejected. . . .

MR. ROBERT C. BYRD: Mr. President, a conference report cannot be amended. It can only be rejected or adopted. If it is rejected it can only go back to conference. In the event both bodies agree to have another conference, in which case all amendments that have not already been receded from by the House would again be up for negotiation.

The House has already adopted the conference report, and in so doing released its conferees. . . .

. . . [A]s I say, the Senate can only do two things: That is, adopt the conference report or reject it. It cannot amend the conference report. But the Senate can, after adopting the conference report, vote to amend one of the amendments in disagreement, and there are several there. That is what I propose to do . . . .

Mr. President, I ask unanimous consent that the Senate proceed to vote on the motion to reconsider forthwith, and that if the Senate votes to reconsider the vote, which I hope it will do because the decision is wrong at the moment—at the moment the conference report is rejected, but I hope the Senate will vote to reconsider.

I ask unanimous consent that the Senate proceed forthwith to a vote to reconsider, and if the motion to reconsider is agreed to, that I be recognized to offer an amendment on the pay cap, and that there be no more than 10 minutes for debate to be equally divided between the two leaders or their designees. I will not take any of the time. I will yield it to anybody. The Senate would proceed to vote within 10 minutes on the amendment. . . .

THE PRESIDING OFFICER:<sup>(12)</sup> Is there objection to the unanimous-consent request? Objection is not heard. It is so ordered.

The question is on agreeing to the motion to reconsider the vote by which the conference report was rejected. The yeas and nays have been ordered. . . .

11. 126 CONG. REC. 33985-90, 33994, 96th Cong. 2d Sess.

12. Daniel P. Moynihan (N.Y.).



So the motion to reconsider was agreed to.

THE PRESIDING OFFICER: Under the previous order, the Senator from West Virginia is recognized.

MR. ROBERT C. BYRD: Mr. President, I ask that the clerk state the first amendment is disagreement.

THE PRESIDING OFFICER: The clerk will state the first amendment in disagreement.

The assistant legislative clerk read as follows:

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid resolution, and concur therein with an amendment as follows:

Strike the matter stricken and inserted by said amendment, and insert: "not exceed \$500,000,000: *Provided further*, That an overall ceiling for Foreign Military Credit Sales loans and grants of \$3,046,187,000 is hereby established provided that of these funds \$25,000,000 shall be for Oman and \$6,000,000 for Kenya."

MR. ROBERT C. BYRD: Mr. President, I send to the desk an amendment, which is the language on the pay cap, and which the Senate previously adopted.

THE PRESIDING OFFICER: The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. Robert C. Byrd) proposes an unprinted amendment numbered 1954 to the House amendment to the Senate amendment numbered 7.

MR. ROBERT C. BYRD: Mr. President, I ask unanimous consent that further

reading of the amendment be dispensed with.

THE PRESIDING OFFICER: Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following: "Notwithstanding any other provision of this joint resolution, the provisions of section 306(a), (b), and (d) of H.R. 7593 (providing salary pay cap limitations for executive, legislative, and judicial employees and officials) shall apply to any appropriation, fund, or authority made available for the period October 1, 1980, through September 30, 1981, by this or any other Act." . . .

So the motion of Mr. Robert C. Byrd to concur in the House amendment with UP amendment No. 1954 was agreed to. . . .

THE PRESIDING OFFICER: The question now is, Shall the conference report on House Joint Resolution 637 upon reconsideration be agreed to?

The yeas and nays are automatic.

MR. ROBERT C. BYRD: Mr. President, I ask unanimous consent that the order for the yeas and nays be vitiated.

THE PRESIDING OFFICER: Without objection, it is so ordered.

The question is on the adoption of the conference report.

The conference report was agreed to.

MR. ROBERT C. BYRD: Mr. President, I move to reconsider the vote by which the conference report was agreed to.

MR. [LOWELL P.] WEICKER [Jr., of Connecticut]: Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MR. [WARREN G.] MAGNUSON [of Washington]: Mr. President, I ask

unanimous consent that the Senate concur en bloc in the amendments of the House to amendments of the Senate numbered 23, 24, 33, 34, 64, 89, 90, 103, 109, 111, 134, 136, and 139.

The Senate having disposed of all the amendments in disagreement in a manner consistent with the prior House action, then, anticipating that the amendment added to the House amendment to Senate amendment number 7 might not be accepted by the House, insisted on its amendment and asked a conference thereon.<sup>(13)</sup> The House, later on that same day, agreed to the request for a further conference.

#### ***Availability of Amendments on Floor***

**§ 29.6 Pursuant to Rule XXVIII clause 2(b)<sup>(14)</sup> copies of Senate amendments reported from conference in disagreement, as well as conference reports in complete disagreement and accompanying joint statements of the managers, must be available on the floor of the House when any such amendment**

13. 126 CONG. REC. 33996, 96th Cong. 2d Sess.

14. *House Rules and Manual* § 912 (1997).

**is considered, unless the amendment is considered under suspension of the rules.**

On June 29, 1973,<sup>(15)</sup> Mr. Wilbur D. Mills, of Arkansas, sought unanimous consent for the immediate consideration of the conference report and amendments in disagreement on H.R. 8410, providing for a continuation of a temporary increase in the public debt limit. Mr. William A. Steiger, of Wisconsin, under a reservation of objection, posed a parliamentary inquiry:

Mr. Speaker, my parliamentary inquiry is this: that if an objection is heard to the request made by the gentleman from Arkansas, is it in order for the gentleman from Arkansas, the distinguished chairman of the Committee on Ways and Means, to move to suspend the rules to bring this to the floor of the House?

THE SPEAKER:<sup>(16)</sup> The Chair will state that the Chair has the authority to recognize the gentleman for such a motion.

MR. STEIGER of Wisconsin: Mr. Speaker, further reserving the right to object, may I ask the Chair's indulgence in a question relating to rule XXVIII, clause 2(b), as to whether we have waived that part of the rule XXVIII governing conference reports,

15. 119 CONG. REC. 22318, 22383, 22384, 93d Cong. 1st Sess.

16. Carl Albert (Okla.).

which says: Nor shall it be in order to consider any such amendment that is to the conference unless copies of the report and accompanying statement together with the text of the amendment are then available on the floor.

THE SPEAKER: The Chair will state that copies of the Senate amendment and conference report are available, but that suspension of the rules will suspend all rules.

### *Recommendations for Proposed Action*

#### **§ 29.7 The rules do not require conference committees to set out in their reports proposed action on amendments in disagreement.**

On June 19, 1941,<sup>(17)</sup> Mr. John J. Cochran, of Missouri, anticipating the consideration of the conference report on H.R. 4590, Department of Interior appropriations, fiscal 1942, with 38 amendments reported in disagreement, posed a parliamentary inquiry in which he noted that the conferees had agreed informally on a motion to recede from the various amendments in disagreement and concur therein with an amendment.

MR. COCHRAN: . . . I feel that the conferees not only on appropriation bills, but on all other bills where amend-

ments are in disagreement and a motion is to be made to recede and concur, with an amendment that has already been agreed to by the conferees, then that motion should be printed in the conference report, so that the Members of the House may have an opportunity to intelligently examine the amendment and take such action as they deem advisable when it is reached.

I am not asking for an immediate decision but I respectfully request, if the Chair is not prepared, that he examine the present rules of the House in reference to conference committees and see if we are in position under existing rules to require conferees to publish motions they propose to make in reference to amendments that are in disagreement in the conference report. I feel that the membership of the House is entitled to such information. . . .

THE SPEAKER:<sup>(18)</sup> . . . The Chair knows of no ruling of any Speaker or of anything in the rules or precedents of the House, that would require a conference committee to file more than what they considered to be a detailed statement of agreements made in the conference. Explanatory statements are made in the statement accompanying a conference report, but it is, so far as the Chair knows, entirely within the hands of the managers as to what they will include in the statement. The Chair cannot see how, under the rules of the House, members of a conference committee can be forced to include something in their statement that they do not want to include; and that would be

17. 87 CONG. REC. 5352, 77th Cong. 1st Sess.

18. Sam Rayburn (Tex.).

the position of the Chair upon this matter at this time.

It occurs to the Chair, however, that the managers certainly under the rules would have the power to include in the statement accompanying a conference report the additional information suggested by the gentleman from Missouri in his parliamentary inquiry.

### *Time for Point of Order*

#### **§ 29.8 A point of order against a matter reported from conference in disagreement should be made after the conference report is agreed to and when the matter in disagreement is before the House for disposition.**

On Oct. 6, 1949,<sup>(19)</sup> Mr. Michael J. Kirwan, of Ohio, called up the conference report on H.R. 3838, Department of Interior appropriations, fiscal 1950. After the further reading of the managers' statement (which was being read in lieu of the report itself) was dispensed with, the following occurred:

THE SPEAKER:<sup>(20)</sup> Does the gentleman from Montana [Mr. D'Ewart] desire to make a point of order?

MR. [WESLEY A.] D'EWART [of Montana]: Yes, Mr. Speaker.

19. 95 CONG. REC. 14028, 14034-36, 81st Cong. 1st Sess.

20. Sam Rayburn (Tex.).

THE SPEAKER: The Chair will state to the gentleman, however, that the matter which he is complaining of is not in the conference report. It is a matter still in disagreement between the two bodies. The Chair doubts whether the gentleman's point of order would be proper at this time.

MR. D'EWART: Then, Mr. Speaker, the proper time to take this matter up would be when it comes before the House as a matter in disagreement.

THE SPEAKER: May the Chair inquire of the gentleman whether he intends to make a point of order against the conference report, or against a particular amendment in disagreement?

MR. D'EWART: Against a particular amendment, Mr. Speaker.

THE SPEAKER: The Chair recognizes the gentleman from Ohio [Mr. Kirwan].

MR. KIRWAN: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER: The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. Kirwan then obtained the consent of the House for the en bloc consideration of several of the amendments in disagreement including Senate amendment No. 132. After the Clerk read Senate amendment No. 131, Mr. Kirwan made this request:

Mr. Speaker, I ask unanimous consent that Senate amendment No. 132 be deleted from my motion.

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

There was no objection.

The Clerk continued to read the amendments in disagreement.

At the conclusion of the reading of these specified amendments in disagreement, the following occurred:

MR. KIRWAN: Mr. Speaker, I move that the House recede and concur in these Senate amendments.

The Clerk read as follows:

Mr. Kirwan moves that the House recede from its disagreement to the amendments of the Senate numbered 6, 17, 20, 38, 46, 47, 50, 63, 66, 83, 108, 109, 125, 128, 130, 131, 133, 134, 144, 148, 156, 162, 164, 166, 172, 174, and 189 and concur therein.

MR. D'EWART: Mr. Speaker, I wish to make a point of order against Senate amendment No. 132.

THE SPEAKER: The Chair understands that Senate amendment No. 132 has been deleted [from the unanimous-consent request to recede from disagreement to a series of Senate amendments].

After the disposition of all other amendments in disagreement, Senate amendment 132 was then reported:<sup>(1)</sup>

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

The Clerk read as follows:

Senate amendment No. 132: Page 56, line 7, insert the following: "*Provided further*, That no part of this or

prior appropriations shall be used for construction, nor for further commitments to construction of Moorhead Dam and Reservoir, Mont., or any feature thereof until a definite plan report thereon has been completed, reviewed by the States of Wyoming and Montana, and approved by the Congress."

MR. D'EWART: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state the point of order.

MR. D'EWART: Mr. Speaker I make a point of order against the provision found on page 56 of H.R. 3838, as reported by the conference committee. This provision reads as follows:

That no part of this or prior appropriations shall be used for construction, nor for further commitments to construction of Moorhead Dam and Reservoir, Mont., or any feature thereof until a definite plan report thereon has been completed, reviewed by the States of Wyoming and Montana, and approved by the Congress.

I make this point of order under rule 21, as it is clearly legislation on an appropriation bill; (1) because it is an affirmative direction and (2) it restricts executive discretion to a degree that may be fairly termed a change in policy. I call the Speaker's attention to page 422, section 844 of the House Rules and Manual, which reads, in part, as follows:

A provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order. . . .

I submit, Mr. Speaker, that this provision is clearly subject to a point of order under rule 21.

1. See 95 CONG. REC. 14038, 14039, 81st Cong. 1st Sess., Oct. 6, 1949.

THE SPEAKER: The Chair is ready to rule.

The Chair has listened to the gentleman from Montana very carefully. The Chair will state that if an amendment of this sort had been proposed in the House of Representatives when this bill was under consideration in all probability it would have been subject to a point of order. The Chair does not feel that in this case it is a violation of clause 2 of rule 21, for the simple reason that it has been held as early as 1921 by Mr. Speaker Gillette that when an amendment that might have been subject to a point of order in the House if offered here was adopted by the Senate, and the conferees reported such an amendment in disagreement the House may consider the amendment.

Therefore, the Chair must overrule the point of order of the gentleman from Montana.

MR. KIRWAN: Mr. Speaker, I move that the House recede and concur in the Senate amendment, and I yield 5 minutes to the gentleman from Montana [Mr. D'Ewart].

***Budget Resolution Reported in Technical Disagreement Because of Scope***

**§ 29.9 Where conferees on a concurrent resolution on the budget reported in disagreement, their report stated the reasons for this action and explained that a compromise between the House and Senate managers was possible only by including**

**figures outside the range of differences submitted to conference.**

The conference report on Senate Concurrent Resolution 80 and a portion of the joint statement of the managers filed in the House on May 15, 1978,<sup>(2)</sup> is included here. For further proceedings leading up to the debate on the motion to concur in the Senate amendment, see § 28.14, supra.

CONFERENCE REPORT ON SENATE  
CONCURRENT RESOLUTION 80

Mr. [Robert N.] Giaimo [of Connecticut] submitted the following conference report and statement on the concurrent resolution (S. Con. Res. 80) setting forth the congressional budget for the U.S. Government for the fiscal year 1979:

CONFERENCE REPORT (H. REPT. NO.  
95-1173)

The Committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 80) setting forth the congressional budget for the United States Government for the fiscal year 1979, having met, after full and free conference have been unable to agree on a conference report because the conference decisions have reduced certain budget figures, including the deficit and the public debt, below the provisions enacted by either House. As set forth in the accompanying

2. 124 CONG. REC. 13615, 95th Cong. 2d Sess.

Joint Explanatory Statement, the conferees do propose a congressional budget, containing the lower figures, incorporated in a further amendment for the consideration of the two Houses.

ROBERT N. GIAIMO,  
ELIZABETH HOLTZMAN,  
BUTLER DERRICK,  
WILLIAM LEHMAN,  
PAUL SIMON,  
JOSEPH L. FISHER,  
JIM MATTOX,

*Managers on the Part of the House.*

WARREN G. MAGNUSON,  
EDMUND S. MUSKIE,  
FRITZ HOLLINGS,  
ALAN CRANSTON,  
LAWTON CHILES,  
JAMES ABOUREZK,  
HENRY BELLMON,  
ROBERT DOLE,  
H. JOHN HEINZ,

*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 80) setting forth the congressional budget for the United States Government for the fiscal year 1979, report that the conferees have been unable to agree. This is a technical disagreement, necessitated by the fact that in some instances the substitute language agreed to by the conferees includes figures which (for purely technical reasons) would fall outside the range between the corresponding House and Senate provisions.

It is the intention of the conferees that the managers on the part of the

Senate will offer a motion in the Senate to recede and concur in the House amendment to the Senate-passed resolution with an amendment (in the nature of a substitute) consisting of the language agreed to in conference. Upon the adoption of such amendment in the Senate, the managers of the House will offer a motion in the House to concur therein.

*Reporting Amendments in  
Technical Disagreement*

**§ 29.10 Where conferees on a particular Senate amendment in disagreement develop compromise language to settle the dispute between the two Houses which is "legislative language" to which the House managers cannot agree (under Rule XX clause 2) without specific permission of the House, the matter is often brought back in "technical disagreement."**

This was the situation on May 16, 1978,<sup>(3)</sup> when a Senate amendment in disagreement to H.R. 9005, making appropriations for the District of Columbia, fiscal 1978, was considered in the House. The proceedings were as follows:

3. 124 CONG. REC. 13921-23, 95th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 37: Page 13, line 14, strike out: "\$168,757,900" and insert "\$102,173,400".

MOTION OFFERED BY MR. NATCHER

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Natcher moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$129,173,400: *Provided*, That none of the funds appropriated for the Washington Civic Center shall be obligated until the Subcommittees on the District of Columbia Appropriations of the House of Representatives and the Senate have approved the plan submitted by the Mayor and the City Council for the Washington Civic Center".

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves that the House recede from its disagreement to the amendment of the Senate numbered 37 and concur therein.

MR. NATCHER: Mr. Speaker, I demand that the question be divided.

THE SPEAKER PRO TEMPORE: The question will be divided.

Does the gentleman from Kentucky (Mr. Natcher) seek time?

MR. BAUMAN: Mr. Speaker, I wonder if the gentleman would take some time briefly. I do not want to prolong this debate.

THE SPEAKER PRO TEMPORE: The gentleman from Kentucky (Mr. Natcher) is recognized for 30 minutes. . . .

MR. NATCHER: Mr. Speaker, I move the previous question on the motion to recede.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recede.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is, Will the House recede from its disagreement to Senate amendment No. 37.

The House receded from its disagreement to Senate amendment No. 37.

PREFERENTIAL MOTION OFFERED BY  
MR. NATCHER

MR. NATCHER: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Natcher moves that the House concur in the amendment of the Senate numbered 37 with an amendment, as follows: In lieu of the sum named in said amendment, insert: "\$129,173,400: *Provided*, That none of the funds appropriated for the Washington Civic Center shall be obligated until the Subcommittees on the District of Columbia Appropriations of the House of Representatives and the Senate have approved the plan submitted by the Mayor and the

4. Thomas S. Foley (Wash.).



City Council for the Washington Civic Center”.

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves to table the motion to concur in the amendment of the Senate numbered 37, with an amendment.

THE SPEAKER PRO TEMPORE: The question is on the preferential motion offered by the gentleman from Maryland (Mr. Bauman).

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 190, nays 199, answered “present” 1, not voting 44. . . .

So the preferential motion to table was rejected.

The result of the vote was announced as above recorded.

MR. NATCHER: Mr. Speaker, I move the previous question on the motion now pending.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the preferential motion offered by the gentleman from Kentucky (Mr. Natcher) to concur in the Senate

amendment No. 37, with an amendment.

The question is on the preferential motion offered by the gentleman from Kentucky (Mr. Natcher).

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

MR. [JOHN H.] ROUSSELOT [of California]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 199, nays 183, answered “present” 1, not voting 51.

*Parliamentarian’s Note:* The motion to table a motion disposing of an amendment in disagreement does not carry with it the amendment and the bill itself, since if the motion is tabled other motions remain available for disposition of the amendment, whereas the tabling of a Senate amendment itself has the effect of carrying to the table the House bill as well.

### *Where Conferees Report in Complete Disagreement*

**§ 29.11 Where conferees have filed a conference report on a Senate bill, and the Senate has then amended a House amendment to the bill, the conference report is called up in the House but is not acted on, and a motion**

**to concur in the Senate amendment to the House amendment is privileged, the stage of disagreement being in effect.**

The House does not act on a conference report in total disagreement but proceeds to consider the amendments in disagreement by motion. On Feb. 24, 1976, the following conference report was filed:<sup>(5)</sup>

CONFERENCE REPORT (H. REPT. NO. 94-839)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2017) to amend the Drug Abuse Office and Treatment Act of 1972, and for other purposes, having met, after full and free conference, have been unable to agree.

The conference report and the amendments in disagreement were taken up and resolved on Mar. 4, 1976:<sup>(6)</sup>

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the Senate bill (S. 2017) to amend the Drug Abuse Office and Treatment Act of 1972, and for other purposes.

5. 122 CONG. REC. 4102, 94th Cong. 2d Sess.

6. 122 CONG. REC. 5497, 5502, 94th Cong. 2d Sess.

THE SPEAKER:<sup>(7)</sup> The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement see proceedings of the House of February 24, 1976.)

THE SPEAKER: The Clerk will read the Senate amendment to the House amendment.

The Clerk read the Senate amendment to the House amendment as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the text of the bill (S. 2017) entitled "An Act to amend the Drug Abuse Office and Treatment Act of 1972, and for other purposes", insert the following:

That section 101 (21 U.S.C. 1101) of the Drug Abuse Office and Treatment Act of 1972 (hereinafter in this Act referred to as the "Act") is amended by adding at the end thereof the following new paragraph: . . .

MOTION OFFERED BY MR. STAGGERS

MR. STAGGERS: Mr. Speaker, I move that the House, concur in the Senate amendment to the House amendment on the Senate bill S. 2017.

The motion was agreed to.

A motion to reconsider was laid on the table.

**§ 29.12 Prior to the 93d Congress, when conferees reported in total disagreement their report was filed, ordered printed, called up and read, and the amendments in**

7. Carl Albert (Okla.).

**disagreement were immediately called up for consideration.**

On June 30, 1972,<sup>(8)</sup> proceedings in the House relative to the filing of a conference report occurred as indicated below:

Mr. Mills of Arkansas submitted the following conference report on the bill (H.R. 15390) to provide for a 4-month extension of the present temporary level in the public debt limitation:

CONFERENCE REPORT (H. REPT. NO.  
92-1215)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15390) to provide for a four-month extension of the present temporary level in the public debt limitation, having met, after full and free conference, have been unable to agree.

WILBUR D. MILLS,  
AL ULLMAN,  
JAMES A. BURKE,  
*Managers on the Part of  
the House.*

RUSSELL B. LONG,  
CLINTON P. ANDERSON,  
HERMAN TALMADGE,  
WALLACE F. BENNETT,  
CARL T. CURTIS,  
*Managers on the Part of  
the Senate.*

Following a call of the House, the proceedings continued as follows:

8. 118 CONG. REC. 23716, 92d Cong. 2d Sess.

Mr. [WILBUR D.] MILLS of Arkansas: Mr. Speaker, I call up the conference report on the bill (H.R. 15390) to provide for a 4-month extension of the present temporary level in the public debt ceiling.

THE SPEAKER:<sup>(9)</sup> The Clerk will read the conference report.

The Clerk read the conference report. . . .

THE SPEAKER: The Clerk will report the first amendment in disagreement.

Mr. John W. Byrnes, of Wisconsin, then raised a parliamentary inquiry:

Mr. Speaker, I make this parliamentary inquiry so that the Members of the House can be apprised of the parliamentary situation which we are in.

Under normal circumstances, Mr. Speaker, a conference report is filed, it either lays over under the rule<sup>(10)</sup> for 3 days—

THE SPEAKER: The Chair will ask the gentleman from Wisconsin to please state his parliamentary inquiry.

9. Carl Albert (Okla.).
10. Rule XXVIII clause 2, *House Rules and Manual* § 912 (1971) as amended pursuant to the Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140, § 125(b)(2), Oct. 26, 1970, required that conference reports lay over for three days prior to consideration. Clause 2(b) was not added to this rule until the adoption of H. Res. 1153, § 2(b)(2), 92d Cong. 2d Sess., Oct. 13, 1972, and did not take effect until the 93d Congress.

MR. BYRNES of Wisconsin: Mr. Speaker, my first parliamentary inquiry involves a question, and the question is: Why does this conference report differ, and why does this not follow the normal rules of the House with regard to laying over with respect to the required legislative days?

THE SPEAKER: The Chair will state to the gentleman from Wisconsin that the conference report was reported back in complete disagreement from the conference committee. . . .

Where conferees report in disagreement all of the amendments of the Senate no action is taken on the report. It is filed, ordered printed and called up and read before further action is taken on the amendments in disagreement.

Where the conferees report they have been unable to agree on all amendments submitted to them the report is not acted on and the Speaker directs the Clerk to report the amendments in disagreement.

That is what the Chair is getting ready to do.<sup>(11)</sup>

### *Senate Action on Conference Report in Disagreement*

**§ 29.13 In the Senate, a conference report in total disagreement is agreed to before disposition of the amendment reported in disagreement.**

11. See 118 CONG. REC. 23717, 92d Cong. 2d Sess., June 30, 1972.

Based on precedents of the Senate dating back at least to 1913,<sup>(12)</sup> a conference report in total disagreement, called up in that body, is acted upon before motions to dispose of the amendment in disagreement are entertained. The proceedings with respect to the concurrent resolution on the budget in the 96th Congress, as excerpted from the Record of May 23, 1979,<sup>(13)</sup> demonstrate the Senate practice.

#### FIRST CONCURRENT RESOLUTION ON THE BUDGET, FISCAL YEAR 1980—CONFERENCE REPORT

MR. [EDMUND S.] MUSKIE [of Maine]: Mr. President, I submit a report of the committee of conference on House Concurrent Resolution 107 and ask for its immediate consideration.

THE PRESIDING OFFICER:<sup>(14)</sup> The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the resolution (H. Con. Res. 107) setting forth the congressional budget for the U.S. Government for fiscal year 1980 and revising the congressional budget for the U.S. Government for fiscal year 1979, having

12. See Senate Procedure, Riddick-Frumin, p. 489, Sen. Doc. 101-28, 101st Cong.

13. 125 CONG. REC. 12398, 12399, 96th Cong. 1st Sess.

14. David H. Pryor (Ark.).

met, after full and free conference, have been unable to agree. Signed by a majority of the conferees.

THE PRESIDING OFFICER: Without objection, the Senate will proceed to the consideration of the conference report. . . .

MR. MUSKIE: Mr. President, I ask unanimous consent that the use of small electronic calculators be permitted on the Senate floor during consideration of and votes on the conference report on House Concurrent Resolution 107.

THE PRESIDING OFFICER: Without objection, it is so ordered.

MR. MUSKIE: Mr. President, I move that the conference report in disagreement be agreed to.

THE PRESIDING OFFICER: Without objection, the conference report in disagreement is agreed to.

MR. MUSKIE: Mr. President, I think I have to make one further request before I go any further.

I ask unanimous consent that the Senate recede from its amendment to the resolution (H. Con. Res. 107), and that it only be in order to move to agree to the resolution with a new amendment in the nature of a substitute, which shall not be amended.

THE PRESIDING OFFICER: Is there objection? . . .

Without objection, it is so ordered.

### ***Disagreement to Amendment in the Nature of a Substitute***

**§ 29.14 Under current practice, where conferees report that they are unable to agree on an amendment in the nature**

**of a substitute sent to conference, their report is filed, and called up after three days but not acted upon, and the Speaker then directs the Clerk to report the amendment in disagreement.**

On July 31, 1973,<sup>(15)</sup> Mr. William R. Poage, of Texas, submitted the conference report in disagreement on S. 1888, to extend and amend the Agricultural Act of 1970.

On Aug. 3, 1973,<sup>(16)</sup> the following occurred in the House:

MR. POAGE: Mr. Speaker, I call up the conference report on the bill (S. 1888) to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(17)</sup> The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement, see proceedings of the House of July 31, 1973.)

THE SPEAKER: The Clerk will read the Senate amendment to the House amendment.

15. 119 CONG. REC. 27001-13, 93d Cong. 1st Sess.

16. *Id.* at p. 28121.

17. Carl Albert (Okla.).

The Clerk proceeded to read the Senate amendment to the House amendment.

(For Senate amendment to House amendment, see proceedings of the Senate of July 31, 1973.)<sup>(18)</sup>

**§ 29.15 A conference committee reported a disagreement in order to give the House an opportunity to perfect a Senate amendment in the nature of a substitute.**

On June 8, 1937,<sup>(19)</sup> Mr. William P. Connery, Jr., of Massachusetts, obtained the consent of the House to recommit the conference report on H.R. 6551 (to create a Civilian Conservation Corps) to the committee of conference. Mr. Connery had made an agreement with John Snell, of New York, the Minority Leader, to recommit this report to set the stage for later proceedings in which separate votes could occur in the House on three provisions on which the House had originally insisted. On June 21, 1937,<sup>(20)</sup> Speaker William B. Bankhead, of Alabama, recognized Mr. Robert Ramspeck, of Georgia, to call up the subsequent confer-

ence report on H.R. 6551, in place of Mr. Connery who had died in the interim.

MR. RAMSPECK: . . . First, let me explain the parliamentary situation, briefly. After having reported a conference agreement to the House, Mr. Connery asked that the bill be recommitted to the conferees in order to give the House an opportunity to express its choice on the three matters. In pursuance of this desire, the conferees have reported a disagreement. I propose to offer a motion that the House recede from its disagreement to the Senate amendment. If that motion carries, which I trust it will, I then propose to offer three separate amendments to the Senate amendment which will substitute for the Senate provisions in controversy the House provisions. On each of these amendments a separate vote may be had if desired.

After the disposition of the three motions, I shall move to offer as a substitute for the entire Senate amendment a proposal which will contain, first, all the matters tentatively agreed on by the conferees, about which I am sure there is no substantial controversy; and, second, the matters which the House has just voted on in the previous separate three motions.

By following this procedure we shall be able to dispose of the noncontroversial matters, give the House the desired separate votes, and offer a proposition to the Senate which it can agree to or send to conference and which will set forth in definite fashion the position of the House.

18. 119 CONG. REC. 26897-911, 93d Cong. 1st Sess.

19. 81 CONG. REC. 5462, 75th Cong. 1st Sess.

20. *Id.* at pp. 6095-97, 6099, 6100.

I may say further that the reason for this complicated procedure is the fact that the Senate, in considering the House bill, struck out all after the enacting clause and substituted the Senate bill. It therefore became impossible for the conference, under the parliamentary situation, to carry out the promise which Mr. Connery made the gentleman from New York [Mr. Snell] when the bill was taken from the Speaker's table and sent to conference. This is the only parliamentary method by which we can carry out that promise, and I am sure the Members of the House, in view of what has happened since, will join with me in helping to keep a promise for a man who never broke one. [Applause] . . .

MR. [CARL E.] MAPES [of Michigan]: I do not understand clearly the parliamentary situation. As I understand the gentleman's motion, it is to recede and concur in the Senate amendment? . . .

MR. RAMSPECK: If the pending motion is adopted, then I shall offer a motion to put back in the bill the provisions of the House bill and we will then go to conference on that.

MR. MAPES: After the House recedes, the gentleman then proposes to offer amendments to the Senate amendment?

MR. RAMSPECK: That is correct.

***Parliamentary Situation  
Where Conference Report  
Ruled Out on Point of Order***

**§ 29.16 Amendments between the Houses once disagreed to do not again require consideration in the Committee of**

**the Whole in the event the conference report is ruled out of order.**

On Aug. 19, 1937,<sup>(1)</sup> after Speaker William B. Bankhead, of Alabama, sustained a point of order against the conference report on H.R. 7646, relating to public works on rivers and harbors for flood control, Mr. Bertrand H. Snell, of New York, raised a parliamentary inquiry:

When a conference report has been thrown out on a point of order is it not the same as if it had been rejected by the House?

THE SPEAKER: The gentleman from New York makes a parliamentary inquiry as to whether, when a point of order to a conference report is sustained ipso facto, the Senate amendments come before the House for further consideration. Is that the parliamentary inquiry?

MR. SNELL: Yes.

THE SPEAKER: In reply to the gentleman the Chair calls the gentleman's attention to section 3257, volume 8, Cannon's Precedents:

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

MR. SNELL: When this first came back from the Senate there was an im-

1. 81 CONG. REC. 9376-79, 75th Cong. 1st Sess.

portant matter that should have gone before the committee for consideration because it entailed expenditure of large amounts of money, and is it a privileged motion to move to consider that in the House at the present time?

THE SPEAKER: It is in the opinion of the Chair, because by sending the bill and Senate amendments to conference, the provisions of the rules requiring consideration in the Committee of the Whole were waived.

**§ 29.17 Where a conference report on a House bill, amended in the Senate by a complete amendment in the nature of a substitute, is ruled out of order, the Senate amendment in disagreement remains before the House for disposition by any of a variety of motions. If the conference manager determines to proceed immediately to address the amendment in disagreement, the Speaker directs that it be read and then a motion may be offered to dispose of the amendment in disagreement.**

On Sept. 27, 1976,<sup>(2)</sup> the conference report on H.R. 5546, the Health Professions Educational Assistance Act of 1976, was called up for consideration in the House.

2. 122 CONG. REC. 32655, 94th Cong. 2d Sess.

A point of order was raised against the report by the chairman of the Committee on the Budget,<sup>(3)</sup> and the report was then ruled out of order in violation of section 401(a) of the Congressional Budget Act, since it contained new spending authority not subject to advance appropriations.

The manager<sup>(4)</sup> of the conference then offered a motion to recede from disagreement and concur in the Senate substitute with a further amendment which rectified the Budget Act violation.

The various inquiries regarding this procedure are contained in the portions of the *Congressional Record* which are set forth herein:<sup>(5)</sup>

MR. ADAMS: Mr. Speaker, I make a point of order on the conference report.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentleman from Washington will state his point of order.

MR. ADAMS: Mr. Speaker, the conference agreement on H.R. 5546, the Health Professions Assistance Act of 1976, contains a provision which appears to provide borrowing authority which is not subject to advance appropriations. Consequently, it would be

3. Brock Adams (Wash.).

4. Harley O. Staggers (W. Va.).

5. 122 CONG. REC. 32655, 32656, 32679, 32703, 32704, 94th Cong. 2d Sess., Sept. 27, 1976.

6. John J. McFall (Calif.).



subject to a point of order under section 401(a) of the Congressional Budget Act.

Section 401(a) provides:

It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts.

Section 401(c)(2)(B) of the Budget Act defines spending authority as authority "to incur indebtedness—other than indebtedness incurred under the second Liberty Bond Act—for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation acts." This form of spending authority is commonly known as borrowing authority.

The conference report accompanying H.R. 5546 contains a provision creating a student loan insurance fund under section 734 of the Public Health Service Act.

Clearly, the requirement that the Secretary of the Treasury purchase these obligations constitutes borrowing authority.

And since the provision contains no requirement that the authority be limited to amounts provided in advance in appropriation acts, it appears to give rise to a section 401(A) point of order.

The fact that the provision relates to default payments which might arise pursuant to a loan guarantee program does not bring the provision within the

"loan guarantee" exception to section 401 of the Budget Act. Although the loan guarantee itself may not be subject to advance appropriation, the default payment made pursuant to the provision in question does not constitute a loan guarantee and it is fully subject to the requirements of section 401.

MR. STAGGERS: Mr. Speaker, will the gentleman yield?

MR. ADAMS: I yield to the gentleman from West Virginia, the chairman of the committee.

MR. STAGGERS: Mr. Speaker, I concede the point of order.

Mr. Speaker, I have a motion.

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Staggers) concedes the point of order.

Therefore, the point of order is sustained.

The Clerk will report the Senate amendment in disagreement.

#### PARLIAMENTARY INQUIRY

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, it was my understanding that the gentleman from West Virginia (Mr. Staggers) called up a conference report, and a point of order was made against that conference report, which was sustained.

Is the conference report still before the House, Mr. Speaker?

THE SPEAKER PRO TEMPORE: The conference report is not, but the Senate amendment in disagreement is; and a

motion will be offered, the Chair will state to the gentleman from Maryland, that could cure the point of order. Therefore, if the gentleman will bear with us for the sake of orderly procedure, we will have this matter properly before the House. . . .

MR. STAGGERS (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment in disagreement be dispensed with.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from West Virginia?

There was no objection.

MOTION OFFERED BY MR. STAGGERS

MR. STAGGERS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Staggers moves that the House recede from its disagreement to the amendment of the Senate to the bill H.R. 5546, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE: REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Health Professions Educational Assistance Act of 1976". . . .

MR. BAUMAN: Mr. Speaker, I reserve the right to object to the unanimous-consent request made by the gentleman from West Virginia (Mr. Staggers).

My inquiry of the Chair is the same as I made before, and that is that in view of the fact that a point of order has been made to any consideration of the conference report, is the motion that is being made to agree with the

Senate amendment to the amendment of the House deleting the offending phrase?

THE SPEAKER PRO TEMPORE: When a conference report is ruled out of order as this one was, then the Senate amendment in disagreement is before the House. This motion, if passed, would remedy the point of order that was made. . . .

PARLIAMENTARY INQUIRY

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. MICHEL: My parliamentary inquiry is this, Mr. Speaker, could the Chair advise us how many disagreeing amendments there are if there is no conference report to be adopted?

THE SPEAKER PRO TEMPORE: The Chair will advise the gentleman there is only one amendment and that is in the nature of a substitute and it is a very long amendment, it is about three-quarters of an inch thick and the reading of the Senate amendment was dispensed with.

The Chair understands that the offending language which was objected to by the chairman of the Committee on the Budget, the gentleman from Washington (Mr. Adams) which gave rise to the point of order is not in the motion now before the House.

MR. MICHEL: I thank the gentleman.

THE SPEAKER PRO TEMPORE: The gentleman from West Virginia (Mr. Staggers) will be recognized for 30 minutes and the gentleman from Ken-

tucky (Mr. Carter) will be recognized for 30 minutes.

The Chair recognizes the gentleman from West Virginia (Mr. Staggers).

### *Debate on Amendments in Disagreement*

#### § 29.18 Debate on each amendment in disagreement is under the hour rule.

On Mar. 16, 1942,<sup>(7)</sup> Mr. Hatton W. Sumners, of Texas, called up the conference report and amendments in disagreement on S. 2208, the second war powers bill. Mr. Sumners then inquired:

Mr. Speaker, let me inquire in regard to the time. How much time is allowed for the entire disposition of the conference report, including amendment No. 32?

THE SPEAKER:<sup>(8)</sup> The gentleman is entitled to 1 hour on the conference report. He can yield such time as he desires. Then, if he desires, an hour may be taken on each amendment in disagreement.

### *Control of Debate*

#### § 29.19 As each amendment in disagreement is reported, the Chair recognizes the Member handling the conference report to offer a motion relat-

**ing to that amendment; and even though another Member offers a preferential motion pertaining to the amendment, the Member handling the report does not thereby lose control of his or her allotted time for debate.**

On Oct. 24, 1967,<sup>(9)</sup> Mr. Joe L. Evins, of Tennessee, called up the conference report on H.R. 9960, independent offices appropriations, fiscal 1968. After the House adopted the report, it granted unanimous consent for the en bloc consideration of two of the Senate amendments in disagreement.

THE SPEAKER:<sup>(10)</sup> The Clerk will report the Senate amendments in disagreement.

The Clerk read as follows:

Senate amendment No. 58: On page 36, line 23, strike out "\$75,000,000" and insert "\$125,000,000".

Senate amendment No. 59: On page 37, line 2, strike out "\$237,000,000" and insert "\$537,000,000".

MR. EVINS of Tennessee: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Evins of Tennessee moves that the House insist on its disagreement

7. 88 CONG. REC. 2502-04, 77th Cong. 2d Sess.

8. Sam Rayburn (Tex.).

9. 113 CONG. REC. 29837-42, 90th Cong. 1st Sess.

10. John W. McCormack (Mass.).

to the amendments of the Senate numbered 58 and 59.

MR. [ROBERT N.] GIAIMO [of Connecticut]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Giaimo moves that the House recede from its disagreement to the amendments of the Senate numbered 58 and 59 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Tennessee [Mr. Evins].

During the hour of debate under his control, Mr. Evins recognized three Members, including Mr. Giaimo, who spoke in favor of the preferential motion, and two Members who spoke in favor of the motion that the House insist on its disagreement to the Senate amendments. After this time had expired, the consideration of Senate amendments No. 58 and No. 59 ended in the following manner:

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Connecticut [Mr. Giaimo] that the House recede from its disagreement to Senate amendments No. 58 and No. 59, and concur therein. . . .

The question was taken; and there were—yeas 156, nays 241, not voting 35. . . .

So the preferential motion was rejected. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Tennessee [Mr. Evins] that the House insist upon its disagreement to the

amendments of the Senate No. 58 and No. 59.

The motion was agreed to.

*Parliamentarian's Note:* In this instance, Mr. Evins controlled the entire hour of debate on the motion offered by Mr. Giaimo. A Member handling a conference report controlled the entire hour of debate on each amendment reported in disagreement through the 92d Congress. Had this occurred after the 92d Congress, Mr. Evins would have controlled half an hour of debate and a Member of the minority the other half hour. House Resolution 1153, 92d Cong. 2d Sess., Oct. 13, 1972, which became effective on Jan. 3, 1973, added clause 2(b) to Rule XXVIII, *House Rules and Manual* § 912 (1973), to provide that time for debate on amendments reported from conference in disagreement be divided between the majority and minority parties. See also § 29.27, *infra*.

### *Amendments in Disagreement as Unfinished Business*

**§ 29.20 Where the House disposed of a conference report on one day and then adjourned, the amendments in disagreement were consid-**

**ered as unfinished business when the House next met.**

A portion of the proceedings of Aug. 1, 1991,<sup>(11)</sup> are carried to show how the Chair initiated the consideration of amendments in disagreement which remained to be disposed of after an adjournment of the House.

CONFERENCE REPORT ON H.R. 2427,  
ENERGY AND WATER DEVELOPMENT  
APPROPRIATIONS ACT, 1992

AMENDMENTS IN DISAGREEMENT

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> The unfinished business is consideration of the amendments in disagreement on the conference report on H.R. 2427.

Pursuant to the order of the House of Tuesday, July 30, 1991, the amendments in disagreement are considered as having been read.

The Clerk will designate the first amendment in disagreement.

***Modifying Pending Motion To Recede and Concur With Amendment***

**§ 29.21 Where a motion to recede and concur in a Senate amendment is before the House, offered under Rule**

11. 137 CONG. REC. 20954, 102d Cong. 1st Sess.

12. Michael R. McNulty (N.Y.).

**XXVIII clause 4,<sup>(13)</sup> following the rejection of portions of a conference report after a decision that they were not germane, the only way to further modify the pending motion is to vote down the previous question.**

On Dec. 15, 1975,<sup>(14)</sup> during the prolonged consideration of the conference report on S. 622, the Standby Energy Authorities Act, several inquiries were directed to the Speaker<sup>(15)</sup> after the majority manager of the conference report offered his motion that the House recede from disagreement and concur in the Senate amendment (to the House amendment to the Senate bill) with a further amendment. The pertinent debate from the *Congressional Record* is included here.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROWN of Ohio: Mr. Speaker, is the motion offered by the gentleman from West Virginia (Mr. Staggers) at this point amendable?

13. *House Rules and Manual* § 913b (1997).

14. 121 CONG. REC. 40713, 40714, 40716, 40738, 94th Cong. 1st Sess.

15. Carl Albert (Okla.).

THE SPEAKER: No.

MR. BROWN of Ohio: Is it divisible?

THE SPEAKER: The only way it could be amended is if it is read. After debate, the previous question is in order. If the previous question is voted down, then it is amendable. . . .

The Chair would like for the sake of the entire House, if the gentleman will bear with the Chair, to hear a parliamentary inquiry.

The gentleman from California is correct. The regular order is the reading of the motion.

MR. [JOHN E.] MOSS [of California]: Mr. Speaker, I am inclined not to be charitable. I insist upon the rules being applied, in this instance the reading of the motion pending.

THE SPEAKER: The Clerk will read.

The Clerk proceeded to read the motion.

MR. [SILVIO O.] CONTE [of Massachusetts] (during the reading): Mr. Speaker, I ask unanimous consent that the motion [to recede and concur with an amendment] and amendment be considered as read and printed in the Record.

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

#### PARLIAMENTARY INQUIRY

MR. BROWN of Ohio: Mr. Speaker, may I ask a parliamentary inquiry?

THE SPEAKER: The gentleman yields to himself for a parliamentary inquiry.

The gentleman is recognized for 30 minutes.

MR. BROWN of Ohio: Mr. Speaker, in order to get to a modification of what we have before us that might receive a majority vote on the floor of the House,

is it required that we would divide the question and that the House vote to recede and then modify the amendment of the gentleman from West Virginia (Mr. Staggers)?

THE SPEAKER: The way the gentleman can get at what he apparently is trying to get at is to vote down the previous question on the motion offered by the gentleman from West Virginia.

MR. BROWN of Ohio: So that when the previous question on the motion of the gentleman from West Virginia is put, there should be a vote requested on that previous question so that we can vote down the previous question and then modify the amendment of the gentleman from West Virginia?

THE SPEAKER: The Chair is not saying it should be done. The Chair is saying that that is the way to get done what the gentleman wants done. . . .

The question is on ordering the previous question.

#### PARLIAMENTARY INQUIRY

MR. BROWN of Ohio: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROWN of Ohio: Mr. Speaker, if the previous question is voted down, then there is no vote on the issue raised by the gentleman from West Virginia (Mr. Staggers), and the time goes to the gentleman from Louisiana (Mr. Waggoner) for a motion, as I understand. Now, the vote to accomplish that would be a "no" vote, is that correct?

THE SPEAKER: A vote against the previous question will permit an amendment to be offered to the pending motion.

MR. BROWN of Ohio: I thank the Speaker.

***Division of Debate Time on Motion To Dispose of Amendment Between Houses***

**§ 29.22 In the modern practice, debate on a privileged motion to dispose of a Senate amendment in disagreement, during the subsequent stages of action following the rejection of a conference report, is equally divided between the majority and minority parties.**

While the provisions of Rule XXVIII clause 2(b) specifically address the division of debate time on an amendment "reported in disagreement" from a conference committee, the practice has developed of dividing the time between the parties on any motion to dispose of an amendment, once the stage of disagreement has been reached.

On Dec. 19, 1985,<sup>(16)</sup> the Chair's announcement of the division of time in the proceedings carried here shows the practice that has been followed in recent years.<sup>(17)</sup>

16. 131 CONG. REC. 38359, 38360, 38367, 99th Cong. 1st Sess.

17. This practice supersedes that followed in the period immediately fol-

FURTHER MESSAGE FROM THE  
SENATE

A further message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate agrees to the amendment of the House to the amendments of the Senate to the bill (H.R. 3128) entitled "An act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process," with an amendment.

The message also announced that the Senate had passed a joint resolution of the following title, in which concurrence of the House is requested:

S.J. Res. 255. Joint Resolution Relative to the convening of the 2d session of the 99th Congress.

CONSOLIDATED OMNIBUS RECONCILIATION ACT OF 1985

MR. [WILLIAM (BILL) H.] GRAY of Pennsylvania: Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, with the Senate amendment to the House amendment to the Senate amendment, and concur in the Senate amendment to the House amendment to the Senate amendment.

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lowing the adoption of Rule XXVIII clause 2(b) in 1972. See *House Rules and Manual* § 912(b) (1997) for a synopsis of the evolution of dividing debate time.

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The Clerk will report the title of the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendment as follows:

(See Senate proceedings in today's Record, page S18201, part II.)

MOTION OFFERED BY MR. DAUB

MR. [HAL] DAUB [of Nebraska]: Mr. Speaker, I move to table the motion.

My motion is in writing, and it is on its way to the desk.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Daub moves to table the motion.

THE SPEAKER PRO TEMPORE: The question is on the motion to lay on the table offered by the gentleman from Nebraska (Mr. Daub).

The motion to table was rejected.

MR. GRAY of Pennsylvania: Mr. Speaker, I move to limit debate to 15 minutes per side.

THE SPEAKER PRO TEMPORE: The gentleman requests that debate be limited. Is there objection to the request of the gentleman from Pennsylvania?

MR. DAUB: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The gentleman from Pennsylvania [Mr. Gray] will be recognized for 30 minutes and the gentleman from Ohio [Mr. Latta] will be recognized for 30

minutes [on the pending motion to concur].

The Chair recognizes the gentleman from Pennsylvania [Mr. Gray]. . . .

MR. GRAY: . . . Mr. Speaker, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The question is on the motion offered by the gentleman from Pennsylvania [Mr. Gray] to concur in the Senate amendment to the House amendment to the Senate amendment.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. GRAY of Pennsylvania: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 137, nays 211, not voting 86, as follows: . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

### *Debate Time on Amendments Offered Once Stage of Disagreement Reached*

**§ 29.23 While the modern practice in the House is to divide time on motions to dispose of amendments once the stage of disagreement has been reached, as recently as the 96th Congress, the practice was to recognize the Member**

18. Dale E. Kildee (Mich.).



**making a motion for a full hour where the pending amendment had not been reported in disagreement.**

The House had earlier adopted the conference report on S. 918, a bill addressing Small Business Act amendments but the Senate had rejected the report and thereafter had concurred in the House amendment to the Senate bill with a further amendment. When this new amendment reached the House on Feb. 6, 1980,<sup>(19)</sup> the following request was entertained and the debate proceeded as indicated.

SMALL BUSINESS ACT

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I move to take from the Speaker's table the Senate bill (S. 918) to amend the Small Business Act and Small Business Investment Act of 1958 and for other purposes, with a Senate amendment to the House amendment and concur in the Senate amendment to the House amendment with an amendment.

The Clerk read the Senate amendment to the House amendment and the House amendment to the Senate amendment to the House amendment, as follows:

Senate Amendment to House Amendment: In lieu of the matter

<sup>19</sup>. 126 CONG. REC. 2133, 2140, 96th Cong. 2d Sess.

proposed to be inserted by the House engrossed amendment, insert:

TITLE I—AUTHORIZATIONS AND MISCELLANEOUS AMENDMENTS . . .

MR. SMITH of Iowa (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment to the House amendment and the House amendment to the Senate amendment to the House amendment be dispensed with and that they be printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> Is there objection to the request of the gentleman from Iowa?

There was no objection.

THE SPEAKER PRO TEMPORE: Under the rule, the gentleman from Iowa (Mr. Smith) is recognized for 1 hour.

***Recognition To Control One-third Time Against Conference Report***

**§ 29.24 The minority has no priority of recognition in opposition to a conference report to control one-third of the debate time where both managers are not opposed; and the Chair will recognize the senior member of the reporting committee to control the 20 minutes in opposition, regardless of party affiliation.**

<sup>20</sup>. James C. Wright, Jr. (Tex.).

The rule providing for a three-way division of time on a conference report, where the managers are in favor of the report and another Member rises in opposition, was adopted in 1985.<sup>(1)</sup>

The proceedings carried here<sup>(2)</sup> show the factors the Chair considers in deciding whom to recognize for the time in opposition.

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I call up the conference report on the Senate bill (S. 1200) to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States and for other purposes.

The Clerk read the title of the Senate bill.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Pursuant to House Resolution 592, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Tuesday, October 14, 1986.)

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Rodino] will be recognized for 30 minutes, the gentleman from California

[Mr. Lungren] will be recognized for 30 minutes.

MR. [DON] EDWARDS of California: Mr. Speaker, I rise in opposition to the bill.

THE SPEAKER PRO TEMPORE: Is the gentleman from California [Mr. Edwards] opposed to the conference report?

MR. EDWARDS of California: I am opposed to the conference report, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Is the gentleman from New Jersey [Mr. Rodino] opposed to the conference report?

MR. RODINO: No, Mr. Speaker.

THE SPEAKER PRO TEMPORE: Under the rules, the gentleman from California [Mr. Edwards], the senior member of the originally reporting committee, is entitled to 20 minutes.

#### POINT OF ORDER

MR. [F. JAMES] SENSENBRENNER [Jr., of Wisconsin]: Mr. Speaker, I rise to a point of order. I believe that the member of the minority would have preference to control the 20 minutes in opposition to the conference report under the precedents of the House and rule XXVIII, clause 2(b).

I am opposed to the conference report, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair would state to the distinguished gentleman from Wisconsin under a ruling this year recognition goes to the opposition on the issue but not necessarily the minority party in the House; and under the rules the Chair is constrained to recognize the senior member of the Judiciary Committee.

1. See Rule XXVIII clause 2(a), *House Rules and Manual* § 912a (1997), adopted as part of the package of rules put in place by H. Res. 7 (131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985).
2. See 132 CONG. REC. 31630, 31631, 99th Cong. 2d Sess., Oct. 15, 1986.
3. Kenneth J. Gray (Ill.).

MR. [DAN] LUNGREN [of California]: Mr. Speaker, I could not hear the Chair's ruling. It seems to me, Mr. Speaker, that a member of the Subcommittee on Immigration would have the right to this time.

THE SPEAKER PRO TEMPORE: The Chair was stating that under a situation like this, it is regrettable where two Members are seeking equal time, the Chair must rule that under the precedents of the House that in this case 20 minutes should be given to the senior Member in opposition to the conference report. That senior Member is the gentleman from California [Mr. Edwards].

Therefore, the time will be divided, 20 minutes to the gentleman from New Jersey [Mr. Rodino], 20 minutes to the gentleman from California [Mr. Lungren], and 20 minutes to the gentleman from California [Mr. Edwards].

The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

*Parliamentarian's Note:* The Chair had occasion to make another decision regarding recognition later on the same day. The chairman of the Committee on Appropriations, Jamie L. Whitten, of Mississippi, offered a motion on a Senate amendment in disagreement on the continuing appropriation bill, for fiscal year 1987. Both he and the minority floor manager, Ralph Regula, of Ohio, were in favor of the motion. A majority Member, Mike Lowry, of Washington, offered a preferential motion

and claimed one-third of the time for debate on the underlying Whitten motion.<sup>(4)</sup>

***Demand for One-third of Debate Time Must Be Timely***

**§ 29.25 A challenge under Rule XXVIII clause 2(b),<sup>(5)</sup> that both managers are in favor of the pending motion to dispose of the amendment in disagreement is timely when the motion is offered but comes too late after debate has begun.**

As the proceedings of Nov. 6, 1991,<sup>(6)</sup> show, a Member must be timely if he desires to have a three-way division of time on a motion to dispose of an amendment in disagreement.

MOTION OFFERED BY MR. NATCHER

MR. [WILLIAM H.] NATCHER [of Kentucky]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Natcher moves that the House recede from its disagreement to the amendment of the Senate numbered 29 and concur therein with an amendment, as follows: In lieu of the

4. See proceedings at 132 CONG. REC. 32116, 32117, 99th Cong. 2d Sess., Oct. 15, 1986 (H.J. Res. 738).
5. See *House Rules and Manual* § 912b (1997).
6. 137 CONG. REC. 30564, 30565, 102d Cong. 1st Sess.

sum proposed by said amendment, insert "\$125,000,000, of which \$25,000,000 shall be for the Healthy Start program".

MR. [CARL D.] PURSELL [of Michigan] (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE SPEAKER PRO TEMPORE: Without objection, the motion is agreed to.

MR. [DAN] BURTON of Indiana: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard. . . .

Does the gentleman from Kentucky [Mr. Natcher] seek time on the motion?

MR. NATCHER: Mr. Speaker, I reserve my time at this time.

THE SPEAKER PRO TEMPORE: Does the gentleman from Michigan seek time?

MR. PURSELL: Yes, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan [Mr. Pursell] is recognized for 30 minutes. . . .

#### PARLIAMENTARY INQUIRY

MR. BURTON of Indiana: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BURTON of Indiana: Mr. Speaker, as I understand it, on these motions on amendments in disagreement, those who are opposed get some portion of the time. I was not allocated any time,

nor was the question put by the Chair on whether or not the gentleman from Tennessee or the gentleman from Michigan was opposed. If they are opposed, they get the time, and I will ask them for time, but if they are not opposed, according to the rules, I believe I get part of the time.

THE SPEAKER PRO TEMPORE: The Chair would state that ordinarily the gentleman from Kentucky and the gentleman from Michigan would be recognized on each amendment. However, at the time the motion is offered, if another Member challenges the minority Member and the minority Member is not opposed, then that Member making the challenge would be entitled to one-third of the time.

MR. BURTON of Indiana: As a further parliamentary inquiry, Mr. Speaker, usually the Chair puts the question to those involved, the chairman and the ranking member: "Are you opposed to the motion?" And if they are not opposed, then those who are opposed are granted part of the time.

THE SPEAKER PRO TEMPORE: The Chair normally does not put that question to the two managers unless there is a challenge.

MR. BURTON of Indiana: With all due respect to my colleague from Tennessee and my colleague from Michigan, Mr. Speaker, I make that request.

THE SPEAKER PRO TEMPORE: On this amendment, the gentleman's request is not timely. The gentleman from Michigan [Mr. Pursell] controls the time. The gentleman from Indiana would have to ask for time from the gentleman from Michigan.

7. Don J. Pease (Ohio).

**§ 29.26 A Member who has offered a pending preferential motion to dispose of a Senate amendment in disagreement does not thereby gain control of time and may not, in time yielded him for debate, move the previous question and deprive the managers of the hour divided between them.**

Where a conference report<sup>(8)</sup> had been adopted and a motion offered by the majority manager of the conference to dispose of an amendment in disagreement by receding and concurring with a further amendment, a preferential motion to recede and concur was offered by Mr. Robert E. Bauman, of Maryland. Mr. Bauman was then yielded a brief time to debate his preferential motion by the minority manager, Mr. Robert H. Michel, of Illinois. The proceedings were as indicated below:<sup>(9)</sup>

MR. BAUMAN: Mr. Speaker, I believe the gentleman from Pennsylvania (Mr. Flood) has offered or will offer a motion, and I have a preferential motion at the desk.

8. H.R. 8069 (Labor and Health, Education, and Welfare appropriations for fiscal year 1976).

9. 121 CONG. REC. 38714, 38716, 38717, 94th Cong. 1st Sess., Dec. 4, 1975.

THE SPEAKER:<sup>(10)</sup> The Clerk will first report the motion offered by the gentleman from Pennsylvania (Mr. Flood).

MOTION OFFERED BY MR. FLOOD

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Flood moves that the House recede from its disagreement to the amendment of the Senate numbered 72 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest or next nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves that the House recede from its disagreement to Senate amendment No. 72 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Pennsylvania (Mr. Flood).

MR. BAUMAN: Mr. Speaker, may I inquire, who has the right to the time under the motion?

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) has 30 min-

10. Carl Albert (Okla.).

utes, and the gentleman from Illinois (Mr. Michel) has 30 minutes. The time is controlled by the committee leadership on each side, and they are not taken from the floor by a preferential motion. . . .

MR. MICHEL: Mr. Speaker, I yield myself such time as I might consume before I yield to the gentleman from Maryland (Mr. Bauman). . . .

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman from Pennsylvania has the floor and the Chair is trying to let the gentleman be heard.

MR. FLOOD: Mr. Speaker, I demand a division.

MR. BAUMAN: Mr. Speaker, I have not yielded. My time has not expired.

THE SPEAKER: The gentleman has time for debate only.

MR. BAUMAN: No; Mr. Speaker, it was not yielded for debate only.

THE SPEAKER: The gentleman from Maryland has 15 seconds.

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman was yielded to for debate only. The gentleman from Illinois had no authority under clause 2, rule XXVIII to yield for any other purpose but debate.

MR. BAUMAN: Mr. Speaker, I was yielded to. There was no limitation on for what purpose.

THE SPEAKER: The gentleman was yielded 5 minutes. He can use it for debate only. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania.

MR. FLOOD: Mr. Speaker, I demand a division of the question.

MR. MICHEL: A parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The question will be divided.

MR. MICHEL: A point of order, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

#### POINT OF ORDER

MR. MICHEL: Mr. Speaker, the gentleman from Illinois was given to understand that the time was to be divided equally. There was no indication on the part of the gentleman from Illinois that he had concluded giving what time he wanted to allocate to Members for general debate.

The gentleman from Illinois still has a request pending.

THE SPEAKER: The gentleman has 30 minutes for debate only. He can yield more time.

MR. MICHEL: I am still entitled, if I understand it, to the balance of the time to which I have been originally allocated. The gentleman from Illinois has 17 minutes remaining.

### *Debate on Amendments in Disagreement*

**§ 29.27 When amendments in disagreement are considered in the House after disposition of the conference report, each amendment is debatable for one hour, equally divided between the majority and minority parties, and this division of time is not**

**disturbed by the offering of a preferential motion.**

The rule dividing time on an amendment in disagreement<sup>(11)</sup> was first adopted in the 92d Congress.<sup>(12)</sup> It was later amended, in the 99th Congress,<sup>(13)</sup> to provide for a three-way division of time if the majority and minority floor leaders on the conference report both support the offered motion.

In the 94th Congress, a controversial Senate amendment was reported in disagreement from the conference dealing with the bill H.R. 8069, the Department of Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1976. The original motion to dispose of the Senate amendment, offered by the majority floor manager of the report, was to recede from disagreement and concur with a further amendment. Immediately after the motion of Mr. Daniel J. Flood, of Pennsylvania, was read, Mr. Robert E. Bauman, of Maryland, of-

fered a preferential motion to recede and concur. The Chair<sup>(14)</sup> explained that the offering of this preferential motion did not deprive Mr. Flood of the floor. When the minority floor leader yielded part of his debate time to Mr. Bauman, the latter spoke briefly and then attempted to move the previous question, but the Chair declined to entertain the motion since it would cut off the time allocated to the managers under Rule XXVIII clause 2(b). After debate, the question on receding and concurring was divided, the House receded from disagreement, rejected a motion to concur with an amendment, and eventually concurred in the Senate amendment.<sup>(15)</sup>

MR. BAUMAN: Mr. Speaker, I believe the gentleman from Pennsylvania (Mr. Flood) has offered or will offer a motion, and I have a preferential motion at the desk.

THE SPEAKER: The Clerk will first report the motion offered by the gentleman from Pennsylvania (Mr. Flood).

MOTION OFFERED BY MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a motion.

The Clerk read as follows:

11. Rule XXVIII clause 2(b)(1), *House Rules and Manual* § 912b (1997).
12. See H. Res. 1153 (118 CONG. REC. 36013-23, 92d Cong. 2d Sess., Oct. 13, 1972).
13. See H. Res. 7 (131 CONG. REC. 393-413, 99th Cong. 1st Sess., Jan. 3, 1985).

14. Carl Albert (Okla.).
15. 121 CONG. REC. 38714, 38716-19, 94th Cong. 1st Sess., Dec. 4, 1975.

Mr. Flood moves that the House recede from its disagreement to the amendment of the Senate numbered 72 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest or next nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

PREFERENTIAL MOTION OFFERED BY  
MR. BAUMAN

MR. BAUMAN: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Bauman moves that the House recede from its disagreement to Senate amendment No. 72 and concur therein.

THE SPEAKER: The Chair recognizes the gentleman from Pennsylvania (Mr. Flood).

MR. BAUMAN: Mr. Speaker, may I inquire, who has the right to the time under the motion?

THE SPEAKER: The gentleman from Pennsylvania (Mr. Flood) has 30 minutes, and the gentleman from Illinois (Mr. Michel) has 30 minutes. The time is controlled by the committee leadership on each side, and they are not taken from the floor by a preferential motion. . . .

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. Bauman). . . .

MR. BAUMAN: The gentleman from Maryland has made his case and if the gentleman would like to concur in the stand taken by the majority party in favor of busing he can do that. I do not concur.

Mr. Speaker, I move the previous question on the motion.

MR. FLOOD: Mr. Speaker, I demand the question be divided.

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman from Pennsylvania has the floor and the Chair is trying to let the gentleman be heard.

MR. FLOOD: Mr. Speaker, I demand a division.

MR. BAUMAN: Mr. Speaker, I have not yielded. My time has not expired.

THE SPEAKER: The gentleman has time for debate only.

MR. BAUMAN: No; Mr. Speaker, it was not yielded for debate only.

THE SPEAKER: The gentleman from Maryland has 15 seconds.

MR. BAUMAN: Mr. Speaker, I move the previous question.

THE SPEAKER: The gentleman was yielded to for debate only. The gentleman from Illinois had no authority under clause 2, rule XXVIII to yield for any other purpose but debate.

MR. BAUMAN: Mr. Speaker, I was yielded to. There was no limitation on for what purpose.

THE SPEAKER: The gentleman was yielded 5 minutes. He can use it for debate only. The gentleman's time has expired.

The Chair recognizes the gentleman from Pennsylvania.

MR. FLOOD: Mr. Speaker, I demand a division of the question. . . .



MR. MICHEL: A point of order, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

## POINT OF ORDER

MR. MICHEL: Mr. Speaker, the gentleman from Illinois was given to understand that the time was to be divided equally. There was no indication on the part of the gentleman from Illinois that he had concluded giving what time he wanted to allocate to Members for general debate.

The gentleman from Illinois still has a request pending.

THE SPEAKER: The gentleman has 30 minutes for debate only. He can yield more time.

MR. MICHEL: I am still entitled, if I understand it, to the balance of the time to which I have been originally allocated. The gentleman from Illinois has 17 minutes remaining.

THE SPEAKER: That is correct, but the question has been divided.

## PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, when must a request for division be made?

THE SPEAKER: Any time the motion is pending and before the question is put the question may be divided, and it is already divided.

MR. FLOOD: Mr. Speaker, if the question has been divided, then I have a preferential motion.

THE SPEAKER: The gentleman from Illinois has 15 minutes remaining, and

the gentleman's motion may come later.

MR. MICHEL: Mr. Speaker, I yield myself such time as I may require, and yield to the gentleman from Massachusetts (Mr. Conte). . . .

MR. MICHEL: Mr. Speaker, I have no further requests for time.

MR. FLOOD: Mr. Speaker, I have no further requests for time.

THE SPEAKER: The question is, Will the House recede from its disagreement to the amendment of the Senate No. 72?

The House receded from its disagreement to Senate amendment No. 72.

PREFERENTIAL MOTION OFFERED BY  
MR. FLOOD

MR. FLOOD: Mr. Speaker, I offer a preferential motion.

The Clerk read the preferential motion as follows:

Mr. Flood moves that the House concur in the amendment of the Senate numbered 72 with an amendment as follows: In lieu of the matter inserted by said amendment, insert the following:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest or next nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964."

THE SPEAKER: The question is on the preferential motion offered by the gentleman from Pennsylvania (Mr. Flood).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. BAUMAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present. . . .

The vote was taken by electronic device, and there were—yeas 133, nays 259, answered “present” 15, not voting 27. . . .

So the preferential motion to the Senate amendment numbered 72 was rejected.

The result of the vote was announced as above recorded.

THE SPEAKER: The question is, Will the House concur in the Senate amendment?

The question was taken; and the Speaker announced that the ayes appeared to have it.

#### RECORDED VOTE

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 260, noes 146, answered “present” 1, not voting 27. . . .

So the Senate amendment was concurred in.

The result of the vote was announced as above recorded.

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

### *Effect of Prior Action by Senate*

§ 29.28 **Where conferees report in disagreement, and the Senate then recedes and concurs in the House amendments with an amendment, the conference**

**report is not acted on in the House and the Speaker directs the Clerk to report the Senate amendment to the House amendments for disposition by motion.**

On Sept. 19, 1967,<sup>(16)</sup> the Senate, acting first on the conference report in complete disagreement on S. 953 (amending the Food Stamp Act of 1964), concurred in the House amendment in the nature of a substitute thereto, with an amendment. Later that day,<sup>(17)</sup> Mr. William R. Poage, of Texas, called up this conference report in the House. After the Clerk read the report the following occurred:

THE SPEAKER:<sup>(18)</sup> The Chair lays before the House the Senate amendments to the House amendment to S. 953, which the Clerk will read.

The Clerk read as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment insert: . . .

After the Clerk read the Senate substitute for the House amendment in the nature of a substitute for the Senate bill, Mr. Poage was again recognized.

Mr. Speaker, I offer a motion.

16. 113 CONG. REC. 25968, 25969, 90th Cong. 1st Sess.

17. *Id.* at p. 26040.

18. John W. McCormack (Mass.).

The Clerk read as follows:

Mr. Poage moves that the House concur in the Senate amendments to the House amendment to S. 953.

The House adopted the motion offered by Mr. Poage.

### ***Motion To Recommit***

#### **§ 29.29 A motion to recommit an amendment reported in disagreement by the conferees is not in order.**

On Oct. 17, 1967,<sup>(19)</sup> the House was considering the amendments in disagreement reported from the conference on H.R. 11476, Department of Transportation appropriations, fiscal 1968. The following occurred:

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Boland moves that the House recede from its disagreement to the amendment of the Senate numbered 13 and concur therein.

THE SPEAKER:<sup>(20)</sup> The gentleman from Massachusetts is recognized for 1 hour. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry, if the gentleman will yield.

19. 113 CONG. REC. 29044, 29048, 29049, 90th Cong. 1st Sess.

20. John W. McCormack (Mass.).

MR. BOLAND: I yield to the gentleman.

THE SPEAKER: The gentleman will state it. . . .

MR. YATES: Mr. Speaker, is it in order to move to recommit this particular amendment to conference?

THE SPEAKER: The Chair will state to the gentleman from Illinois that at this point it would not be in order to do so.

MR. YATES: Mr. Speaker, if the gentleman from Massachusetts will yield further for a parliamentary inquiry, is it in order, in the event the motion to recede and concur is voted down?

THE SPEAKER: After the House has taken some specific action with relation to the amendment of the other body, the Chair assumes that a further conference could be requested.

### ***Inclusion in Second Conference Report of Concurrence in Nongermane Senate Amendment***

**§ 29.30 Where a House bill, with a Senate amendment to a House amendment to a nongermane Senate amendment reported in disagreement from an initial conference, is sent to a further conference, the House having separately concurred with an amendment in the nongermane Senate amendment following its approval of the first conference report, the subject of that nongermane**

**Senate amendment becomes germane to the House bill, and may be included in the subsequent conference report.**

On Oct. 17, 1972,<sup>(1)</sup> the House adopted House Report No. 92-1606, the conference report on H.R. 16810, to provide a temporary increase in the public debt limitation. Senate amendment No. 10 contained an unemployment benefits program, was therefore not germane to the House bill, and was for this reason reported by the conferees in disagreement. The House receded from its disagreement to this amendment and concurred therein with an amendment:

THE SPEAKER: The Clerk will report the amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 10: . . .

MR. [WILBUR D.] MILLS of Arkansas: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mills of Arkansas moves that the House recede from its disagreement to Senate amendment numbered 10 and agree to the same with the following amendment: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: . . .

The motion was agreed to.

A motion to reconsider was laid on the table.

Later that day,<sup>(2)</sup> the Senate rejected this conference report, concurred in the House amendment to the Senate amendment with a further nongermane amendment, and requested a further conference with the House in a message received by the House on Oct. 18, 1972.<sup>(3)</sup>

The message also announced that the Senate disagrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16810) entitled "An act to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973."

And that the Senate agrees to the amendment of the House of Representatives to the amendment of the Senate numbered 10, to the above-entitled bill, with an amendment.

And that the Senate further insist upon its amendments to the above-entitled bill and request a further conference with the House of Representatives on the disagreeing votes of the two Houses thereon and appoints Mr. Long, Mr. Anderson, Mr. Talmadge, Mr. Bennett, and Mr. Jordan of Idaho be the conferees on the part of the Senate.

1. 118 CONG. REC. 36951-53, 92d Cong. 2d Sess.

2. *Id.* at pp. 36854-58.

3. *Id.* at p. 37050.

Following receipt of the message, the House disagreed to the Senate amendments and agreed to the conference in the following exchange:<sup>(4)</sup>

MR. MILLS of Arkansas: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 16810) to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

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

MR. [JAMES J.] PICKLE [of Texas]: Mr. Speaker, reserving the right to object, I would ask the gentleman from Arkansas if this is the measure which also pertains to the extension of the unemployment benefits program.

MR. MILLS of Arkansas: If the gentleman will yield, it does. Yes.

MR. PICKLE: With great hesitation and reluctance, Mr. Speaker, I make the point of order that that portion of the bill is not germane.

THE SPEAKER: The Chair will advise that this is a matter of disagreeing to the Senate amendments and that issue is not before the House at this time, so a point of order is not available at this time.

MR. PICKLE: Then the same point of order may be reserved when it comes back from conference?

4. *Id.*

THE SPEAKER: Perhaps.

Is there objection to the request of the gentleman from Arkansas? The Chair hears none, and appoints the following conferees . . . .

The next day<sup>(5)</sup> Mr. Wilbur D. Mills, of Arkansas, submitted and called up<sup>(6)</sup> the further conference report on H.R. 16810, House Report No. 92-1614, which recommended that the Senate recede from its amendment to the House amendment to Senate amendment No. 10. During the debate on this conference report, Mr. James J. Pickle, of Texas, raised a parliamentary inquiry:

MR. PICKLE: Would the gentleman from Texas be permitted to make the point of order that the title in this conference report pertaining to the unemployment benefits program is not germane under this conference report?

THE SPEAKER:<sup>(7)</sup> That point of order would come up too late now.

MR. MILLS of Arkansas: Mr. Speaker, just for the purpose of clarification, may I make a parliamentary inquiry?

THE SPEAKER: The gentleman will state it.

MR. MILLS of Arkansas: Since the House did approve the nongermane

5. *Id.* at pp. 37065-73.

6. *Parliamentarian's Note*: Immediate consideration of this conference report was in order since this was the day on which the 92d Congress adjourned *sine die*. *Id.* at p. 37200.

7. Carl Albert (Okla.).

proposal with an amendment, that then becomes, when the conference committee submits a second conference report, germane to the bill, and can be included in the conference report, can it not?

THE SPEAKER: The gentleman is correct.

### *Matters Beyond Scope of Disagreement*

**§ 29.31 In amending a Senate amendment reported from conference still in disagreement the House is not confined to the differences between the House bill and the Senate amendment; but the amendment to the Senate amendment must be germane.**

On May 29, 1936,<sup>(8)</sup> the House adopted the conference report on H.R. 11418, agriculture appropriations, fiscal 1937. After the Clerk read Senate amendment No. 85, reported in disagreement, Mr. William M. Colmer, of Mississippi, offered a motion to recede and concur therein with an amendment. Mr. Thomas L. Blanton, of Texas, rose with a point of order:

Mr. Speaker, I make the point of order that the proposed amendment to

8. 80 CONG. REC. 8341-44, 74th Cong. 2d Sess.

the Senate amendment embraces provisions that are not in conference; that the gentleman can propose only such things as are embraced within the jurisdiction of the conference; and the amendment exceeds that matter by releasing restrictions that have already been agreed to by the conferees.

THE SPEAKER:<sup>(9)</sup> As the Chair reads the amendment offered by the gentleman from Mississippi, it contains exactly the same language as the first portion of the Senate amendment except the amount is \$40,000 instead of \$80,000.

MR. BLANTON: But, Mr. Speaker, it releases restrictions that have been agreed upon.

THE SPEAKER: In the opinion of the Chair the amendment is germane.

MR. BLANTON: Mr. Speaker, only those matters that were embraced within the jurisdiction of the conferees may be offered as amendments.

THE SPEAKER: This Senate amendment was reported back to the House still in disagreement, as a matter of fact, and is now before the House for such action as the House may see fit to take. The gentleman from Mississippi has offered a motion to recede and concur in the Senate amendment with an amendment. The Chair has held that the amendment is germane and therefore overrules the point of order.

The Senate amendment reported in disagreement from conference appropriated \$80,000 with a proviso relating to authorizing appropriation of user fees collected

9. Joseph W. Byrns (Tenn.).

under a related law. Mr. Colmer's amendment varied from the Senate amendment only in changing the amount appropriated to \$40,000 and eliminating the proviso.

**§ 29.32 While conferees are restricted by the differences in the bill and amendment before them, the House, when acting on a Senate amendment in disagreement, is not subject to the same limitation and may recede and concur in the Senate amendment with a further germane amendment which goes beyond the provisions of either the House or Senate versions.**

On Dec. 11, 1967,<sup>(10)</sup> Thaddeus J. Dulski, of New York, the Chairman of the Committee on Post Office and Civil Service, called up the conference report on H.R. 7977, the Postal Revenue and Federal Salary Act of 1967. Mr. H. R. Gross, of Iowa, rose with a point of order:

Mr. Speaker, I make a point of order against the conference report on the grounds that the House managers exceeded their authority and did not con-

fine themselves to the differences committed to them, in violation of the rules and precedents of the House of Representatives.

The House bill, in section 107(a) provided a minimum charge of 3.8 cents for bulk third-class mail effective January 7, 1968. Section 107(a) of the Senate amendment provided a two-step minimum charge—the first of 3.6 cents effective January 7, 1968, and a second 4-cent rate effective January 1, 1969.

The differences committed to the conferees with respect to this postage rate and the effective dates for this rate were: A rate range between 3.6 cents and 4 cents; a January 7, 1968, effective date for a one-rate charge with no further rate provided; and January 7, 1968, and January 1, 1969, effective dates for any two-rate charges.

The conference report contains a two-rate charge—the first, 3.6 cents, effective January 7, 1968; the second, 4 cents, effective July 1, 1969.

The July 1, 1969, effective date for a second rate goes beyond the disagreements confided to the conferees. By agreeing to any effective date for a second rate beyond January 1, 1969, the House managers have clearly exceeded their authority.

Mr. Speaker, the precedents of the House, Cannon's Precedents, volume VIII, section 3264, have established that where two Houses fix different periods of time the conferees have latitude only between the two, but may not go beyond the longer nor within the shorter.

Mr. Dulski conceded the point of order, whereupon Speaker John

10. 113 CONG. REC. 35811-33, 35841, 35842, 90th Cong. 1st Sess.

W. McCormack, of Massachusetts, sustained the point of order. The Clerk then began to read the Senate amendment (in the nature of a substitute) in disagreement.

MR. DULSKI (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment be dispensed with and that it be printed in full in the Record at this point.

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

There was no objection.

MR. DULSKI: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Dulski moves that the House recede from its disagreement to the amendment of the Senate to the bill (H.R. 7977) and concur therein with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: . . .

Mr. Dulski's substitute for the Senate amendment consisted of the conference report which had just been ruled out on Mr. Gross' point of order.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The question is on the motion offered by the gentleman from New York [Mr. Dulski] that the House recede from its disagreement to the amendment of the Senate and concur therein with an amendment. . . .

11. Omar T. Burleson (Tex.).

The question was taken; and there were—yeas 327, nays 63, not voting 43. . . .

So the motion was agreed to.

### *Consideration of Senate Legislative Amendments to General Appropriation Bills*

**§ 29.33** When an amendment that might have been subject to a point of order in the House as in violation of Rule XXI clause 2,<sup>(12)</sup> if offered in the House, was adopted by the Senate, and the conferees reported such an amendment in disagreement, the House may consider the amendment.

On Oct. 6, 1949,<sup>(13)</sup> the House approved the conference report on H.R. 3838, Department of Interior appropriations, fiscal 1950. After the Clerk read Senate amendment No. 132, reported from conference still in disagreement, Mr. Wesley A. D'Ewart, of Montana, interposed a point of order on the ground that the amendment contained legislation and was therefore in violation of Rule XXI clause

12. See *House Rules and Manual* § 834 (1997).

13. 95 CONG. REC. 14028, 14038, 14039, 81st Cong. 1st Sess.



2. Speaker Sam Rayburn, of Texas, gave the following ruling:

The Chair has listened to the gentleman from Montana very carefully. The Chair will state that if an amendment of this sort had been proposed in the House of Representatives when this bill was under consideration in all probability it would have been subject to a point of order. The Chair does not feel that in this case it is a violation of clause 2 of rule 21, for the simple reason that it has been held as early as 1921 by Mr. Speaker Gillette that when an amendment that might have been subject to a point of order in the House if offered here was adopted by the Senate, and the conferees reported such an amendment in disagreement the House may consider the amendment.

Therefore, the Chair must overrule the point of order of the gentleman from Montana.

***Consideration of Senate Amendments in Disagreement***

**§ 29.34 Rule XX clause 1<sup>(14)</sup> requires consideration of certain Senate amendments in the Committee of the Whole; but this requirement applies only before the state of disagreement is reached and it is too late to raise a point of order after the matter has been to conference**

14. *House Rules and Manual* § 827 (1997).

**and an amendment in disagreement is before the House.**

During consideration of an amendment in disagreement to the conference report on the Department of Health, Education, and Welfare and related agencies appropriation bill for fiscal year 1976,<sup>(15)</sup> an amendment in disagreement restricting appropriations in the bill to bus students to a school other than that nearest his or her home was reported. Mr. Silvio O. Conte, of Massachusetts, raised a point of order of two parts: first, that the Senate amendment was legislative; second, that it required consideration in the Committee of the Whole.

The response of Speaker Carl Albert, of Oklahoma, put both arguments in perspective.

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

The Clerk read as follows:

Senate amendment No. 72: Page 47, line 4, insert:

"SEC. 209. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to

15. 121 CONG. REC. 38714, 94th Cong. 1st Sess., Dec. 4, 1975.

comply with title VI of the Civil Rights Act of 1964.”

POINT OF ORDER

MR. CONTE: Mr. Speaker, I raise a point of order on the amendment. This is legislation on an appropriation bill, and I would like to be heard on the point of order.

THE SPEAKER: The gentleman from Massachusetts may be heard on his point of order.

MR. CONTE: Mr. Speaker, I rise in support of a point of order against Senate amendment No. 72 to the Labor-HEW Appropriations Act of 1976.

At this point, I should like to direct the Chair to rule 21, section 2 of the House regarding the prohibition of legislation in an appropriations bill. The pertinent language states:

Nor shall any provisions in any such bill or amendment thereto changing existing law be in order.

Clearly, the purpose of this rule prohibiting legislation in an appropriations bill is to prohibit the overt alteration of fundamental law. This is the case where an amendment is concealed by the subterfuge of a limitation on spending.

While the Senate amendment No. 72 might appear to only act as a limitation on spending, it will actually change basic law as I will now set out.

Section 215(a), title II of the Equal Educational Opportunities Act of 1974 provides the following language, which limits the specific distance a student may be transported in a schoolbusing program:

No court, department or agency of the United States shall, pursuant to

section 214, order the implementation of a plan that would *require the transportation of any student to a school other than the school closest to his place of residence* which provides the appropriate grade level and type of education for such student. (Emphasis added.)

Notice that the distance a student can be transported is limited to the “school closest or next closest to his place of residence.” I should now address myself to the language of the Senate amendment here in question:

None of the funds contained in this act shall be used to *require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, and which offers the courses of study pursued by such student, in order to comply with title VI of the Civil Rights Act of 1964.* (Emphasis added.)

As is readily apparent, where the Equal Educational Opportunities Act of 1974 (Public Law 93-380) limits busing to either the student's immediate or adjacent school district, the Senate amendment further limits the transportation to the student's immediate district. I am sure the Chair can see this apparent attempt to change the effect of section 215(a) of Public Law 93-380.

I should like to note that while this is a Senate amendment and may be consistent with the rules of that House—it is not controlling. It is clear that since this is an appropriations bill and naturally originates in the House, it is the House rules which are controlling and I cite rule 20 on this point:

Any amendment of the Senate to any House bill shall be subject to the

point of order that it shall first be considered in the Committee of the Whole House on the State of the Union, if, originating in the House, it would be subject to that point.

For these reasons, Mr. Speaker, I contend that this amendment carries the standard of a simple limitation in an appropriations bill, but in reality is a prima facie case of legislation in an appropriations bill, which on its face changes existing law.

Therefore, I urge that this point of order be sustained.

Thank you, Mr. Speaker.

THE SPEAKER: The Chair is ready to rule.

The Chair overrules the point of order raised by the gentleman from Massachusetts (Mr. Conte) because when that stage is reached that an amendment is in disagreement between the two Houses, the rule—clause 1 of rule XX—cited by the gentleman from Massachusetts no longer applies and the amendment may be disposed of in the House. The Senate amendment is reported back in disagreement and not as part of the conference report, therefore clause 2 of rule XX is not applicable and the Senate amendment may be considered by the House.

**§ 29.35 Where a Senate amendment proposing legislation on a general appropriation bill is, pursuant to the edict of Rule XX clause 2,<sup>(16)</sup> reported back from con-**

<sup>16.</sup> *House Rules and Manual* § 829 (1997).

**ference in disagreement, a motion to recede and concur in the amendment with a further amendment is in order (albeit the further amendment is also legislative), and the only test is whether the further amendment is germane to the Senate amendment reported in disagreement.<sup>(17)</sup>**

<sup>17.</sup> *Parliamentarian's Note*: House consideration of Senate legislative amendments to general appropriation bills as illustrated by this precedent differs from Committee of the Whole consideration of House legislative provisions which had been permitted to remain in a general appropriation bill pursuant to a resolution waiving points of order against such provisions. In an example of the latter case, the Chairman has ruled that these legislative provisions could be perfected by germane amendments so long as they did not add further legislation. See 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess., June 26, 1973. These different rulings demonstrate the changing priority of two policy considerations at different stages of the legislative process. During the early stages great care is taken to separate the authorizing and appropriating functions of the House. Later, after both Houses have considered a matter and after the conferees have reported a disagreement, the requirement of expeditious disposal of the legislation supersedes

On Dec. 15, 1970,<sup>(18)</sup> the House was considering the amendments reported in disagreement from the conference on H.R. 17755, Department of Transportation appropriations, fiscal 1971. The following occurred:

THE SPEAKER:<sup>(19)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment numbered 14: On page 7 line 11, insert:

"That \$28,000,000 of the foregoing amount shall be available only upon enactment into law of H.R. 19444, 91st Congress, or similar legislation: *Provided further,*"

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, I offer a motion.

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Speaker, I make a point of order on amendment No. 14.

THE SPEAKER: The gentleman will state his point of order.

MR. ECKHARDT: Mr. Speaker, I make the point of order that the receding from the position of the House and concurring with the Senate has the effect of attaching positive legislation to an appropriation bill in violation of rule 21, paragraph 2, and other provisions.

Mr. Speaker, may I be heard briefly on my point of order?

\_\_\_\_\_ this earlier policy, and the House is accorded greater latitude in amending the Senate amendment.

18. 116 CONG. REC. 41504, 41505, 91st Cong. 2d Sess.

19. John W. McCormack (Mass.).

THE SPEAKER: The Chair will hear the gentleman.

MR. ECKHARDT: . . . The provision contained in this motion to concur would provide that the managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment providing that \$28 million of the appropriation for operations shall be derived from the airport and airways trust fund for combating hijacking.

So in effect this constitutes an amendment on H.R. 17755, an appropriation bill which alters existing law, Public Law 91-258. . . .

MR. BOLAND: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER: The gentleman is recognized.

MR. BOLAND: Mr. Speaker, the motion is, I believe, germane to the Senate amendment. . . .

There is no question about the amendment being legislation, but I submit that the House can legislate further, since this is in the bill, and the action of the Subcommittee on Appropriations for the Department of Transportation refers to the Senate amendment.

THE SPEAKER: The Chair is prepared to rule.

The Chair recognizes that the Senate amendment is legislation on an appropriation bill not authorized by law.

However, the conferees did not agree to it in conference, but reported it back in disagreement. The Senate amendment is not subject to a point of order in the House. The Chair calls attention to volume VII of the Cannon's Prece-

dents, section 1572, the syllabus of which reads as follows:

Senate amendments interdicted by clause 2, rule XXI, are not subject to a point of order under the rule providing for a separate vote on such amendments when considered in the House, as the rule applies to conferees and their reports only.

The Chair overrules the point of order.

***Perfecting Senate Amendments in Disagreement in the House***

**§ 29.36** Where a Senate amendment containing legislation is reported in disagreement from a conference on a general appropriation bill, it may be perfected by a further House amendment, albeit legislative in effect, so long as the House amendment is germane to the Senate amendment.

Rule XX clause 2,<sup>(20)</sup> prohibits the managers on the part of the House from agreeing to a Senate amendment which would constitute legislation on a general appropriation bill under Rule XXI clause 2(b).<sup>(1)</sup> Such amendments of the Senate are routinely reported

20. See *House Rules and Manual* § 829 (1997).

1. See *House Rules and Manual* § 834b (1997).

in disagreement to avoid making the conference report subject to a point of order.

During the proceedings of Aug. 1, 1979,<sup>(2)</sup> the point of order against the manager's motion to recede and concur with an amendment, the response of Speaker Pro Tempore James C. Wright, Jr., of Texas, and the subsequent action in dividing the question on the manager's motion were as follows:

MR. [TOM] BEVILL [of Alabama]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Bevill moves to recede in the amendment of the Senate No. 37 and concur therein with an amendment as follows in lieu of the matter proposed to be inserted by the Senate insert:

SEC. 502. There is appropriated, out of any money in the Treasury not otherwise appropriated, for an additional amount for "Construction of an Extension to the New Senate Office Building" \$52,583,400 toward finishing such building and to remain available until expended: *Provided*, That the amount of \$137,730,400 shall constitute a ceiling on the total cost for construction of the Extension to the New Senate Office Building.

It is *further provided*, That such building and office space therein upon completion shall meet all needs for personnel presently supplied by the Carroll Arms, the Senate Courts, the Plaza Hotel, the Capitol Hill

2. 125 CONG. REC. 22007, 22008, 22010, 22011, 96th Cong. 1st Sess.

Apartments and such buildings shall be vacated.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state the point of order.

MR. BAUMAN: Mr. Speaker, this amendment offered at this time would not have been in order had it been offered to the bill as originally before the House. The bill is an appropriation bill and this constitutes legislation on an appropriation bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from Alabama desire to be heard on the point of order?

MR. BEVILL: Mr. Speaker, I wish to point out this is merely a change of the report language that is in the appropriation bill and it is germane and it is a part of the bill.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule. The Chair would like to state that the only requirement of the amendment in the motion offered by the gentleman from Alabama is that it be germane to the Senate amendment. The language is quite clearly germane to the Senate amendment No. 37 and, therefore, the motion is in order and the point of order is overruled.

PARLIAMENTARY INQUIRY

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, under the rules would not a demand by any Member to separate the questions to

recede and concur with an amendment be permitted and then only a vote would occur on the first part of that, which would be the motion to recede?

THE SPEAKER PRO TEMPORE: The gentleman is correct, such a motion would be in order. The House could consider the first part if the two items were separated.

MR. BAUMAN: Mr. Speaker, I demand that the question be divided.

THE SPEAKER PRO TEMPORE: The gentleman is protected.

The gentleman from Alabama is recognized for 30 minutes in support of his motion, or such portion of that time as he may consume. . . .

MR. BEVILL: Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is, will the House recede from its disagreement to the amendment of the Senate No. 37?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. BAUMAN: Mr. Speaker, I demand a recorded vote, and I request a fair count.

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman is fully within his rights to demand a recorded vote and to expect a fair count.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 214, noes 184, not voting 36, as follows: . . .

So the House receded from its disagreement to Senate amendment No. 37.

The result of the vote was announced as above recorded.

THE SPEAKER PRO TEMPORE: The question is, Will the House concur in Senate amendment No. 37 with an amendment?

The motion was agreed to.

A motion to reconsider was laid on the table.

***Amendment to Senate Amendment in Disagreement Must Be Germane***

**§ 29.37 While a point of order against a motion to recede and concur with an amendment in a Senate amendment to a general appropriation bill reported from conference in disagreement will not lie merely because the proposed House amendment adds legislation, there is a requirement that it be germane to the Senate amendment.**

An amendment reported in disagreement from the conference on defense appropriations, fiscal 1980, which restricted the use of funds for missile development was pending when a motion was offered to recede and concur with a further amendment authorizing certain new research and development funds. The point of order against the motion offered by the bill's manager and subsequent arguments thereon, as excerpted

from the proceedings of Dec. 12, 1979,<sup>(3)</sup> are carried here.

THE SPEAKER:<sup>(4)</sup> The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 56: Page 29, line 7, insert: None of the funds appropriated under this paragraph to continue development of the MX Missile may be used in a fashion which would commit the United States to only one basing mode for the MX missile system.

MOTION OFFERED BY MR. ADDABBO

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Addabbo moves that the House recede from its disagreement to the amendment of the Senate numbered 56 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert:

None of the funds appropriated under this paragraph to continue development of the MX missile may be used in a fashion which would commit the United States to only one basing mode for the MX missile system.

In addition to any other funds authorized to be appropriated under this heading, there is hereby authorized to be appropriated during fiscal year 1980 an additional amount of \$5,000,000 only for research and development on the Perimeter Acquisition Radar Attack Characterization System (PARCS).

3. 125 CONG. REC. 35520, 35521, 96th Cong. 1st Sess.

4. Thomas P. O'Neill, Jr. (Mass.).

## POINT OF ORDER

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Speaker, I have a point of order.

THE SPEAKER: The gentleman will state it.

MR. ICHORD: Mr. Speaker, I make a point of order against the motion offered by the gentleman from New York (Mr. Addabbo) for the reason that this calls for an authorization. The amendment calls for an authorization in an appropriation bill.

For that reason, Mr. Speaker, the amendment is not germane, and I would point out for the edification of the Chair that the authorization for the PARCS radar was rejected by both the Committee on Armed Services of the House and the permanent Select Committee on Intelligence of the House, which are the authorizing committees for this particular weapons system.

MR. ADDABBO: Mr. Speaker, I wish to be heard on the point of order.

THE SPEAKER: The Chair will hear the gentleman.

MR. ADDABBO: . . . We realize that this is authorization on an appropriation bill, but it is insisted on by the Senate chairman of the conference committee, Senator Stennis of Mississippi, who is also the chairman of the Senate Armed Services Committee. . . .

So, Mr. Speaker, I do concede the point of order, but I would hope the gentleman from Missouri (Mr. Ichord) would not insist on his point of order.

THE SPEAKER: Does the gentleman from Missouri (Mr. Ichord) insist on his point of order?

MR. ICHORD: Mr. Speaker, I must insist on the point of order.

THE SPEAKER: The gentleman insists on his point of order.

MR. [JACK] EDWARDS of Alabama: Mr. Speaker, may I be heard on the point of order?

THE SPEAKER: The Chair will hear the gentleman.

MR. EDWARDS of Alabama: Mr. Speaker, I hate to find myself at odds with my subcommittee chairman, but I do not believe that I can concede the point of order.

This is a point of order raised against an amendment brought back in disagreement. It is not a point of order raised to a bill, and my understanding of the rules is that a point of order would not lie to an amendment brought back in disagreement.

THE SPEAKER: The Chair will rule that the germaneness point of order is well taken. It is very obvious that the motion is not germane as it relates to the Senate amendment 56, and the Chair sustains the point of order.

### *Adding Legislative Provisions to Appropriation Bill*

**§ 29.38** The House adopted a resolution waiving points of order against a conference report on an appropriation bill, and making in order motions to recede from disagreement to any Senate amendment (reported from conference still in disagreement) and concur therein with an amendment inserting in this bill any or all pro-



**visions of a legislative bill (and amendments thereto) as agreed to by the House conferees on the appropriation bill.**

On Aug. 2, 1955,<sup>(5)</sup> Mr. James W. Trimble, of Arkansas, by direction of the Committee on Rules reported and called up House Resolution 337, providing for the consideration of the conference report on H.R. 7117, appropriations for the legislative branch for fiscal 1956.

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill H.R. 7117, making appropriations for the legislative branch for the fiscal year ending June 30, 1956, and for other purposes, and all points of order against the conference report are hereby waived; that during the consideration of the amendments of the Senate to the bill H.R. 7117 reported from the conference committee in disagreement it shall be in order, notwithstanding any rule of the House to the contrary, to move that the House recede from its disagreement to any such amendment and concur therein with an amendment inserting in the proper place in the bill any or all of the parts of the provisions of the bill H.R. 7440 and any amendments thereto as agreed upon by the House conferees on the bill H.R. 7117. . . .

5. 101 CONG. REC. 13051-56, 84th Cong. 1st Sess.

Mr. Trimble explained the purpose of the resolution:

This rule waives points of order on the conference report on the legislative appropriation bill. Briefly, it simply waives points of order for the substitution of certain features of H.R. 7440.

Mr. Karl M. LeCompte, of Iowa, added:

This resolution will make in order the consideration of legislation on a conference report.

The House debated the extent to which this resolution would incorporate provisions of H.R. 7440 in the conference report on H.R. 7117, and then adopted the resolution.

Mr. John J. Rooney, of New York, then submitted and called up the conference report on H.R. 7117. The House adopted the report without debate, and the Speaker instructed the Clerk to read the only amendment reported in disagreement. After the Clerk read Senate amendment No. 52, the following occurred:

MR. ROONEY: Mr. Speaker, I move that the House recede and concur in the Senate amendment with an amendment.

The Clerk read as follows:

Mr. Rooney moves that the House recede from its disagreement to the amendment of the Senate numbered 52, and concur therein with an

amendment, as follows: In lieu of the matter proposed by said amendment insert: . . .

After the Clerk read his motion, Mr. Rooney explained,

Mr. Speaker, this is the amendment which was discussed just prior to the adoption of the rule. This is where the provisions of H.R. 7440 reported by the House Administration Committee and for which a rule was granted about a week ago, as amended by the House conferees, are inserted in this appropriation bill. . . .

After a brief discussion of this motion, the consideration of the Senate amendment was concluded in the following manner:

THE SPEAKER:<sup>(6)</sup> The question is on the motion.

The motion was agreed to.

A motion to reconsider was laid on the table.

*Parliamentarian's Note:* During July 1955, the Committee on House Administration held hearings on a proposal to authorize increases in the salaries of certain House employees. Tentative arrangements were made with the legislative subcommittee of the Committee on Appropriations to include these recommendations in the legislative appropriation bill (H.R. 7117) when such recommen-

dations were referred to it by the Committee on House Administration. Leaders of the Committee on Appropriations rejected this arrangement. The Committee on House Administration then reported its recommendations to the House as embodied in H.R. 7440. The legislative appropriation bill passed the House, was amended in the Senate to provide for many salary increases for its employees, and was sent to conference. The House leadership requested that the provisions of H.R. 7440, authorizing raises for certain House employees, be inserted in H.R. 7117 in conference (since this was the last appropriation bill for the year). The Senate conferees refused to do this, so it was decided by the House leadership to resort to the resolution referred to above. The procedure outlined in the resolution was followed, the Senate agreed to the House amendment to the Senate amendment, and the provisions of H.R. 7440, authorizing the desired appropriations, became a part of the bill H.R. 7117, and were enacted into law.

***Changing Text Not in Disagreement***

6. Sam Rayburn (Tex.).

**§ 29.39 When considering a Senate amendment reported from a conference in disagreement, the House may not recede and concur therein with an amendment which changes a provision of the bill which is not in disagreement.**

On Mar. 9, 1939,<sup>(7)</sup> Mr. Clifton A. Woodrum, of Virginia, called up the conference report on H.R. 2868, the deficiency appropriations bill, fiscal 1939. After the Clerk read the first amendment in disagreement, Mr. Woodrum offered a motion to recede and concur therein with an amendment. Speaker Pro Tempore Lindsey C. Warren, of North Carolina, recognized Mr. John Taber, of New York, who raised a point of order:

Mr. Speaker, I make a point of order against the amendment on the ground that it attempts to amend an item that has not been in disagreement.

MR. WOODRUM of Virginia: Will the gentleman reserve his point of order to permit me to make a brief explanation?

MR. TABER: Yes; I will reserve it.

THE SPEAKER PRO TEMPORE: The gentleman from New York reserves a point of order against the amendment.

MR. WOODRUM of Virginia: Mr. Speaker, undoubtedly the portion of

the amendment to which the gentleman objects is subject to a point of order; but the situation that confronts the House and the Wage and Hour Division of the Department of Labor is that we carry in this deficiency bill a deficiency appropriation for the Wage and Hour Division, but they are actually out of money now and have been for several days. Under the law the deficiency appropriation, when finally signed by the President, will be available only from the time of its becoming law; so there is a period of some 8, 10, or 12 days during which the obligations and expenses of this Bureau have been running which are not provided for unless language is put in here or a joint resolution is passed. The language, of course, is subject to a point of order if the gentleman desires to press it, but if he does that we shall have to go through the formality of passing a joint resolution.

I hope with this explanation the gentleman will be willing to withdraw his point of order. The amendment does not increase the appropriation or do anything except to make the money available to pay the expenses which have been incurred during this interim I mentioned.

MR. TABER: Mr. Speaker, I do not feel I can accept the gentleman's proposition. I feel that I should insist on my point of order. I do not know whether I would insist on it if unanimous consent were asked to amend page 5 by itself as the gentleman has suggested, but I shall have to insist on the point of order if it is coupled with the census bill.

MR. WOODRUM of Virginia: Mr. Speaker, I acknowledge the point of order and will reoffer the amendment with the latter part of it stricken.

7. 84 CONG. REC. 2525, 2526, 76th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE: The point of order made by the gentleman from New York [Mr. Taber] is sustained.

***Interruption of Series of Motions on Amendments in Disagreement by Other Business***

**§ 29.40 While the House was considering a series of amendments in disagreement on one measure, it interrupted the consideration to call up amendments in disagreement on another appropriation bill.**

Consideration of amendments on two different appropriation bills are matters of equal privilege. In this situation,<sup>(8)</sup> the leadership was anxious to complete consideration of H.R. 4781, the Defense appropriation bill, where only two amendments remained in disagreement, before adjourning for the evening. Unanimous consent to interrupt consideration of the various amendments in disagreement and the motions pertaining thereto to H.R. 4637, the foreign operations appropriations bill, was not required, since in the House,

between motions, other business of the same or higher precedence can be raised.

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, the reason I sought recognition is that there is the possibility of asking unanimous consent that the House move out of the present order of debate to consider motions to be offered by the distinguished gentleman from Florida [Mr. Chappell] with respect to the Department of Defense appropriation bill prior to final action with respect to this amendment.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is the gentleman from Washington [Mr. Foley] making a request?

MR. FOLEY: Mr. Speaker, I yield to the gentleman from Florida [Mr. Chappell].

MR. [WILLIAM V.] CHAPPELL [Jr., of Florida]: Mr. Speaker, I make a request. I ask unanimous consent that we call up from the Speaker's table the remaining amendments in disagreement on the bill, H.R. 4781, making appropriations for the Department of Defense for the fiscal year 1989 and for other purposes.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida?

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Speaker, reserving the right to object, I am just trying to figure out what we are doing here.

Do I understand that we are rising on the bill that we are presently considering, going to another bill, and then

8. See 134 CONG. REC. 27321, 27322, 100th Cong. 2d Sess., Sept. 30, 1988.

9. Kenneth J. Gray (III.).

coming back to the bill that we were considering?

THE SPEAKER PRO TEMPORE: The House is not in the Committee of the Whole. We would not have to rise. We are in the House.

MR. WALKER: . . . Can we get some explanation as to why? . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Speaker, we are going to take up the Defense conference report. The Senate is taking it up. They have two amendments. We feel we can clean this up in about 5 minutes and then get right back onto this bill here. . . .

MR. WALKER: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida?

There was no objection.

MR. CHAPPELL: Mr. Speaker, there are two amendments yet to be disposed of in this conference. One is amendment No. 89, and the other one is amendment No. 252.

THE SPEAKER PRO TEMPORE: Does the gentleman from Florida [Mr. Chappell] call up the amendments?

CONFERENCE REPORT ON H.R. 4781,  
DEPARTMENT OF DEFENSE APPRO-  
PRIATIONS ACT, 1989

MR. CHAPPELL: Mr. Speaker, I call up from the Speaker's table the remaining amendments in disagreement on the bill (H.R. 4781) making appropriations for the Department of Defense for the fiscal year ending September 30, 1989, and for other purposes.

AMENDMENTS IN DISAGREEMENT

THE SPEAKER PRO TEMPORE: The Clerk will report the first amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 89:

*Resolved*, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 89 with an amendment as follows: . . .

MOTION OFFERED BY MR. CHAPPELL

MR. CHAPPELL: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Chappell moves that the House concur in the Senate amendment to the House amendment to the Senate Amendment No. 89.

The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Clerk will report the remaining amendment in disagreement.

The Clerk read as follows:

Senate amendment No. 252:

*Resolved*, That the Senate agree to the amendment of the House of Representatives to the amendment of the Senate numbered 252 with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment insert: . . .

MOTION OFFERED BY MR. CHAPPELL

MR. CHAPPELL: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Chappell moves that the House concur in the Senate amendment to the House amendment to the Senate amendment No. 252.

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the two motions was laid on the table.

### *En Bloc Consideration*

§ 29.41 The House may grant unanimous consent for the en bloc consideration of all but one amendment reported in disagreement from a conference, and consider that amendment separately.

On Mar. 1, 1939,<sup>(10)</sup> the House was considering the conference report on the independent offices appropriation bill, fiscal 1940. The Speaker, William B. Bankhead, of Alabama, recognized Mr. John Taber, of New York, to pose a parliamentary inquiry:

If the conference report should be voted down, would it be in order to ask unanimous consent to dispose of the other amendments than the T.V.A. all in one block in accordance with the conference report so that they might be disposed of and we might get at the T.V.A. question by itself?

THE SPEAKER: In answer to the parliamentary inquiry of the gentleman from New York, the Chair will state that if unanimous consent should be given by the House to vote on the amendments en bloc, aside from the one in dispute, that such action could

properly be taken and would dispose of all items except the ones in dispute.

### *Considering Amendments in Disagreement En Bloc*

§ 29.42 In the consideration of a myriad of amendments reported in disagreement from a conference on a general appropriation bill, the manager often asks that those amendments to which the House proposes to recede and concur be considered (by unanimous consent) as read, and disposed of en bloc.

The procedure used in disposing of the amendments in disagreement to the State, Justice, Commerce, and Judiciary appropriation bill, fiscal 1979, is often employed to expedite consideration of non-controversial amendments. Note that those amendments in disagreement that were to be disposed of by a motion to recede and concur with an amendment were also considered as read. When reached in the consideration, the Clerk reported the amendments by number, and then the manager offered the appropriate motion to dispose of the pending amendment. The proceedings

10. 84 CONG. REC. 2085, 2086, 76th Cong. 1st Sess.

in the House of Sept. 28, 1978,<sup>(11)</sup> are carried below:

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table. . . .

#### AMENDMENTS IN DISAGREEMENT

MR. [NEAL] SMITH of Iowa: Mr. Speaker, there are 65 amendments in technical disagreement, and may I inform the Members, if they will bear with me, we will be able to take care in about 7 or 8 minutes of all except amendments 9 and 123, which we will postpone until tomorrow. . . .

Mr. Speaker, in order to expedite the disposition of these amendments, I would like to suggest that all such amendments on which we are asking that the House recede and concur be considered en bloc. Accordingly, Mr. Speaker, I ask unanimous consent that Senate amendments numbered 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 26, 27, 28, 29, 33, 35, 36, 37, 38, 40, 41, 56, 73, 78, 88, 91, 92, 96, 101, 102, 103, 104, 105, 110, and 114 be considered as read, printed in the Record, and that they be considered en bloc.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

There was no objection. . . .

<sup>11</sup> 124 CONG. REC. 32449, 32452, 95th Cong. 2d Sess.

#### MOTION OFFERED BY MR. SMITH OF IOWA

MR. SMITH of Iowa: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Motion offered by Mr. Smith of Iowa:

Mr. Smith of Iowa moves that the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 26, 27, 28, 29, 33, 35, 36, 37, 38, 40, 41, 56, 73, 78, 88, 91, 92, 96, 101, 102, 103, 104, 105, 110 and 114 and concur therein.

The motion was agreed to.

MR. SMITH of Iowa: Now, Mr. Speaker, I ask unanimous consent that the consideration of the amendments 9 and 123 be postponed until tomorrow, and be considered the unfinished business for tomorrow.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

MR. [ROBERT E.] BAUMAN [of Maryland]: Reserving the right to object, Mr. Speaker, I do so to make in inquiry of the Chair. If this postponement is granted, will these be the first order of unfinished business in the morning?

THE SPEAKER PRO TEMPORE: The Chair would advise the gentleman from Maryland that as unfinished business, the answer to the question is yes. . . .

Is there objection to the request of the gentleman from Iowa?

There was no objection.

#### AMENDMENTS IN DISAGREEMENT

MR. SMITH of Iowa: Mr. Speaker, I ask unanimous consent that the remaining amendments in disagreement,

that is, Senate amendments numbered 2, 22, 24, 25, 30, 31, 34, 51, 66, 67, 90, 100, 106, 109, 111, 113, 115, 116, 117, and 124 be considered as read, printed in the Record, and that they be identified by the Chair by number so that I may offer motions for their disposition.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

There was no objection.

**§ 29.43 The House may adhere to its disagreement to certain Senate amendments en bloc.**

On June 30, 1937,<sup>(12)</sup> after the House considered the conference report and several amendments in disagreement on H.R. 6692, military appropriations, fiscal 1938, the following occurred:

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I ask unanimous consent that the reading of the remaining amendments in disagreement be dispensed with and that they be considered en bloc.

THE SPEAKER:<sup>(13)</sup> Is there objection to the request of the gentleman from Missouri?

There was no objection.

MR. CANNON of Missouri: Mr. Speaker, I offer a motion, which I send to the Clerk's desk.

The Clerk read as follows:

Mr. Cannon of Missouri moves that the House adhere to its disagreement

to the amendments of the Senate to the bill H.R. 6692, the military appropriation bill, 1938, nos. 1, 47 to 77, inclusive, and 80, and the amendment of the Senate to the title of said bill.

MR. CANNON of Missouri: Mr. Speaker, I ask for a vote on the motion. The motion was agreed to.

***Varying Order of Consideration of Amendments***

**§ 29.44 The disposition of Senate amendments in disagreement normally proceeds in the order in which they appear in the House text; but the House may vary the order of consideration by a unanimous-consent agreement.**

Where controversy is expected on a particular motion to dispose of a Senate amendment in disagreement, its disposition can be postponed until a more convenient time on the following day by a proper unanimous-consent request.<sup>(14)</sup>

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I ask unanimous consent that amendments numbered 147 and 148 be passed over this evening and that they be considered tomorrow, Wednesday, October 20, 1933, immediately prior to

12. 81 CONG. REC. 6611, 75th Cong. 1st Sess.

13. William B. Bankhead (Ala.).

14. See 139 CONG. REC. 25388, 25390, 103d Cong. 1st Sess., Oct. 19, 1933 (H.R. 2519).



the consideration of amendment No. 171.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> Is there objection to the request of the gentleman from Iowa?

There was no objection.

THE SPEAKER PRO TEMPORE: The Clerk will designate the next amendment in disagreement. . . .

The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Chair rules that further consideration of this bill will continue tomorrow.

### *Corrections in Dollar Amounts*

**§ 29.45 The House by unanimous consent authorized the enrolling clerk to correct dollar amounts contained in several amendments reported from conference in disagreement pursuant to a series of motions specifying these corrections.**

On June 22, 1939, after the House adopted the conference report on H.R. 5269, Department of Agriculture appropriations, fiscal 1940, and considered several amendments reported from conference still in disagreement, the following occurred:<sup>(16)</sup>

15. Kweisi Mfume (Md.).

16. See 84 CONG. REC. 7740, 76th Cong. 1st Sess.

THE SPEAKER:<sup>(17)</sup> The Clerk will report the next amendment in disagreement.

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I ask unanimous consent that the Clerk be authorized on Senate amendments Nos. 21, 26, 27, 33, 105, 115, 116, 142, and 148 to correct the totals contained in said foregoing amendments and to formulate the proper motions and messages in respect thereto in accordance with the action of the House on the remaining Senate amendments reported in disagreement, and such motions so formulated shall be considered as agreed to by the House.

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

There was no objection.

Mr. Cannon then offered and the House adopted motions correcting the dollar amounts contained in the amendments mentioned above.

### *Timing of Message to Senate*

**§ 29.46 House action on amendments reported back in disagreement is not messaged to the Senate until final action has been taken on adoption of the conference report.**

17. William B. Bankhead (Ala.).

On Sept. 18, 1962,<sup>(18)</sup> the House deferred the vote on the conference report on H.R. 12648, Department of Agriculture appropriations, fiscal 1963, until the following day,<sup>(19)</sup> and then immediately disposed of the amendments reported from conference still in disagreement. On Sept. 20, the Senate received a message from the House which included the following:<sup>(20)</sup>

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12648) making appropriations for the Department of Agriculture and related agencies for the fiscal year ending June 30, 1963, and for other purposes; that the House receded from its disagreement to the amendments of the Senate Nos. 4, 25, and 40 to the bill, and concurred therein, that the House receded from its disagreement to the amendment of the Senate No. 38 to the bill, and concurred therein with an amendment, in which it requested the concurrence of the Senate, and that the House insisted upon its disagreement to the amendments of the Senate Nos. 1, 2, 6, 19, 44, 47, 48, 49, 50, 51, 52, 53, and 54 to the bill.

18. 108 CONG. REC. 19708, 19720, 87th Cong. 2d Sess.

19. 108 CONG. REC. 19945, 87th Cong. 2d Sess., Sept. 19, 1962.

20. *Id.* at p. 19992.

### *House Recedes From Its Amendment*

§ 29.47 When a House amendment to a Senate bill is reported back from conference in disagreement and the House insists on its amendment, the bill returns to the Senate with such message for further action; but should the House recede from its amendment the bill retains its original form.

On Mar. 16, 1942,<sup>(1)</sup> the House was considering the amendments reported in disagreement from the conference on S. 2208, the second war powers bill, 1942. The following occurred:

MR. [HATTON W.] SUMNERS of Texas: Mr. Speaker, I move that the House insist upon its amendment numbered 32, and yield myself 10 minutes. . . .

MR. [CHARLES F.] MCLAUGHLIN [of Nebraska]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The gentleman will state it.

MR. MCLAUGHLIN: If the House votes not to insist upon its amendment, then there is nothing before the conferees, because the House will then have yielded to the position taken by the

1. 88 CONG. REC. 2508, 2512, 2513, 77th Cong. 2d Sess.

2. Richard M. Duncan (Mo.).

Senate, as I understand the situation. Am I correct?

THE SPEAKER PRO TEMPORE: If the House recedes from its amendment, then there would be no reason to go to conference.

MR. McLAUGHLIN: That is what I intended to ask. So that the situation is, Mr. Speaker, if I understand it correctly, we have two alternatives—one to insist and one to recede.

THE SPEAKER PRO TEMPORE: That is correct.

MR. McLAUGHLIN: If we recede, we vote to pass without further action by the conferees the bill in the form in which it was prior to the time the Judiciary Committee, by committee amendment, moved that this title be stricken out, and prior to the time the House adopted that amendment. If we vote to insist, then we send it back to conference for action by the conferees. Is that not the situation?

THE SPEAKER PRO TEMPORE: If the House adopted the pending motion, then it goes back to the Senate for further consideration. It goes to the Senate first before it goes to conference.

MR. McLAUGHLIN: If the Senate does not agree with our action in accepting the Sumners motion insisting on the House amendment, then the matter will have to go to conference?

THE SPEAKER PRO TEMPORE: That is correct.

***Senate Amendment Reported in Disagreement is One Entity and Not Divisible***

**§ 29.48 A Senate amendment reported in disagreement**

**from a conference committee is considered in its entirety, and it is not in order to consider individually separate items contained therein.**

On May 20, 1936,<sup>(3)</sup> the House was considering a Senate amendment reported in disagreement from the conference on the Department of Interior appropriation bill, fiscal 1937. The amendment authorized the construction of seven separate reclamation projects. Mr. Edward T. Taylor, of Colorado, offered a motion to recede and concur in this amendment with an amendment which related to one of the seven projects contained in the Senate amendment. Mr. Fred Cummings, of Colorado, then raised a parliamentary inquiry:

Will a motion be in order to consider these items separately?

THE SPEAKER:<sup>(4)</sup> No; there is only one Senate amendment.

***Requesting a Further Conference***

**§ 29.49 When both Houses have adopted a conference report on a bill and amendments**

3. 80 CONG. REC. 7623, 7624, 74th Cong. 2d Sess.

4. Joseph W. Byrns (Tenn.).

thereto, but certain amendments are still in disagreement between them, a further conference may be asked on these remaining amendments.

On Sept. 24, 1962,<sup>(5)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Albert Thomas, of Texas, and the following occurred:

Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 12711) making appropriations for sundry independent executive bureaus . . . and offices, for the fiscal year ending June 30, 1963, and for other purposes, further insist on disagreement to the Senate amendments and agree to the further conference asked by the Senate.

May I explain that the other body adopted all of the conference report on the independent offices appropriation bill except three items, and we are asking unanimous consent to go back to conference on those three items.

The Clerk read the title of the bill. . . .

THE SPEAKER: Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. Thomas, Yates, Cannon, Ostertag, and Taber.

5. 108 CONG. REC. 20489, 87th Cong. 2d Sess.

§ 29.50 A motion to request further conference on an amendment reported in disagreement by conferees is not in order as long as preferential motions (to recede, recede and concur, insist or adhere) are pending.

On Oct. 17, 1967,<sup>(6)</sup> Mr. Edward P. Boland, of Massachusetts, offered a motion to recede and concur in Senate amendment No. 13, which had been reported in disagreement from the conference on H.R. 11476, Department of Transportation appropriations, fiscal 1968.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry, if the gentleman will yield.

MR. BOLAND: I yield to the gentleman.

THE SPEAKER:<sup>(7)</sup> The gentleman will state it.

MR. YATES: This is a motion to recede and concur in the Senate amendment. What would be the effect of voting down such a motion? Will it have the effect of sending the conferees back to conference for the purpose of ironing out this particular item again?

THE SPEAKER: The amendment would still be before the House subject to another form of a motion.

6. 113 CONG. REC. 29044, 29048, 29049, 90th Cong. 1st Sess.

7. John W. McCormack (Mass.).

MR. YATES: What would be the nature of that motion, Mr. Speaker?

THE SPEAKER: The motion could be that the House insist on its disagreement.

MR. YATES: I thank the Speaker.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, will the gentleman yield?

MR. BOLAND: I yield to the gentleman.

MR. HALL: If the gentleman from Massachusetts' motion that the House recede from its disagreement to the amendment of the Senate No. 13 and concur therein was voted down, then another motion would be in order, would it not, I would ask as a parliamentary inquiry, to instruct the conferees to maintain the position of the House or that the House insist upon its disagreement with the other body?

THE SPEAKER: The Chair will state in response to the parliamentary inquiry propounded to the Chair by the distinguished gentleman from Missouri that if the House should insist upon its disagreement, then the matter could go back to conference.

### § 30. Voting; Final Disposition of Report

Conference reports are voted on before any amendments in disagreement are considered,<sup>(8)</sup> although under certain circumstances the vote on the report may

8. § 29.3, supra, and § 30.1, infra.

follow the consideration of these amendments.<sup>(9)</sup>

They are voted on as a whole,<sup>(10)</sup> and, in accordance with Jefferson's Manual, they are not subject to amendment.<sup>(11)</sup> Although it is not in order to adopt only certain amendments contained in a report,<sup>(12)</sup> it has been in order, since the onset of the 93d Congress, to debate for 40 minutes and vote separately on any specified portion of a conference report which the Speaker, in response to a point of order, holds to contain material which would have been ruled nongermane if offered as an amendment in the House.<sup>(13)</sup> In this case the report must nonetheless be adopted as a whole, and the rejection of any portion of the report pursuant to this procedure results in the rejection of the entire report. However, in this event the pending question before the House is a motion to recede and concur with an amendment consisting of the portions of the con-

9. § 29.4, supra.

10. §§ 30.4, 30.5, infra.

11. *House Rules and Manual*, Jefferson's Manual § 542 (1997); and §§ 30.6, 30.7, infra.

12. § 30.4, infra.

13. See Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997); and §§ 30.10, 30.11, infra.

ference report not so rejected.<sup>(14)</sup> Should the portions at issue be approved, the report is debated, after which the entire report is voted upon.<sup>(15)</sup>

A conference report may not contain an agreement to some portions of an amendment in the nature of a substitute and a disagreement to other portions of that amendment.<sup>(16)</sup>

The vote on a conference report is subject to the motion to reconsider,<sup>(17)</sup> and the proceedings whereby a conference report was considered, may, by unanimous consent, be vacated.<sup>(18)</sup>

### *Time for Consideration*

**§ 30.1 In the consideration of conference reports the report itself is considered and voted up or down before action is taken on amendments in disagreement.**

14. Rule XXVIII clause 4(d), *House Rules and Manual* § 913(b) (1997); and § 30.12, *infra*.

15. Rule XXVIII clause 4(d), *House Rules and Manual* § 913(b) (1997).

16. § 30.3, *infra*.

17. §§ 30.32–30.34, *infra*.

18. § 30.34, *infra*.

On Mar. 16, 1942,<sup>(19)</sup> Mr. Hatton W. Sumners, of Texas, called up the conference report on S. 2208, to expedite prosecution of the war.

MR. SUMNERS of Texas: Mr. Speaker, may I submit a parliamentary inquiry?

THE SPEAKER:<sup>(20)</sup> The gentleman will state it.

MR. SUMNERS of Texas: Amendment No. 32 is highly controversial. I understand it is my duty to move that the House further insist upon this amendment. May I ask unanimous consent that the consideration of that amendment be postponed for the moment?

THE SPEAKER: The Chair suggests to the gentleman from Texas that the first thing to do is to adopt the conference report, leaving out, of course, those matters that are in disagreement.

MR. SUMNERS of Texas: Then, Mr. Speaker, I make that motion at this time. . . .

THE SPEAKER: The parliamentary situation is this: Insofar as the amendments in disagreement are concerned, the conference report must first be voted up or down. The gentleman from Texas has moved that the conference report be adopted.

### *En Bloc Consideration of Several Reports*

**§ 30.2 The Speaker has indicated that it is not permissi-**

19. 88 CONG. REC. 2502–04, 77th Cong. 2d Sess.

20. Sam Rayburn (Tex.).

**ble to consider several conference reports en bloc.**

On June 29, 1970,<sup>(1)</sup> Mr. Philip J. Philbin, of Massachusetts, called up the conference report on H.R. 15021, to release cobalt from the national stockpile. At that time there were 16 additional conference reports on other stockpile bills awaiting consideration by the House. Mr. H. R. Gross, of Iowa, raised a parliamentary inquiry:

MR. GROSS: ... Is there any way under the rules of the House whereby these reports might be considered en bloc and disposed of rather expeditiously by unanimous consent?

THE SPEAKER:<sup>(2)</sup> The Chair will state to the gentleman from Iowa in response to his parliamentary inquiry that under the mechanics of the rules of the House it will not be possible at this time to consider these conference reports en bloc because each report must be acted upon individually.

***Acting on Report in Whole or in Part***

**§ 30.3 A conference report may not contain a partial agreement to an amendment in the nature of a substitute; and where the conferees had**

1. 116 CONG. REC. 21833, 91st Cong. 2d Sess.
2. John W. McCormack (Mass.).

**agreed to all but one of the provisions of such an amendment they reported back to the House in total disagreement.**

On July 31, 1973,<sup>(3)</sup> Mr. William R. Poage, of Texas, submitted the following conference report on S. 1888, to extend and amend the Agricultural Act of 1970:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1888), to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices, having met, after full and free conference, have been unable to agree. . . .

The conferees explained in their joint statement the reason for their report in total disagreement.

The House amendment struck out all after the enacting clause of S. 1888 and inserted in lieu thereof the language of H.R. 8860 as passed by the House.

There were 111 substantive differences between S. 1888 and the House amendment. The conferees were able to reconcile 110 of these differences, but were unable to agree on the provision in the House amendment which would, under specified conditions, prohibit food stamp assistance to strikers.

3. 119 CONG. REC. 27001, 93d Cong. 1st Sess.

**§ 30.4 A conference report must be acted on as a whole and agreed to or disagreed to in its entirety, and a motion to adopt a report only on certain amendments included therein is not in order.**

On Aug. 22, 1940,<sup>(4)</sup> the House was considering the conference report on Senate Joint Resolution 286, to strengthen the national defense.

MR. [WALTER G.] ANDREWS [of New York]: Mr. Speaker, I move the adoption of the conference report insofar as amendments numbered 1 to 14 are concerned.

THE SPEAKER:<sup>(5)</sup> The Clerk will report the motion.

The Clerk read as follows:

Mr. Andrews moves the adoption of the conference report on amendments Nos. 1 to 14, inclusive.

THE SPEAKER: The Chair holds that under the rules the gentleman cannot move to adopt a conference report in that way.

MR. [ANDREW J.] MAY [of Kentucky]: Mr. Speaker, I move the adoption of the conference report as a whole.

THE SPEAKER: The question is on agreeing to the motion of the gentleman from Kentucky.

The conference report was agreed to, and a motion to reconsider the vote by

4. 86 CONG. REC. 10759-63, 76th Cong. 3d Sess.

5. William B. Bankhead (Ala.).

which the conference report was agreed to was laid on the table.

**§ 30.5 A conference report must be acted upon as a whole, being agreed to or disagreed to as an entirety; and rejection of a portion of a conference report under a special procedure permitting such a separate vote results in the rejection of the entire report.**

On Nov. 10, 1971,<sup>(6)</sup> Mr. Richard Bolling, of Missouri, by direction of the Committee on Rules, called up House Resolution 696, providing for the consideration of the conference report on H.R. 8687, military procurement authorizations, fiscal 1972. The resolution contained the following provision:

... It shall also be in order, pursuant to clause 1 of rule XX,<sup>(7)</sup> for a separate vote to be had upon demand on those individual parts of the Senate amendment now contained in the conference report and numbered as sections 503, 505, and 601. . . .

6. 117 CONG. REC. 40479, 40481, 40482, 92d Cong. 1st Sess.

7. The provision of Rule XX clause 1, alluded to in this resolution was contained in the *House Rules and Manual* § 827 (1971). The comparable provision was moved in the 93d Congress to Rule XXVIII clause 4, *House Rules and Manual* § 913(b) (1997).



Pending the vote on the resolution, Mr. Durward G. Hall, of Missouri, posed a parliamentary inquiry:

Mr. Speaker, my parliamentary inquiry is simply if House Resolution 696, now before the House, is adopted or not, it is provided that it shall also be in order, pursuant to clause 1 of rule XX, for a separate vote to be had upon demand of any individual on those individual parts of the Senate amendment now contained in the conference report and numbered as sections 503, 505, and 601. My inquiry, Mr. Speaker, is, in the event that such a vote was demanded on those separate sections and it was not agreed to by this body, would the entire conference report be rejected and returned to the conferees or the other body?

THE SPEAKER:<sup>(8)</sup> The answer to the gentleman is that the conference report would be rejected.

MR. HALL: I thank the Speaker.

THE SPEAKER: If the first section is rejected, that is the end of the conference report. A provision of *Jefferson's Manual*—found in sections 542 and 549 of the *House Rules and Manual*—holds that conference reports must be acted on as a whole, being agreed to or disagreed to as an entity.

The House by its action in rejecting any one of the sections on which a separate vote may be demanded would nullify the agreement between the managers on the part of the House and the Senate, and the conference report would therefore fall.

8. Carl Albert (Okla.).

### *Amendment of Report*

#### § 30.6 A conference report is not subject to amendment.

On June 30, 1939,<sup>(9)</sup> the House was considering the conference report on House Joint Resolution 326, the relief bill of 1940, when the following colloquy occurred:

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(10)</sup> The gentleman will state it.

MR. MARCANTONIO: If the previous question is voted down, Mr. Speaker, would the conference report then be open to amendment?

THE SPEAKER: It would not be open to amendment.

### *Effect of Rejection of Previous Question*

#### § 30.7 Voting down the previous question on a conference report merely extends time for debate and does not afford an opportunity to amend the report.

On Mar. 1, 1939,<sup>(11)</sup> the House was considering the conference report on H.R. 3743, the inde-

9. 84 CONG. REC. 8459, 76th Cong. 1st Sess.

10. William B. Bankhead (Ala.).

11. 84 CONG. REC. 2085, 2086, 76th Cong. 1st Sess.

pendent offices appropriations bill, fiscal 1940. The following discussion occurred:

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Speaker, it has been stated upon the floor by myself, and I think it was the general understanding of the rest of us, that in the event the previous question on the conference report was voted down the Senate amendments would then be open for separate consideration. Pursuant to the statement just made a few moments ago by the gentleman from New York, I discussed the matter with the Parliamentarian, and, as I understand the matter now, it appears that the only way the House could get a vote on this amendment would be to vote down the conference report; that then each Senate amendment would be before the House for separate consideration. My parliamentary inquiry is whether or not that is correct.

THE SPEAKER:<sup>(12)</sup> The Chair is of the opinion that the gentleman has very clearly stated the parliamentary situation. The mere voting down of the previous question would not afford an opportunity to the House to open up a conference report for amendments. In other words, the Chair under the precedents, is clearly of the opinion that the only way in which a separate vote could be obtained upon any Senate amendment would be to vote down the conference report; that voting down the previous question would not afford an opportunity for such consideration.

12. William B. Bankhead (Ala.).

MR. WOODRUM of Virginia: So nothing will be gained by voting down the previous question.

THE SPEAKER: It would merely extend the time for debate on the conference report.

### *Postponement of Vote After Ordering Previous Question*

**§ 30.8 Further consideration of a conference report on which the previous question had been ordered was, by unanimous consent, postponed and made the unfinished business on the following day.**

On Dec. 15, 1970,<sup>(13)</sup> after the House completed its consideration of the conference report on H.R. 17867, foreign assistance appropriations, fiscal 1971, the following occurred:

The previous question was ordered.

THE SPEAKER:<sup>(14)</sup> The question is on the conference report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present. . . .

I want a vote on the acceptance of the conference report, to which I object

13. 116 CONG. REC. 41544, 91st Cong. 2d Sess.

14. John W. McCormack (Mass.).

violently, and I object to the vote on the ground that a quorum is not present and, I repeat, I make a point of order that a quorum is not present.

THE SPEAKER: The Chair will count.

Will the gentleman withhold his point of order?

MR. HALL: No, Mr. Speaker, I will not withhold the point of order. I insist on my point of order. The point of order has been properly made.

THE SPEAKER: Will the gentleman indulge the Chair? There are quite a few Members at the White House, and it would be the purpose of the gentleman from Texas if the gentleman from Missouri will withhold his point of order, to ask that further proceedings on the conference report and the amendments in disagreement be postponed until tomorrow, because there are many Members at the White House with their wives.

MR. HALL: . . . Mr. Speaker, under those circumstances, and with that understanding and for no other purpose, I will yield until the gentleman from Texas makes his request.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent that further proceedings on the conference report be postponed until tomorrow and that this be the first order of business on tomorrow. . . .

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

There was no objection.

THE SPEAKER: Accordingly, the matter is postponed until tomorrow, when it will be the first order of business.

### *Postponement of Vote on Adoption of Conference Report*

**§ 30.9 Before the Speaker's postponement authority was added to Rule I, a vote on the adoption of a conference report after the previous question was ordered thereon could be postponed only by unanimous consent.**

The proceedings of Oct. 15, 1974,<sup>(15)</sup> are carried as illustrative of the practice before the adoption of Rule I clause 5(b)(1) in the 96th Congress.<sup>(16)</sup>

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, I ask unanimous consent that further proceedings on the conference report be postponed until 5 p.m. today.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from Massachusetts?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I object.

THE SPEAKER: Objection is heard.

15. 120 CONG. REC. 35640, 93d Cong. 2d Sess.

16. See H. Res. 5, 125 CONG. REC. 7, 96th Cong. 1st Sess., Jan. 15, 1979.

17. Carl Albert (Okla.).

## PARLIAMENTARY INQUIRY

MR. [GARRY] BROWN of Michigan: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BROWN of Michigan: Mr. Speaker, would it be in order to move that the vote on this measure be postponed until 5 p.m.?

THE SPEAKER: It requires a unanimous-consent request.

***Procedure for Addressing Senate Amendments Which Are Not Germane***

**§ 30.10 New rules (Rule XXVIII clauses 4 and 5) were adopted in the 92d and 93d Congresses to provide a procedure in the House to address the inclusion in conference reports or amendments in disagreement of Senate amendments or provisions in Senate bills which would not have been considered germane to the bill in the House.**

Near the end of the 92d Congress, the House adopted a change in Rule XXVIII clause 4, to allow the House to have a separate vote on a nongermane Senate amendment which was included in a conference report.<sup>(18)</sup> The mecha-

18. Clause 4, Rule XXVIII, was included as part of a general revision of sev-

nism allowed a point of order directed at the nongermane provision, which if sustained, permitted a vote to reject the provision.

On Apr. 9, 1974, the House considered a resolution reported from the Committee on Rules, amending several rules of the House.<sup>(19)</sup> Clause 4 of Rule XXVIII was at that time broadened to provide not only a mechanism for getting a vote on Senate amendments which were not germane, but also parts of Senate bills sent to conference with provisions, which if offered in the House to its version of the bill, would not have been germane. At the same time, clause 5 was added, for the first time providing a way of voting on discrete portions of motions to dispose of Senate amendments or bills in disagreement which contained provisions which would not have been appropriate in the House under Rule XVI clause 7.<sup>(20)</sup>

eral House rules that became effective at the end of the 92d Congress. See H. Res. 1153, 118 CONG. REC. 36023, 92d Cong. 2d Sess., Oct. 13, 1972.

19. See H. Res 998, amending the rules of the House, 120 CONG. REC. 10195-99, 93d Cong. 2d Sess.

20. Rule XXVIII clause 5 as adopted in 1974, has remained unchanged in its essentials. See *House Rules and*

THE CHAIRMAN:<sup>(1)</sup> Under the rule, the resolution shall be considered as having been read for amendment. No amendments shall be in order to said resolution except amendments offered by the direction of the Committee on Rules and germane amendments to section 3 of said resolution, and said amendments shall not be subject to amendment.

The resolution reads as follows:

H. RES. 998

*Resolved*, That the Rules of the House of Representatives are amended in the following respects: . . .

APPLICATION OF PROVISIONS OF CLAUSE 4 OF RULE XXVIII RELATING TO NONGERMANE MATTER IN CONFERENCE AGREEMENTS TO CERTAIN MATTER IN CONFERENCE AGREEMENTS NOT PROPOSED TO BE PLACED IN THE MEASURE CONCERNED AS PASSED THE HOUSE

SEC. 6. (a) Paragraph (a) of clause 4 of Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end of such paragraph the following: "For the purposes of this clause, matter which—

"(A) is contained in any substitute agreed to by the conference committee;

"(B) is not proposed by the House to be included in the measure concerned as passed by the House; and

"(C) would be in violation of clause 7 of Rule XVI if such matter had been offered in the House as an amendment to the provisions of that

measure as so proposed in the form passed by the House; shall be considered in violation of such clause 7."

(b) Clause 4(d) of Rule XXVIII of the Rules of the House of Representatives is amended to read as follows:

"(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be—

"(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

"(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this Rule, it shall be in order to move the previous question on the adoption of the conference report."

CONSIDERATION IN THE HOUSE OF CERTAIN SENATE AMENDMENTS REPORTED IN DISAGREEMENT BY CONFERENCE COMMITTEES OR IN DISAGREEMENT BETWEEN THE TWO HOUSES

SEC. 7. Rule XXVIII of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

"5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which—

"(A) is proposed by the Senate to any measure and thereafter—

*Manual* § 913c (1997) and the annotation which follows for the current application of this clause.

1. Dawson Mathis (Ga.).

“(i) is reported in disagreement between the two Houses by a committee of conference; or

“(ii) is before the House, the stage of disagreement having been reached; and

“(B) contains any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House;

it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

“(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

“(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2) of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

“(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to re-

cede and concur shall be considered as rejected, and further motions—

“(A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration); . . .

#### EFFECTIVE DATE

SEC. 8. The amendments made by this resolution to the Rules of the House of Representatives shall become effective at the beginning of the thirtieth day after the date of adoption of this resolution. . . .

THE CHAIRMAN: Are there further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Mathis of Georgia, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the resolution (H. Res. 998) to amend the House rules regarding the making of points of no quorum, consideration of certain Senate amendments in conference agreements or reported in conference disagreement, request for recorded votes and expeditious conduct of quorum calls in Committee of the Whole, and postponement of proceedings on suspension motions, and for other purposes, pursuant to House Resolution 1018, he reported the resolution back to the House with sundry amendments adopted by the Committee of the Whole.

THE SPEAKER:<sup>(2)</sup> Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

THE SPEAKER: The question is on the resolution.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 374, nays 27, not voting 31. . . .

Portions of the debate pertaining to House Resolution 998 follow:

MR. [B. F.] SISK [of California]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 998) to amend the House rules regarding the making of points of no quorum, consideration of certain Senate amendments in conference agreements or reported in conference disagreement, request for recorded votes and expeditious conduct of quorum calls in Committee of the Whole, and postponement of proceedings on suspension motions, and for other purposes.

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Sisk).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 998), with Mr. Mathis of Georgia in the chair.

The Clerk read the title of the resolution.

By unanimous consent, the first reading of the resolution was dispensed with.

THE CHAIRMAN: Under the rule, the gentleman from California (Mr. Sisk) will be recognized for 1 hour, and the gentleman from Ohio (Mr. Latta) will be recognized for 1 hour. . . .

MR. [SPARK M.] MATSUNAGA [of Hawaii]: Mr. Chairman, I rise in solid support of House Resolution 998, which would reform a number of House rules to simplify and streamline certain procedures in the House. . . .

The other changes in the rules proposed by House Resolution 998 are also directed at expediting the business of the House. . . .

Rules for controlling House consideration of nongermane Senate amendments would be tightened. . . .

MR. [RICHARD C.] WHITE [of Texas]: Mr. Chairman, will the gentleman yield?

MR. SISK: Yes, I will, briefly.

MR. WHITE: On page 3, section 2, it states:

The last two sentences of clause 1 of Rule XX of the Rules of the House of Representatives are repealed.

As I read that portion of the repeal, it would obviate the new procedures that the House has experienced in the last 2

2. Carl Albert (Okla.).

years of being able to vote on nongermane amendments to a bill placed by the Senate.

MR. SISK: Well, I had hoped to comment briefly on that. That is purely a technical amendment. What we have done is to shift the matters dealing with nongermane amendments in conference reports exclusively to rule XXVIII. We are simply transferring that specific language in rule XX to rule XXVIII, and consolidating all the matters that are of concern in connection with the rules dealing with the handling of nongermane matters.<sup>(3)</sup> . . .

3. A rather rudimentary method for addressing nongermane Senate amendments had been added to the rules of the House by the Legislative Reorganization Act of 1970, 84 Stat. 1140, and made part of the Rules of the House on Jan. 22, 1971 (H. Res. 5), 117 CONG. REC. 144, 92d Cong. 1st Sess. The last two sentences of Rule XX clause 1, at that time provided as follows: "Any motion to agree, or agree with amendment, to any House or Senate bill or resolution or amendment thereto (other than a motion to agree to a conference report) shall require for adoption, or [on] demand of any Member, a separate vote on each such amendment (including a separate vote on any nongermane part of an amendment in the nature of a substitute), if, originating in the House, such amendment would be subject to a point of order on a question of germaneness under clause 7 of Rule XVI. Before such separate vote is taken, it shall be in order to debate

I appreciate that. I have now used up about half of the time that I have, and I do not want to cut off anybody because I realize the interest of Members in this matter. I appreciate it.

Let me run through it briefly, and then I will yield myself such additional time as is necessary to answer any questions.

Mr. Chairman, section 6 extends the present procedure permitting separate debate and votes on nongermane Senate amendments to nongermane matter that first, originally appeared in a Senate bill; or second, was not included in the House-passed version of that bill; or third, appeared again in conference report.

This is, of course, a further attempt to make absolutely certain that with regard to any nongermane material placed on legislation by the other body or developed in a conference the Members of the House will have a right, if they desire to make a point of order on it, to debate it and to vote on it.

We have been through this and have been up and down the hill on it for 4 or 5 years. Hopefully, the new language that the committee adopted will make it absolutely clear.

Section 6 further extends the procedure for dealing with nongermane Senate amendments to permit separate debate and votes on nongermane matter on Senate amendments reported in

such amendment or part for forty minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such amendment or part."



disagreement by a conference committee.

This will cover motions to recede and concur in Senate amendments, and motions to recede and concur with an amendment.

### *Separate Vote on Nongermane Provisions*

#### § 30.11 *Parliamentarian's*

**Note:** The basic principle as set forth in § 542 of Jefferson's Manual—that a conference report cannot be amended or altered—was preserved in Rule XXVIII clause 4, adopted in 1972.<sup>(4)</sup> While that rule permits separate motions to reject those portions of a conference report containing Senate amendments or bills which would not have been germane to the House-passed version, it also provides that upon rejection of a portion of a conference report under that procedure, the entire report is considered as rejected, and the pending question shall be a motion to recede and concur with an amendment consisting of

#### **that portion of the conference report not rejected.**

On Oct. 13, 1972,<sup>(5)</sup> Mr. B. F. Sisk, of California, by direction of the Committee on Rules, called up House Resolution 1153, amending the rules of the House concerning, I, nongermane Senate amendments included in conference reports. With respect to this provision, Mr. Sisk explained in part:

Mr. Speaker, the first section of the resolution grapples with this thorny problem of Senate nongermane amendments. Frankly, I thought we had settled that matter through section 126 of the Legislative Reorganization Act of 1970.<sup>(6)</sup> But our experiences under the rules changes brought about by that act make it pretty clear that our rules do not yet adequately deal with the situation.

I think we all understood the basic purpose of section 126. It was to give the House an opportunity to have separate debate and a separate vote on Senate nongermane provisions attached to House-passed measures. Unfortunately, the way in which that section was written did not take into account the special parliamentary problems raised by amendments in the nature of a substitute. Our present rules permit us to debate and vote on the whole of nongermane Senate amend-

4. *House Rules and Manual* § 913b (1997).

5. 118 CONG. REC. 36013-15, 36021-23, 92d Cong. 2d Sess.

6. Pub. L. No. 91-510, 84 Stat. 1140, § 126(a) (Oct. 26, 1970).

ments, but not on the specific nongermane parts of Senate amendments. This means that when we are dealing with a Senate amendment in the nature of a substitute, under the present rules and precedents we are limited to a single vote on the whole amendment—all up, or all down. We cannot separate out the nongermane parts of that amendment in the nature of a substitute for individual consideration.

Mr. Speaker, the Committee on Rules literally spent months trying to find a way out of this dilemma. We finally settled on the approach that appears in the first section of this resolution.

I will not go into the details of the proposed procedure; most of them are laid out in the report. But I do want to point out to the House that this approach will introduce three new parliamentary devices into the practices of the House.

First, it will permit us to have separate votes on the nongermane parts of conference reports, where now we may not have such separate votes.

Second, it will permit the House to debate and vote separately on all nongermane parts of a conference report, even after the House has rejected any one of them.

Third, and this is a modification of what we originally reported—we retain the present concept that when any part of the conference report has been rejected, the whole report is automatically rejected. But, we provide that if any part is rejected, the pending question will then be to recede and concur with an amendment, and that amendment shall consist of all of the conference report except the rejected parts.

With this device we will give the Senate an opportunity to accept our version, to ask for another conference, or to deal with the measure in some other suitable way.

Mr. Sisk then offered the following amendment:

Amendment offered by Mr. Sisk: On page 8, immediately below line 5, insert the following:

“Sec. 6. The amendments made by the foregoing sections of this resolution shall become effective immediately before noon on January 3, 1973.”

After debate on Mr. Sisk's amendment had transpired, consideration of the resolution was concluded by the following proceedings:

THE SPEAKER:<sup>(7)</sup> The question is on the amendment offered by the gentleman from California (Mr. Sisk).

The amendment was agreed to.

MR. SISK: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER: The question is on the resolution. . . .

The question was taken; and there were—yeas 281, nays 57, not voting 93. . . .

So the resolution was agreed to. . . .

A motion to reconsider was laid on the table.

### *Rejection of Nongermane Section*

7. Carl Albert (Okla.).

**§ 30.12 Pursuant to Rule XXVIII clause 4(d),<sup>(8)</sup> where the House has agreed to one or more motions to reject a portion of a conference report, the report is considered as rejected, and the pending question is whether the House shall recede from disagreement to the Senate amendment(s) and concur with an amendment consisting of that portion of the conference report not rejected.<sup>(9)</sup>**

On Sept. 11, 1973,<sup>(10)</sup> the House was considering the conference report on H.R. 7645, Department of State authorizations, fiscal 1974, when Mr. Robert L. F. Sikes, of Florida, rose with a point of order:

Mr. Speaker, I make a point of order that the matter contained in section 10 of the substitute offered by the conference committee and accepted by the House conferees would not have been germane to H.R. 7645 under clause 7,

8. See *House Rules and Manual* § 913(b) (1997).

9. See § 30.13, *infra*, for an instance where a point of order was sustained, but the House defeated the motion to reject the nongermane provision.

10. 119 CONG. REC. 29243-46, 93d Cong. 1st Sess.

rule XVI<sup>(11)</sup> if offered in the House and is therefore subject to a point of order under clause 4, rule 28.

After listening to debate on the point of order, Speaker Carl Albert, of Oklahoma, reached the following conclusion:

The Chair, therefore, concludes that the amendment would not have been germane if offered to the House bill and the point of order against section 10 of the conference report is, therefore, sustained.

MR. SIKES: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Sikes moves that the House reject section 10 of the conference report.

THE SPEAKER: The gentleman from Florida is recognized for 20 minutes.

After debate transpired on Mr. Sikes' motion, the proceedings concluded in the following manner:

THE SPEAKER: The question is on the adoption of the motion offered by the gentleman from Florida (Mr. Sikes).

The motion was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: The motion to reject sections 10 and 13<sup>(12)</sup> of the conference

11. *House Rules and Manual* § 794 (1997).

12. The Speaker had previously sustained a point of order against section 13 on the ground that it embod-

report having been adopted, under the rule the conference report is considered as rejected.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, pursuant to clause 4, rule 28, in view of the action of the House, I offer a motion.

The Clerk read as follows:

Mr. Hays moves that the House recede from its disagreement and concur in the Senate amendment with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: . . .

MR. HAYS (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

I will explain to the House that this is simply the conference report deleting the two amendments which the House has turned down.

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

There was no objection.

MR. HAYS: Mr. Speaker, as I have just said, this is to get the conference report back to the conferees.<sup>(13)</sup> We are taking it back to the Senate conferees

ied an amendment which was not germane to the House bill.

13. *Parliamentarian's Note:* Mr. Hays' explanation was misleading. The adoption of his motion would send the House bill with the Senate amendment in the nature of a substitute as herein amended to the Senate for its consideration. Senate concurrence in this action would obviate the need for a further conference.

without the two sections, 10 and 13, which the House deleted. We will explain to them that the House refused to accept them.

We will see what we can do from there.

THE SPEAKER: The question is on the motion offered by the gentleman from Ohio (Mr. Hays).

The motion was agreed to.

### *Addressing a Nongermane Provision in a Senate Amendment in Disagreement*

**§ 30.13 Pursuant to Rule XXVIII clause 5(b), a Member may make a point of order against a portion of a motion to recede and concur in a Senate amendment reported in disagreement with a further amendment, on the ground that the portion of the Senate amendment addressed in the motion was not germane to the House-passed bill, and a motion to reject that portion of the motion is in order if the point of order is sustained.**

Where a point of order raised under Rule XXVIII clause 5, against a motion to recede and concur in a Senate amendment reported in disagreement from conference is sustained, the debate on a motion to reject may be di-

vided, 20 minutes to a side, between the Member pressing the point of order and the manager of the conference report; and where the motion to reject is itself defeated, the one hour for debate on the original motion to recede and concur with an amendment is often divided between the manager of the report and the ranking minority Member on the conference committee. The rule actually requires a division of the hour between the two parties.<sup>(14)</sup>

An instance of the aforementioned proposition occurred on July 31, 1974,<sup>(15)</sup> when the conference report on H.R. 8217 was taken up in the House. The report had been submitted to the House on July 16, 1974.<sup>(16)</sup>

CONFERENCE REPORT ON H.R. 8217,  
EXEMPTING FROM DUTY CERTAIN  
EQUIPMENT AND REPAIRS FOR  
VESSELS

14. The rule providing for division of time was amended in the 99th Congress to specify a three-way division of time where the manager and the ranking member are both supporters of the motion. One-third may be claimed by a Member opposed to the motion. See H. Res. 7, 131 CONG. REC. 393, 99th Cong. 1st Sess., Jan. 3, 1985.
15. 120 CONG. REC. 26082, 26083, 26088, 26089, 93d Cong. 2d Sess.
16. *Id.* at pp. 23359, 23360.

Mr. Ullman submitted the following conference report and statement on the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971:

CONFERENCE REPORT (H. REPT. NO.  
93-1197)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971, having met, after full and free conference, have been unable to agree.

W. D. MILLS,  
AL ULLMAN,  
JAMES A. BURKE . . .

JOINT EXPLANATORY STATEMENT OF  
THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971, report that the conferees have been unable to agree.

W. D. MILLS,  
AL ULLMAN . . .

The report was taken up in the House on July 31:

CONFERENCE REPORT ON H.R. 8217,  
EXEMPTION FROM DUTY OF EQUIP-

MENT AND REPAIRS FOR CERTAIN  
VESSELS

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I call up the conference report on the bill (H.R. 8217) to exempt from duty certain equipment and repairs for vessels operated by or for any agency of the United States, and ask unanimous consent that the statement of the manager be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Clerk read the statement.

MR. MILLS: Mr. Speaker, in view of the fact that the text of the Senate amendments was printed in the Record last week and Members had access to it at that time, I ask unanimous consent to dispense with the reading of the amendment.

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

There was no objection.

MOTION OFFERED BY MR. MILLS

MR. MILLS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Mills moves that the House recede from its disagreement to the Senate amendment to the text of the bill, H.R. 8217, and concur therein with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill (page 2, after line 6), insert the following:

SEC. 3. The last sentence of section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (as added by section 20 of Public Law 93-233 and amended by section 2 of Public Law 93-256 and by section 2 of Public Law 93-329) is amended by striking out "August 1, 1974" and inserting in lieu thereof "April 30, 1975" . . .

POINT OF ORDER

MR. [J. J.] PICKLE [of Texas]: Mr. Speaker, I make a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. PICKLE: Mr. Speaker, I make a point of order on section 3 of this bill because it does not conform to the House germaneness rule, rule 28, clause 5(b)(1).

In no way can this section be germane to the House-passed H.R. 8217.

The House bill dealt with exempting from duty certain equipment and repairs for vessels operated by or for any agency of the United States where the entries were made in connection with vessels arriving before January 5, 1971.

Section 3 deals with the unemployment compensation program as it relates to extended benefits. This has nothing to do with the "repair of vessels."

Mr. Speaker, I feel that it is necessary to take time to explain why the Senate unemployment compensation amendment is nongermane to the House-passed tariff bill.

It is nongermane on its face, and I ask that my point of order be sustained.

17. Carl Albert (Okla.).

THE SPEAKER: Does the gentleman from Arkansas (Mr. Mills) desire to be heard on the point of order?

MR. MILLS: Mr. Speaker, I must admit that the point of order is well taken. I cannot resist the point of order.

THE SPEAKER: The point of order is sustained.

MOTION OFFERED BY MR. PICKLE

MR. PICKLE: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Pickle moves that the House reject section 3 of the proposed amendment to the Senate amendment to the text of the bill H.R. 8217.

THE SPEAKER: The gentleman from Texas (Mr. Pickle) will be recognized for 20 minutes, and the gentleman from Arkansas (Mr. Mills) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas. . . .

The question was taken, and the Speaker announced that the noes appeared to have it. . . .

THE SPEAKER: The gentleman from Iowa was seeking recognition for what purpose?

MR. [H. R.] GROSS [of Iowa]: To object to the vote on the ground that a quorum was not present, and make the point of order that a quorum is not present.

MR. MILLS: Not on the previous question I hope?

MR. GROSS: No; I wanted it on the vote on the motion offered by the gentleman from Texas (Mr. Pickle).

MR. MILLS: Mr. Speaker, I must make the point of order that the gentleman's request comes too late.

MR. PHILLIP BURTON [of California]: Mr. Speaker, you had already put the question, and announced the result.

THE SPEAKER: The Chair will state that the Chair announced that the noes appeared to have it. The gentleman from Iowa states that he was on his feet and seeking recognition of the Chair to make the point of order that a quorum was not present, and to object to the vote on the ground that a quorum was not present.

MR. MILLS: Mr. Speaker, the Chair had also recognized me on the previous question.

THE SPEAKER: The Chair will state that the Chair had not observed the gentleman from Iowa at the time when the gentleman from Iowa was seeking recognition to make the point of order that a quorum was not present and object to the vote on the ground that a quorum was not present.

Therefore the Chair must recognize the gentleman from Iowa, and the Chair does recognize the gentleman from Iowa who objects to the vote on the ground that a quorum is not present and makes the point of order that a quorum is not present, and evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 63, nays 336, not voting 35. . . .

So the motion was rejected.

The Clerk announced the following pairs:

Mr. Rostenkowski with Mr. Ar-ends. . . .

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER: The Chair desires to state that under the rule the gentleman from Arkansas (Mr. Mills) will be recognized for 30 minutes and the gentleman from Pennsylvania (Mr. Schneebeli) will be recognized for 30 minutes.

The Chair now recognizes the gentleman from Arkansas (Mr. Mills).

### *Timing of Motion To Reject Nongermane Portion*

**§ 30.14 Motions to reject a section or sections of a conference report are in order immediately after the Speaker sustains a point of order that the material contained in such section(s) would not have been germane if offered as an amendment in the House, and are debatable for 40 minutes (20 minutes for and 20 minutes against each motion).**

On Sept. 11, 1973,<sup>(18)</sup> Mr. Wayne L. Hays, of Ohio, called up the conference report on H.R. 7645, authorizing Department of State

18. 119 CONG. REC. 29235-37, 29242, 93d Cong. 1st Sess.

appropriations, fiscal 1974, and obtained the consent of the House that the statement of the managers be read in lieu of the report. Speaker Carl Albert, of Oklahoma, then recognized Mr. Gerald R. Ford, of Michigan:

Mr. Speaker, I make a point of order against section 13 of the conference report, and I should like to be heard on the point of order.

THE SPEAKER: The Chair will hear the gentleman.

MR. [ROBERT L. F.] SIKES [of Florida]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Michigan yield for a parliamentary inquiry?

MR. GERALD R. FORD: I yield for a parliamentary inquiry.

MR. SIKES: Mr. Speaker, I will have a similar point of order against section 10 of the bill. Am I protected in my right to raise that point of order subsequent to the disposition of the point of order on section 13?

THE SPEAKER: After the first point of order is disposed of, Members may be recognized to make additional points of order on other matters.

MR. SIKES: I thank the Chair.

MR. GERALD R. FORD: Mr. Speaker, I make a point of order that the matter contained in section 13 of the substitute offered by the conference committee and accepted by the House conferees would not have been germane to H.R. 7645 under clause 7, rule XVI if offered in the House and is therefore subject to a point of order under clause 4, rule XXVIII. . . .



I make my point of order on the grounds that this language is in violation of rule XXVIII, clause 4(a)<sup>(19)</sup> which provides in brief that if a conference substitute contains language which, if originally offered in the House, would be nongermane under rule XVI, clause 7,<sup>(20)</sup> a valid point of order lies against the conference report.

After Mr. Ford spoke in favor of his point of order and Mr. Hays against, the following occurred:

THE SPEAKER: The Chair is ready to rule. . . .

The Chair concludes that the conference provision would not have been germane if offered to the House bill and the point of order against section 13 is therefore sustained.

MR. [WILLIAM S.] MAILLIARD [of California]: Mr. Speaker, pursuant to the provisions of clause 4, rule XXVIII, I offer a motion.

The Clerk read as follows:

Mr. Mailliard moves that the House reject section 13 of the conference report.

THE SPEAKER: The gentleman from California (Mr. Mailliard), is recognized for 20 minutes, and the gentleman from Ohio (Mr. Hays), is recognized for 20 minutes.

The Chair recognizes the gentleman from California (Mr. Mailliard), for 20 minutes.

19. See *House Rules and Manual* § 913(b) (1997).

20. *Id.* at § 794.

At the conclusion of 40 minutes of debate, Mr. Hays moved the previous question on the motion offered by Mr. Mailliard.

The previous question was ordered.

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Mailliard). . . .

The vote was taken by electronic device, and there were—yeas 213, nays 185, not voting 36. . . .

So the motion was agreed to.

Mr. Sikes then raised a point of order against section 10 of the conference report, and the procedure outlined above was repeated with respect thereto.

### *Nongermane Provision in Senate Amendment, Motion To Reject*

§ 30.15 To a title of a House-passed bill reported from the Committee on Interstate and Foreign Commerce containing a program to improve automotive fuel efficiency by imposing fuel economy standards on manufacturers, a modified portion of a Senate amendment contained in a conference substitute providing loan guarantees for automotive research and development (a matter within the jurisdiction of the Com-

**mittee on Science and Technology), was conceded to be not germane, and a motion was agreed to under Rule XXVIII clause 4, to reject that portion of the conference report.**

When the conference report on S. 622, the Energy Policy and Conservation Act of 1975, was called up for consideration in the House on Dec. 15, 1975,<sup>(1)</sup> a timely point of order was stated by Mr. Barry M. Goldwater, Jr., of California, under Rule XXVIII clause 4,<sup>(2)</sup> to the effect that a portion of the conference text would not have been germane to the House text. The provision and the point of order are carried below:<sup>(3)</sup>

CONFERENCE REPORT ON S. 622, ENERGY POLICY AND CONSERVATION ACT

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the Senate bill (S. 622) to increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes, and ask unanimous consent that the

1. 121 CONG. REC. 40671, 94th Cong. 1st Sess.
2. *House Rules and Manual* § 913b (1997).
3. See 121 CONG. REC. 40676, 40677, 40680, 40681, 94th Cong. 1st Sess., Dec. 15, 1975.

statement of the managers be read in lieu of the report. . . .

POINT OF ORDER

MR. GOLDWATER: Mr. Speaker, a point of order.

THE SPEAKER:<sup>(4)</sup> The gentleman will state it.

MR. GOLDWATER: Mr. Speaker, I make a point of order to that part of section 301 which adds to the new motor vehicle improvements and cost saving account a new title V, part B, entitled "Application Advanced Automotive Technology."

My point of order is that it is non-germane, pursuant to clause 4, rule XXVIII.

Part B of title V was not in the House bill, as passed in H.R. 7014, but it was in the Senate version and it is in the conference report.

If the section had been offered as an amendment on the House floor, it would have been subject to a point of order as nongermane. Hence, it is subject to a nongermaneness point of order now under rule XXVIII, clause 4.

May I point out to the Speaker that the automotive R & D part of title V is wholly unrelated to the oil pricing and conservation thrust of the bill. Besides, the Science and Technology Committee has jurisdiction of all nonnuclear energy R. & D. matters, and this is an R. & D. incentive program which clearly falls in that jurisdiction.

The original Senate version of section 546 was contained in title II of the Senate bill (S. 1883). H.R. 9174 was introduced on July 31, 1975, by the

4. Carl Albert (Okla.).

gentleman from Washington (Mr. McCormack) and was referred to the Committee on Science and Technology. H.R. 9174 basically included all of title II of the Senate bill (S. 1883), specifically the loan guarantee provision. The committee jurisdiction was positively established by that referral.

Mr. Speaker, I insist on my point of order.

PARLIAMENTARY INQUIRY

MR. STAGGERS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. STAGGERS: Mr. Speaker, my parliamentary inquiry is that I had asked unanimous consent that the statement on the part of the managers be read in lieu of the report.

Mr. Speaker, I would like to go through with that before any other unanimous-consent requests or any other points of order are made against the bill. It does not jeopardize any point of order and then I would be glad to answer any questions.

THE SPEAKER: The Chair had asked whether there was any objection to the request and there was no objection. It was so ordered.

MR. STAGGERS: So, Mr. Speaker, it is now considered as read?

THE SPEAKER: The request that the statement be read in lieu of the report has been granted. It does not jeopardize any point of order. . . .

MR. GOLDWATER: Mr. Speaker, I yield back my time. I have made my point of order.

MR. DINGELL: Mr. Speaker, I think that this is not a good point of order, but out of grace and in order to give the

House a chance to vote on this as an orderly procedure—I protested the disorderly procedure with the ERDA bill which was before us—but in order to have orderly procedure I will not contest the point of order, and I do not think my good friend from West Virginia, the chairman of the committee (Mr. Staggers) will contest it. Under those circumstances, I think it is appropriate for the Chair to rule on the point of order with regard to germaneness in order that we may proceed.

MR. STAGGERS: Mr. Speaker, I would say that we have a separate vote on the point of order and then under those circumstances we would be able to proceed.

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

MR. STAGGERS: I would say to the gentleman from California that it is without prejudice—

MR. [OLIN E.] TEAGUE [of Texas]: Whether he concedes it or not, I would like to be heard on the point of order.

THE SPEAKER: The Chair is going to sustain the point of order.

MOTION OFFERED BY MR. GOLDWATER

MR. GOLDWATER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Goldwater moves that part B, title V in section 301 of S. 622 be rejected.

THE SPEAKER: The gentleman from California (Mr. Goldwater) is recognized for 20 minutes and the gentleman from West Virginia (Mr. Staggers) is recognized for 20 minutes.

The Chair recognizes the gentleman from California. . . .

The question is on the motion offered by the gentleman from California (Mr. Goldwater).

The question was taken; and the Speaker announced that he was in doubt.

MR. GOLDWATER: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 300, nays 103, not voting 31 . . . .

So the motion to reject was agreed to.

### *Consideration of Several Points of Order Against a Conference Report*

**§ 30.16 Where a point of order is sustained against a provision in a conference substitute on the ground that it is not germane under Rule XXVIII clause 4,<sup>(5)</sup> another point of order against a provision in the report or against the totality of the report will not be entertained by the Speaker until the motion to reject the nongermane provision has been disposed of.**

During consideration of the conference report on S. 622, the En-

5. *House Rules and Manual* § 913b (1997).

ergy Policy and Conservation Act of 1975, a point of order was sustained against a portion of the conference substitute as not germane.<sup>(6)</sup> Before a motion was entertained and disposed of to reject the offending provision, further proceedings transpired as follows:<sup>(7)</sup>

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, may I reserve the right to make a point of order? I am going to make a point of order against the whole conference report.

THE SPEAKER:<sup>(8)</sup> That would come later.

MR. TEAGUE: But the Speaker will reserve my right?

THE SPEAKER: Could the Chair make himself clear to the gentleman? That might depend upon the outcome of the motion the gentleman from California will make.

MR. [JOHN D.] DINGELL [Jr., of Michigan]: I think the gentleman wants to be heard; he desires to be heard.

I ask unanimous consent that he be heard at this time on the point of order which, by concession, without waiving questions of jurisdiction—

THE SPEAKER: The Chair has no authority to hear arguments on matters not related to the point of order made by the gentleman. If the gentle-

6. See proceedings carried in §§ 25.11, 25.20, *supra*.

7. 121 CONG. REC. 40677, 94th Cong. 1st Sess., Dec. 15, 1975.

8. Carl Albert (Okla.).

man from California makes a motion, the business which transpires after the motion made by the gentleman will determine whether certain other points of order will be in order.

PARLIAMENTARY INQUIRY

MR. GOLDWATER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GOLDWATER: Has the Chair ruled on the point of order.

THE SPEAKER: The Chair sustained the point of order.

MOTION OFFERED BY MR. GOLDWATER

MR. GOLDWATER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Goldwater moves that part B, title V in section 301 of S. 622 be rejected.

THE SPEAKER: The gentleman from California (Mr. Goldwater) is recognized for 20 minutes and the gentleman from West Virginia (Mr. Staggers) is recognized for 20 minutes.

*Debate on Motion To Reject Nongermane Provision*

**§ 30.17 The House conferee who has been recognized for the 20 minutes debate in opposition to a motion to reject a nongermane provision in the report is entitled to close the debate on the motion.**

When a point of order against a conference report on the Senate

bill, S. 3201, amending the Public Works and Economic Development Act, was conceded, a motion to reject the provision which was not germane was offered. The proceedings and the recognition to debate the motion were as indicated herein.<sup>(9)</sup>

MR. [ROBERT E.] JONES of Alabama: Mr. Speaker, I call up the conference report on the Senate bill (S. 3201) to amend the Public Works and Economic Development Act of 1965, to increase the antirecessionary effectiveness of the program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from Alabama?

There was no objection.

MR. [JACK B.] BROOKS [of Texas]: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER: The gentleman will state his point of order.

MR. BROOKS: Mr. Speaker, I make the point of order that title II of the conference report constitutes a nongermane Senate provision to the House-passed version of the bill, in violation of rule XXVIII, clause 4.

Mr. Speaker, I ask to be heard on my point of order.

9. 122 CONG. REC. 20020, 20027, 94th Cong. 2d Sess., June 23, 1976.

10. Carl Albert (Okla.).

THE SPEAKER: The Chair recognizes the gentleman from Texas (Mr. Brooks).

MR. BROOKS: Mr. Speaker, we are in the identical position we were in last January when a House-passed bill authorizing grants for public works construction projects was brought back to the House containing a Senate amendment that established an entirely new program of Federal assistance to State and local governments. . . .

Mr. Speaker, we have precisely the same situation here. The House has passed H.R. 12972, providing solely for the construction of public works projects to help cut unemployment. The Senate added a provision for grants to State and local governments to pay for basic governmental services, and that provision has been brought back again as title II of the conference report.

Title II is still a form of revenue sharing and clearly not germane to the subject matter of H.R. 12972. Also, it is not within the jurisdiction of the Public Works and Transportation Committee.

Mr. Speaker, I could elaborate on this argument, but in view of the Chair's ruling last January, I do not think it is necessary to do so.

MR. JONES of Alabama: Mr. Speaker, will the gentleman yield? . . .

Mr. Speaker, I was going to be a little bit more gracious than the gentleman expected.

Mr. Speaker, this proposition has been resolved before. We concede the point of order.

THE SPEAKER: The gentleman from Alabama (Mr. Jones) concedes the point of order. The point of order is sustained.

MOTION OFFERED BY MR. BROOKS

MR. BROOKS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Brooks moves the House reject title II of S. 3201 as reported by the Committee of Conference.

THE SPEAKER: The gentleman from Texas (Mr. Brooks) is recognized for 20 minutes. . . .

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The gentleman from Texas (Mr. Brooks) has 2 minutes remaining, and the gentleman from Texas (Mr. Wright) has 2 minutes remaining. The gentleman from Texas (Mr. Wright) has the right to close debate.

*Application of Germaneness Rule to Provision in Senate Bill in Conference*

**§ 30.18 Where a germaneness point of order is sustained against a provision of a conference report, the House may vote to reject the provision. A provision in a conference report on a Senate bill sent to conference with a House amendment in the nature of a substitute was held to violate Rule XXVIII clause 4 where it would not have been germane had it been offered as an amendment to**

11. Sam M. Gibbons (Fla.).

**the House amendment in the nature of a substitute.**

The conference report on S. 555, the Ethics in Government Act of 1978, recommended that the Senate recede from its disagreement to the House amendment in the nature of a substitute and concur therein with a further amendment. The point of order was directed to the germaneness of the proposed amendment to the House amendment.

The House amendment in the nature of a substitute related to official actions of federal officials, while the Senate provision permitted the appointment of a special prosecutor to investigate any criminal offenses, whether official actions or not, by a federal official.

Portions of the argument on the point of order raised by Mr. Charles E. Wiggins, of California, the statements of Mr. James R. Mann, of South Carolina, in defense of the conference report, and the ruling of the Chair, excerpted from the Record of Oct. 12, 1978,<sup>(12)</sup> follow. Note that Members refer to the provision of the conference report in question as a Senate amendment, technically, as

12. 124 CONG. REC. 36460, 36461, 95th Cong. 2d Sess.

stated above, it is a provision of a conference report although apparently included at the insistence of the Senate conferees.

POINT OF ORDER

MR. WIGGINS: Mr. Speaker, I make a point of order against title VI of the conference report. That, for the Speaker's information, is the title dealing with the special prosecutor language in the conference report, and I request to be recognized on my point of order.

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The Chair will hear the gentleman from California.

MR. WIGGINS: Mr. Speaker, my point of order is based upon rule XXVIII, which is the germaneness section. It is my position, Mr. Speaker, that title VI is a nongermane Senate amendment and it violates that section of the House rules which I have cited. It is to be remembered, Mr. Speaker, that a similar amendment to the Senate amendment was offered on the House floor during our consideration of H.R. 1. At that time an objection was raised to the amendment on the ground that it was nongermane to the bill. At that time the Speaker sustained the point of order.

It is my view, Mr. Speaker, that for the very reasons cited by the Speaker in rejecting the so-called Hyde amendment, the present Senate amendment is similarly defective and subject to a point of order.

13. Norman Y. Mineta (Calif.).

When the gentleman from Illinois (Mr. Hyde) argued forcefully that the amendment he proposed was germane, he called to the attention of the Speaker that the issue dealt broadly with ethics in Government, but that argument did not prevail. He also called to the attention of the Speaker that the special prosecutor language was referred to the Judiciary Committee, but that language did not prevail.

Indeed, every argument which I think the proponents of the Senate language must now make in order to sustain the germaneness of this amendment was considered by the Speaker only several days ago and was rejected.

I wish, however, to not rest my case entirely upon the arguments which were made most cogently by the gentleman from California (Mr. Danielson) as he argued against the point of order earlier but rather wish to proceed by saying that the language in the special prosecutor amendment added by the Senate is so broad and sweeping that it covers in several respects private individuals, that is to say, new classes of people who are not covered under the sweep of the ethics bill.

As the Speaker knows, the ethics bill in the various titles affects those in the legislative branch, the executive branch, and the judicial branch of Government. However the special prosecutor legislation goes beyond that. It includes former members of the executive branch who are by hypothesis in private life. It also includes private individuals who have never served in Government, namely the campaign manager of a Presidential campaign or a person in a similar position connected with a Presidential campaign.

Under the Senate amendment a special prosecutor may be appointed in the event of alleged irregularities by these private individuals.

Now, Mr. Speaker, this is extending the categories of coverage in a very significant way and is a basis for my point of order to be sustained, but before I rest my case, Mr. Speaker, I wish to address myself to a more fundamental reason.

The special prosecutor bill, which is tacked on to the ethics bill, is a complicated and important piece of legislation. It was considered in detail by a different subcommittee in the Committee on the Judiciary which did not consider the ethics bill. It is true that the Committee on the Judiciary reported out a special prosecutor bill but it was never brought to the floor of the House and, indeed, has never been debated nor subject to amendment by Members of this House. . . .

I hope the Speaker will sustain my point of order.

THE SPEAKER PRO TEMPORE: The Chair will recognize the gentleman from South Carolina on the point of order.

MR. MANN: . . . The House amendment to S. 555 is actually the text of H.R. 1 as passed by the House. The text of H.R. 1, as finally approved, was actually the text of an amendment in the nature of a substitute, as amended. Thus, the issue, as I understand it, is whether the provisions of title VI of the conference report would have been germane to the amendment in the nature of a substitute which eventually became the text of House bill, H.R. 1, had the provisions of title VI been offered as an amendment to the amend-



ment in the nature of a substitute. I believe that the provisions of title VI would have been germane to the amendment in the nature of a substitute and that the Chair should therefore overrule the point of order.

During the consideration of the amendment in the nature of a substitute, the gentleman from Illinois (Mr. Hyde) offered an amendment with provisions similar to, but also critically different from, the provisions of title VI of the conference report. Unlike title VI of the conference report, the gentleman's amendment included Members of Congress. Since title II of the amendment in the nature of a substitute was limited to financial disclosure by executive branch personnel, the amendment of the gentleman from Illinois was not germane to title II and a point of order to his amendment was sustained.

The basic test for determining germaneness is whether the fundamental purpose of the amendment is germane to the fundamental purpose of the bill. The question here, then, is whether the fundamental purpose of title VI is germane to the fundamental purpose of the amendment in the nature of a substitute. I submit that it is. The purpose of the amendment in the nature of a substitute, which is subtitled the "Ethics in Government Act," is to promote ethical conduct by Federal Government officials and certain other private citizens. The purpose of title VI of the conference report is also to promote ethical conduct.

A second test for germaneness is whether the subject matter of the amendment relates to the subject matter of the bill. The question here is

whether the subject matter of title VI of the conference report relates to the subject matter of the amendment in the nature of a substitute. I submit that it does.

The subject matter of the amendment in the nature of a substitute was broad. It encompassed ethical standards and conduct involving officials in all three branches of the Federal Government—legislative, executive, and judicial—as well as certain private citizens.

With regard to Federal Government employees and officials, it required detailed financial disclosure statements to be filed by people in all three branches of Government. It established an Office of Government Ethics with broad authority, including the power to promulgate regulations pertaining to "conflicts of interest and ethics in the executive branch." It amended our Federal criminal law in the area of conflicts of interest. . . .

Therefore, Mr. Speaker, the amendment in the nature of a substitute applied to private citizens when their status or relationship to people within the Government would create ethical or conflict-of-interest problems within the Federal Government. . . .

Based upon the above, Mr. Speaker, I submit that the provisions of title VI of the conference report would have been germane to the amendment in the nature of a substitute if those provisions had been offered as a separate title to the amendment in the nature of a substitute.

Therefore, I submit that the point of order should be overruled. . . .

MR. WIGGINS: Mr. Speaker, I am fully sympathetic with the awkward

position in which the gentleman from South Carolina (Mr. Mann) finds himself. He knows full well that the Chair sustained a point of order against a similar special prosecutor proposal when this matter was considered in the House. It is incumbent upon him to distinguish that action, obviously, in order to take the contrary point of view. Now he attempts to distinguish the recent decision of the Speaker by pointing out that the so-called Hyde amendment was nongermane to a title. However, had it been offered as a separate title, the argument of nongermaneness would not have prevailed.

Since this Senate proposal is a separate title, he urges the Speaker to adopt that reasoning. However, the trouble, Mr. Speaker, is that my friend, the gentleman from South Carolina, misunderstands the germaneness rule. An amendment, in order to overcome a charge of nongermaneness, must be germane to the bill and not to a title. That is the basis upon which the distinction is made that it was nongermane to a title. . . .

THE SPEAKER PRO TEMPORE: The Chair has examined the ruling cited by the gentleman from California and the previous discussion relative to title II of the House bill in the discussion of the 27th of September and the ruling of the Chair at that time. In examining that, it is a narrow ruling, and it only applies to title II and not to the whole bill. In looking at the gentleman's point of order in this instance the gentleman from California makes two points, one as title VI relates to new classes of persons not covered by the House-passed bill, and the other in terms of the breadth of the types of conduct subject

to investigation by the special prosecutor.

It seems that under what is being considered here, the breadth of the investigation which the special prosecutor may undertake, goes far beyond the scope of the activity regulated by the House-passed bill. In looking at title VI, it authorizes the special prosecutor to investigate any violation of any Federal criminal law other than a violation constituting a petty offense—conduct which may or may not directly relate to the official duties of the persons covered. For that reason and for the reason that the Chair does not feel that the prior ruling is directly in point or a precedent in the present situation, the Chair does sustain the point of order.

Does the gentleman have a motion?

MOTION OFFERED BY MR. WIGGINS

MR. WIGGINS: Mr. Speaker, I now move that the House reject title VI of the conference report.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

Mr. Wiggins moves to reject title VI of the conference report on Senate 555.

THE SPEAKER PRO TEMPORE: The gentleman from California (Mr. Wiggins) is recognized for 20 minutes.

[Mr. Wiggins asked and was given permission to revise and extend his remarks.]

MR. WIGGINS: Mr. Speaker, as a result of the ruling of the Chair that the motion has been made to reject the Senate amendment, and 40 minutes of debate will follow, 20 minutes apparently to be controlled by me and, I pre-

sume, 20 minutes by the other gentleman from California. At the conclusion of 40 minutes of debate, or such portions thereof as we may consume, it is my intention to ask for a vote to reject title VI of the bill, the special prosecutor section.

***Use of Motion To Reject Non-germane Conference Provision***

**§ 30.19 Where conferees agreed to a Senate amendment which, in the House, was conceded to be not germane, a point of order was raised under Rule XXVIII clause 4(a) and a motion to reject the provision was offered.**

Where a House bill (reported by the Committee on Public Works) contained an authorization for state and local governments to embark on new public works projects, a Senate amendment adding a new title to the bill mandating the use of previously appropriated funds for public works and reclamation (and within the jurisdiction of the Committee on Appropriations) was agreed to by the conferees. As a consequence, a point of order was made in the House that the conferees had agreed to an amendment which was not germane, the point of

order was conceded, and a motion was offered to reject the provision.

The relevant proceedings of May 3, 1977,<sup>(14)</sup> were as follows:

MR. [ROBERT A.] ROE [of New Jersey]: Mr. Speaker, I call up the conference report on the bill (H.R. 11) to increase the authorization for the Local Public Works Capital Development and Investment Act of 1976, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [ROBERT A.] YOUNG of Missouri: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER PRO TEMPORE:<sup>(15)</sup> The gentleman will state his point of order.

MR. YOUNG of Missouri: Mr. Speaker, the inclusion of title II of the conference report on H.R. 11 is in violation of clause 4 of rule XXVIII of the Rules of the House of Representatives.

Mr. Speaker, it should be obvious to my colleagues that this bill—H.R. 11—has come back from conference with an unrelated, nongermane amendment.

Title 1 of this bill authorizes \$4 billion to be channeled to State and local governments throughout the country to create new public works jobs. The goal is to reduce the Nation's high unemployment rate.

In contrast, title 2 concerns previously approved water projects, with a

14. 123 CONG. REC. 13242, 13243, 95th Cong. 1st Sess.

15. Abraham Kazan, Jr. (Tex.).

principal goal of providing new flood control, water management and recreational benefits.

The jurisdiction over title 2 currently rests with the Appropriations Committee, and no longer involves the Public Works Committee. Therefore, title 2 should be excluded from consideration now and allowed to be handled by the appropriate committee.

My argument of nongermaneness is based on several precedents cited in Deschler's Procedure. May I call your attention to 4.25 of Deschler's chapter 28 which reads:

To a bill reported by the Committee on Public Works authorizing funds for highway construction and for mass transportation systems which use motor vehicles on highways, an amendment relating to urban mass transit (a subject within the jurisdiction of the Committee on Banking and Currency) and to rapid rail transportation and assistance to the railroad industry (within the jurisdiction of the Committee on Interstate and Foreign Commerce) was ruled out as not germane. 118 Congressional Record 34111, 34115, 92d Congress, 2nd Session, Oct. 5, 1972.

I would also like to cite 4.12 reading:

An amendment relating to railroads generally, which was offered to a bill pertaining solely to urban transportation, was ruled out as not germane. 116 Congressional Record 34191, 91st Congress, 1st Session, Sept. 29, 1970.

Finally I ask you to refer to 4.12 which reads:

To a bill establishing penalties for desecration of the American flag, an amendment establishing certain restrictions upon exporting the flag was ruled out as not germane. 113

Congressional Record 16495, 90th Congress, 1st Session, June 20, 1967.

These precedents form the basis of my point of order—that title 2 is simply not germane to the local public works bill.

THE SPEAKER PRO TEMPORE: Does the gentleman from New Jersey (Mr. Roe) wish to be heard in debate on the point of order?

MR. ROE: No, Mr. Speaker. We concede the point of order.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey (Mr. Roe) concedes the point of order. The Chair sustains the point of order.

MOTION OFFERED BY MR. YOUNG OF MISSOURI

MR. YOUNG of Missouri: Mr. Speaker, I move, in conformity with the matter involved in the point of order, that the House reject title II of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Young) is recognized for 20 minutes on his motion.

MR. YOUNG of Missouri: Mr. Speaker, I yield myself such time as I may consume.

PARLIAMENTARY INQUIRY

MR. ROE: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman will state it.

MR. ROE: Mr. Speaker, I understand that the Chair has allotted 20 minutes to the gentleman from Missouri (Mr. Young).

16. Thomas P. O'Neill, Jr. (Mass.).

THE SPEAKER: The gentleman is correct. And the gentleman from New Jersey (Mr. Roe) will also be recognized for 20 minutes.

MR. ROE: I thank the Chair.

The motion to reject was itself defeated,<sup>(17)</sup> and the conference report as reported was eventually agreed to.<sup>(18)</sup>

***Determining Whether Conference Provision Is Germane***

**§ 30.20** In determining whether a portion of a Senate amendment to a House bill included in a conference agreement would have been germane if offered in the House, the Chair examines, *inter alia*, the diversity of the House bill, the House committee jurisdiction of a particular law amended in the Senate provision; and the fact that a part of that law bestows a duty on another House committee is not necessarily conclusive in deciding whether a point of order under Rule XXVIII clause 4(a) would lie in the House.

17. 123 CONG. REC. 13245, 95th Cong. 1st Sess.

18. *Id.* at p. 13256.

On Aug. 3, 1977,<sup>(19)</sup> the conference report on the Foreign Relations Authorization Act for fiscal 1978 was called up for consideration. A point of order was raised under Rule XXVIII clause 4(a) that section 515 of the report was derived from a Senate amendment, included in the conference report, which would not have been germane had it been offered in the House to the House text.

A part of section 515 is carried below, with the point of order and the Speaker's response.

FOREIGN GIFTS AND DECORATIONS

SEC. 515. (a)(1) Section 7342 of title 5, United States Code, is amended to read as follows:

"§ 7342. Receipt and disposition of foreign gifts and decorations

"(a) For the purpose of this section—

"(1) 'employee' means—

"(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission; . . .

"(E) the President and the Vice President;

"(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and . . .

"(6) 'employing agency' means—

"(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Represen-

19. 123 CONG. REC. 26532, 26533, 95th Cong. 1st Sess.

tatives, except that those responsibilities specified in subsections (c)(2)(A), (e), and (g)(2)(B) shall be carried out by the Clerk of the House;

“(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate;

“(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and . . .

“(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

“(A) deposit the gift for disposal with his or her employing agency; or . . .

“(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees. . . .

#### POINT OF ORDER

MR. [BRUCE F.] CAPUTO [of New York]: Mr. Speaker, a point of order.

I would like to make a point of order and I regret that it comes at so late an hour and after the previous discussion. I make the point of order that the matter contained in section 515 of the conference report would not be germane to H.R. 6689 under clause 7 of rule XVI if offered in the House and is therefore subject to a point of order under clause 4 of rule XXVIII.

Let me state that the language in the conference report substantially changes the terms under which the Members of Congress can accept or authorize acceptance of things of value from foreign governments.

The Constitution clearly provides in article I that each House shall write its own rules. The House has a rule of its

own on this matter, rule 44, which we only recently modified, under which Members of Congress could receive things of value from foreign governments.

The conference report changes that rule because it is a subsequent act of this House and in direct conflict with that rule. . . .

If the Chair does not sustain my point of order, he will be in effect sustaining the other body in writing the rules of this House.

I insist on my point of order Mr. Speaker.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> Does the gentleman from Florida wish to be heard on the point of order?

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, I would like to be heard on the point of order.

First of all, we are dealing with the 1966 Foreign Gifts and Declarations Act which is clearly and certainly within the jurisdiction of the committee.

The bill that went to the conference is broad and diverse enough to handle the subject matter in this amendment.

Finally, we do not in any way change the rules of the House. We are dealing with an act. We in no way impinge on the Ethics Committee or the rule the gentleman cited. That is clearly within their jurisdiction, it stays there, and is in no way affected by this amendment.

Therefore I would hope the Chair would overrule the point of order. . . .

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

<sup>20</sup> Dan Rostenkowski (Ill.).

The gentleman from New York makes a point of order that the conference report contains, in section 515, matter contained in the Senate amendment which would not have been germane to the bill if offered in the House.

Section 515 amends the Foreign Gifts and Declarations Act to provide new guidelines and procedures relating to the acceptance by employees of the United States of gifts and awards from foreign governments. The section provides that the Committee on Standards of Official Conduct shall have the functions of regulating the minimum value of an acceptable gift for Members and employees of the House of Representatives, of consenting to the acceptance by Members and employees of gifts in certain circumstances, and of disposing of unacceptable gifts through the General Services Administration. H.R. 6689, the Foreign Relations Authorization Act, as passed by the House, contained a wide variety of amendments to existing laws within the jurisdiction of the Committee on International Relations relating generally to the foreign relations of the United States and the operations of the Department of State, the U.S. Information Agency, and the Board for International Broadcasting. It thus appears to the Chair that an amendment to the Foreign Gifts and Declarations Act, a law within the jurisdiction of the committee and relative to our foreign relations, would have been germane to the bill if offered in the House, particularly since section 111 of the House bill dealt with foreign employment by officers of the United States notwithstanding article I, section 9 of the Constitution. The Foreign

Gifts and Declarations Act arose from the identical constitutional provision. The fact that the Senate amendment placed new responsibilities on a standing committee of the House does not render the provision subject to a point of order, since no attempt is made to amend the rules of the House or to otherwise exceed the jurisdiction of the Committee on International Relations.

For the reasons stated, the Chair overrules the point of order.

*Parliamentarian's Note:* The thrust of the point of order was that the conference language implicitly amended the rules of the House by imposing an obligation on the Committee on Standards of Official Conduct. But the impact of the provision, carried in an act over which the Committee on Foreign Affairs had jurisdiction, was to vest the regulatory authority under that act in relation to the House of Representatives, not to supersede a more restricting standard imposed by the rules of the House.

***Determining Whether Provision in Conference Report Is Germane***

**§ 30.21 The test of germaneness of a motion to recede and concur in a Senate amendment in disagreement with a further amendment is**

**the relationship between the proposed House amendment and the total Senate amendment, and not the relationship between one portion of the Senate amendment and that of the proposed House amendment.**

Where conferees reported in complete disagreement from the conference on the omnibus judgeship bill, H.R. 7843, the manager of the House report moved to recede from disagreement and concur in the Senate amendment (a complete amendment in the nature of a substitute) with a further amendment. The proceedings of Oct. 4, 1978,<sup>(1)</sup> were as follows:

CONFERENCE REPORT ON H.R. 7843,  
OMNIBUS JUDGESHIP BILL

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, I call up the conference report on the bill (H.R. 7843) to provide for the appointment of additional district and circuit judges, and for other purposes, and ask for its immediate consideration.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement, see proceedings of the House of September 28, 1978.)

1. 124 CONG. REC. 33502-06, 95th Cong. 2d Sess.
2. Abraham Kazen, Jr. (Tex.).

THE SPEAKER PRO TEMPORE: The Clerk will report the Senate amendment.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert: . . .

SEC. 5. That section 41 of title 28 of the United States Code is amended to read in part as follows:

"The twelve judicial circuits of the United States are constituted as follows:

"Circuits	Composition
* * *	* * *
Fifth. . . . .	Alabama, Florida, Georgia, Mississippi, Canal Zone. . . .

MR. RODINO: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Rodino moves that the House recede and concur in the Senate amendment to the bill H.R. 7843 with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: . . .

Sec. 6. Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its en banc function by such number of members of its en banc courts as may be prescribed by rule of the court of appeals. . . .

POINT OF ORDER

MR. [ROBERT] McCLORY [of Illinois]: Mr. Speaker, I make a point of order on section 6 of the amendment which is being offered by the gentleman from New Jersey (Mr. Rodino).



THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MCCLORY: Mr. Speaker, I make the point of order that section 6 of the amendment offered by the gentleman from New Jersey is not a germane modification of the House bill and the Senate amendment thereto. Section 6 is an entirely new subject introduced under color of amendment contrary to clause 7 of rule XVI. Section 6 is not what is commonly known as a nongermane Senate amendment but rather is a nongermane House amendment.

Section 6 treats with the subject of "administrative units." Neither the House bill nor the Senate amendment treat with that subject. The Senate amendment did create a new 11th circuit. But the creation of new administrative units are very different subjects, the former being quite fundamental and the latter being—in the chairman's view—much less so. Moreover, while the Senate amendment dealt with the creation of one new circuit, the pending amendment deals with all circuits.

Finally, section 6 sets new law for en banc courts. The House bill did not. The Senate amendment did not. But the pending amendment says that the number of members of an en banc court may be set by rule of court. Current law—which neither body has sought to change—requires en banc courts comprised of all the judges.

For these reasons, section 6 is not germane.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey is recognized.

MR. RODINO: Mr. Speaker, I urge, first of all, that the matter in section 6

is wholly appropriate to the subject matter of the bill, which includes matters pertaining to all 11 circuits, and there is no issue of germaneness, therefore. If it is outside of the scope of the conference, that is not relevant. We are in technical disagreement.

Mr. Speaker, I would urge, therefore, rejection of the point of order.

MR. MCCLORY: Mr. Speaker, I just point this out, as I did: It is not a question of technical disagreement; it is a question that there was nothing in the Senate bill and nothing in the House bill. The Senate bill did provide for splitting the fifth circuit. I guess that is what they are trying to accomplish here, but what in fact is occurring is that they are trying to develop an administrative procedure which will set up the courts themselves without any law, without any act on the part of this body, to do something. . . .

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

The Chair agrees with the gentleman from Texas on the essence of her argument. The essential question, since the conferees reported in disagreement, is whether the proposed motion is germane to the Senate amendment. The Senate amendment was much broader than the House version.

The Chair has a little difficulty in really pinpointing the point that the gentleman from Illinois makes. It may be that he intends his point of order to lie against the motion under rule XXVIII, clause 5. Clause 5(b)(2) of rule XXVIII provides that a point of order may be made upon the offering of a motion to recede and concur with an amendment in an amendment of the Senate reported from conference in

disagreement, but only if the Senate amendment or a portion thereof as proposed to be amended by such motion contains matter which would not have been germane if offered to the House bill when it was under consideration.

The Chair would note, however, that the nongermane Senate matter to which the gentleman refers, the split of the 5th circuit into a 5th and an 11th circuit, is not proposed to be included even in modified form in the motion offered by the gentleman from New Jersey.

The amendment proposed to the Senate amendment provides, in section 6, for the establishment of administrative units in any court of appeals with more than 15 active judges, but deletes any mention of an adjustment of the fifth circuit.

Section 6 appears to the Chair to be a new proposition, not a modification of the portion of the Senate amendment dealing with the fifth circuit. Therefore, a point of order under clause 5 of rule XXVIII does not apply in this instance.

The only appropriate test is whether the entire amendment proposed by the gentleman from New Jersey in his motion is germane to the Senate amendment as a whole, and it appears to the Chair that it is germane since the Senate amendment dealt with diverse subjects including appointment of additional district and circuit judges, a split of the fifth circuit, assignments and terms of the courts, and jurisdictional requirements.

For all of these reasons, the Chair will very respectfully overrule the point of order.

***Special Order May Protect Nongermane Motion While Not Precluding a Preferential Motion***

**§ 30.22** Where a special order specified that it would be in order to offer a motion to recede and concur in a Senate amendment reported from conference in disagreement and then concur therein with an amendment which would not be germane, it is still in order to offer a preferential motion to recede and concur; and if the House does recede from its disagreement (the preferential motion being divided), the motion to concur with the nongermane amendment remains preferential.

Following consideration of the urgent supplemental appropriation bill, fiscal year 1982, the House began consideration of amendments reported from conference in disagreement. The House had previously adopted a special order, providing that it would be in order during consideration of one such amendment in disagreement, to offer a motion to recede and concur with an amendment which would not have

been germane if offered without a waiver of points of order.

Mr. Vic Fazio, of California, offered this special motion when the appropriate amendment in disagreement was reached. The subsequent proceedings of June 16, 1982,<sup>(3)</sup> are carried here.

THE SPEAKER PRO TEMPORE:<sup>(4)</sup> The Clerk will designate the next amendment in disagreement.

The amendment reads as follows:

Senate amendment No. 62: Page 22, after line 18, insert:

SEC. 217. (a) The last sentence of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by inserting “, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000” after “home”. . . .

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of House Resolution 502, it is in order to consider a motion to recede and concur with an amendment printed in the *Congressional Record* of June 15, 1982, by Representative Fazio.

#### PARLIAMENTARY INQUIRY

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

3. 128 CONG. REC. 13870, 13871, 13877, 13878, 97th Cong. 2d Sess.

4. George E. Brown, Jr. (Calif.).

MR. YATES: Mr. Speaker, I propose to offer a preferential motion for the House to recede and concur with respect to Senate amendment No. 62.

At what point do I offer that amendment?

THE SPEAKER PRO TEMPORE: After the motion of the gentleman from California (Mr. Fazio) has been read, it will be in order for the gentleman to present the motion.

#### MOTION OFFERED BY MR. FAZIO

MR. FAZIO: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Fazio moves that the House recede from its disagreement to the amendment of the Senate numbered 62 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

SEC. 217A. (a) The last sentence of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by inserting “, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000” after “home”. . . .

SEC. 217B. (a)(1) Except as provided by paragraph (2), no Member may, in any calendar year beginning after December 31, 1981, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

(2) In the case of any individual who becomes a Member during any calendar year beginning after December 31, 1981, such Member may not have outside earned income attributable to the portion of that calendar year which occurs after such

individual becomes a Member which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

(b) For purposes of subsection (a), honoraria shall be attributable to the calendar year in which payment is received.

(c) For the purposes of this section—

(1) "Member" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(2) "honorarium" means a payment of money or any thing of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for purposes of this paragraph any actual and necessary travel expenses incurred by the Member to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that they are not paid or reimbursed;

(3) "travel expenses" means, with respect to a Member, the cost of transportation, and the cost of lodging and meals while away from his residence or the greater Washington, District of Columbia, metropolitan area; and

(4) "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered but does not include—

(A) the salary of such Member as a Member;

(B) any compensation derived by such Member for personal services actually rendered prior to the effective date of this section or becoming

such a Member, whichever occurs later;

(C) any amount paid by, or on behalf of, a Member to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such Member from such a plan; and

(D) in the case of a Member engaged in a trade or business in which the Member or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by such Member so long as the personal services actually rendered by the Member in the trade or business do not generate a significant amount of income.

Outside earned income shall be determined without regard to any community property law. . . .

PREFERENTIAL MOTION OFFERED BY  
MR. YATES

MR. YATES: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Yates moves that the House recede and concur with Senate amendment No. 62.

THE SPEAKER PRO TEMPORE: The gentleman from California (Mr. Fazio) will be recognized for 30 minutes, and the gentleman from Massachusetts (Mr. Conte) will be recognized for 30 minutes.

MR. FAZIO: Mr. Speaker, I demand a division of the question.

THE SPEAKER PRO TEMPORE: The question will be divided.

Does the gentleman wish to debate the issue? . . .

The gentleman is recognized for 30 minutes.

MR. FAZIO: Mr. Speaker, I yield myself such time as I may consume. . . .

## PARLIAMENTARY INQUIRY

MR. [CHALMERS P.] WYLIE [of Ohio]: Mr. Speaker, I have a parliamentary inquiry. . . .

If the motion or the amendment by the gentleman from California (Mr. Fazio) prevails, then that wipes out, in effect, the motion to instruct conferees by the gentleman from Illinois (Mr. Yates). Is that correct? . . .

THE SPEAKER PRO TEMPORE: The motion before the House as divided is a motion to recede from disagreement to Senate amendment No. 62. . . .

MR. WYLIE: All right. If the motion to recede on the part of the gentleman from Illinois prevails, then we go to a vote on the amendment to that motion to recede?

THE SPEAKER PRO TEMPORE: If that is an inquiry, the answer is the House would then vote on a preferential motion to concur with an amendment if offered.

MR. WYLIE: All right. Now, if the amendment of the gentleman from California to the motion to recede prevails, then that, in effect, wipes out the motion to concur of the gentleman from Illinois.

MR. YATES: Yes.

THE SPEAKER PRO TEMPORE: The gentleman is, of course, correct.

## PARLIAMENTARY INQUIRY

MR. YATES: Mr. Speaker I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. YATES: Following up the gentleman's inquiry, if the amendment offered by the gentleman from California (Mr. Fazio) is voted down, then a vote

will occur on the motion that I have presented to concur with the Senate. Is that not correct?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

## PARLIAMENTARY INQUIRY

MR. FAZIO: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. FAZIO: It is my understanding that the first vote will be on receding to the Senate on the language that was adopted through the instruction of the conferees on this floor.

THE SPEAKER PRO TEMPORE: The Chair has stated that about three times.

MR. FAZIO: The second motion would be the vote on the addendum of the gentleman from California to that first language, and there is no question that that would take precedence.

THE SPEAKER PRO TEMPORE: The gentleman is correct. That motion is protected by the rule.

The gentleman from Massachusetts (Mr. Conte) has 15 minutes remaining. . . .

MR. YATES: I did ask the gentleman to yield for a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The Chair cannot anticipate what the Senate might do to the House amendment. But if the Senate were merely [to] disagree to the House amendment, the gentleman is correct.

*Standard Used in Determining Whether Portion of Conference Report Is Not Germane*

**§ 30.23 The test of germaneness under Rule XXVIII clause 4 of a portion of a conference report originally contained in a Senate amendment is its relationship to the final House version of the bill committed to conference and not to the original House-passed bill which may have been superseded by a House amendment to the Senate amendment prior to conference.**

The proper way of determining whether a portion of a conference report is not germane and subject to the point of order and possible separate vote procedure under Rule XXVIII is the comparison between the provisions in the Senate text against the final House text sent to conference.

In the instant example, the original House bill, H.R. 2973, dealt only with the repeal of interest and dividend withholding. The Senate amendment to the House text included both the repeal and provisions dealing with the Caribbean Basin initiative (an unrelated tariff and trade issue).

The proceedings on July 28, 1983,<sup>(5)</sup> are carried below.

MR. [TOM] HARKIN [of Iowa]: Then I have a parliamentary inquiry, Mr. Speaker.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The gentleman will state it.

MR. HARKIN: Mr. Speaker, under rule 28, it seems to me that after the reading of any conference report a point of order lies if, in fact, there is a provision in the conference report that is not germane to the bill that was passed by the House, and I do not think CBI is germane to the repeal of withholding.

THE SPEAKER PRO TEMPORE: In answer to the gentleman, by unanimous consent the House, prior to sending the bill to conference, joined both issues as a House amendment to the Senate amendment, so there is no germaneness question.

MR. HARKIN: Mr. Speaker, I am sorry, I cannot hear the Speaker.

THE SPEAKER PRO TEMPORE: By unanimous consent, the House joined both these issues, so there is no germaneness question.

MR. HARKIN: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HARKIN: Mr. Speaker, in other words, a unanimous-consent request was offered on the floor of the House during a House session to join both these issues and no one objected to that unanimous-consent request?

5. 129 CONG. REC. 21401, 98th Cong. 1st Sess.

6. John Joseph Moakley (Mass.).

THE SPEAKER PRO TEMPORE: The gentleman is correct.

***Where Motion To Reject a Non-germane Provision Is Defeated***

**§ 30.24 Where a point of order is sustained against a portion of a conference report not meeting the test of Rule XXVIII clause 4(a), that the provision would have been germane if offered in the House, and the motion to reject the offending provision then is rejected, the debate then begins on the conference report itself.**

The sequence of events shown in the following proceedings from the *Congressional Record* of Oct. 11, 1984,<sup>(7)</sup> illustrate the procedural steps under Rule XXVIII clause 4(a).<sup>(8)</sup> Where the motion to reject is defeated, the Chair bestows the customary recognition for debating a conference report.

CONFERENCE REPORT ON H.R. 6027,  
LOCAL GOVERNMENT ANTITRUST ACT  
OF 1984

Mr. Rodino submitted the following conference report and statement on the

7. 130 CONG. REC. 32219, 32220, 32223, 32224, 98th Cong. 2d Sess.

8. *House Rules and Manual* § 913b (1997).

bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments:

CONFERENCE REPORT (H. REPT. NO.  
98-1158)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*This Act may be cited as the "Local Government Antitrust Act of 1984." . . .*

*SEC. 5. Section 510 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985 (Public Law 98-411), is repealed.<sup>(9)</sup>*

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, pursuant to House Resolution 616, I call up the conference report on the bill (H.R. 6027) to clarify the application of the Clayton Act to the official conduct of local governments, and for other purposes.

The Clerk read the title of the bill.

9. The conference report was filed on Oct. 10, 1984. See 130 CONG. REC. 31441, 98th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The Clerk will read the conference report.

The Clerk proceeded to read the conference report. . . .

POINT OF ORDER

MR. [CHARLES] WILSON [of Texas]: Mr. Speaker, I have a point of order.

I make the point of order that the last section of the conference report contains nongermane matters within the definition of clause 4 of rule XXVIII.

THE SPEAKER PRO TEMPORE: Does the gentleman from New Jersey desire to be heard on the point of order?

MR. RODINO: The gentleman from New Jersey desires to be heard on the point of order.

MR. WILSON: I would also like to be heard, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Texas.

MR. WILSON: Mr. Speaker, if the objectionable section had been offered to the House bill, it would have been in violation of the provisions of clause 7 of rule XVI of the House rules. The provision is a repeal of appropriations law.

That provision deals with spending levels for the Federal Trade Commission for this fiscal year. The legislation is a permanent piece of legislation that amends our antitrust laws. These amendments reduce monetary damages that local governments may be liable for in antitrust suits.

That has nothing to do with the provision of the last section of this confer-

ence report to which my point of order is directed.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

MR. RODINO: Mr. Speaker, I rise in opposition to the point of order against section 5 of the conference report. The fundamental purpose of this conference report is to provide for continued enforcement of the antitrust laws without severely damaging local governments. This legislation before us continues to ensure that antitrust violations will be prosecuted; but limits the amount of damages which can be assessed in such a case against a local governmental unit. It allows the aggrieved party to ensure that injunctive relief will be available to terminate anticompetitive activity of a local government. . . .

THE SPEAKER PRO TEMPORE: . . . [T]he Chair has had the opportunity of reviewing the point of order raised by the gentleman from Texas that pursuant to clause 4 of rule XXVIII, the conferees on H.R. 6027 have agreed to a nongermane Senate provision. Section 5 of the conference report on H.R. 6027 contains the substance of section 3 of the Senate amendment, which repealed section 510 of Public Law 98-411, the State, Justice, Commerce Appropriation Act for fiscal year 1985. . . .

For the reasons stated, the Chair sustains the point of order. . . .

MOTION OFFERED BY MR. WILSON

MR. WILSON: Mr. Speaker, I move, pursuant to clause 4(b) of rule XXVIII, to strike section 5 of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Wilson] is

10. Steny Hoyer (Md.).



entitled to 20 minutes in support of his motion.

Does the gentleman from Texas wish to use his time?

MR. WILSON: Mr. Speaker, I am prepared to yield back my time.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Rodino] is entitled to 20 minutes in opposition to the motion. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Texas [Mr. Wilson].

The question was taken; and on a division (demanded by Mr. Wilson) there were—yeas 8, nays 23. . . .

The vote was taken by electronic device, and there were—yeas 36, nays 298, not voting 98. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The gentleman from New Jersey [Mr. Rodino] will be recognized for 30 minutes, and the gentleman from New York [Mr. Fish] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

***Motion To Reject—Unusual Use of To Cure Defect Not Raised in Point of Order***

**§ 30.25 On one rare occasion, the motion to recede and concur with an amendment**

11. Frank Harrison (Pa.).

**offered by the manager of a conference report following rejection of a provision in the report held not to be germane under Rule XXVIII clause 4, deleted not only the nongermane part but another controversial paragraph which had been the focus of debate during argument on the first point of order.**

During consideration of the conference report on S. 622, the Energy Policy and Conservation Act of 1975, it became apparent in the debate that the conference report contained provisions exceeding its scope (Rule XXVIII clause 3)<sup>(12)</sup> as well as portions of text which were not germane to the House version and subject to motions to reject (under Rule XXVIII clause 4).<sup>(13)</sup> No point of order under clause 3 was pressed. Realizing that a subsequent conference report retaining that same scope problem would only delay a final resolution of the matters in disagreement, the manager<sup>(14)</sup> of the conference report modified his motion to

12. *House Rules and Manual* § 913a (1997).

13. *Id.* at § 913b.

14. Harley O. Staggers (W. Va.).

recede and concur in that portion of the conference amendment not rejected, going beyond what the provisions of Rule XXVIII clause 4, provide to rectify the parliamentary problem disclosed in debate but not the focus of a separate point of order. There was no objection raised to this procedure even though in contravention of the standing rule. Following an affirmative vote on a motion to reject under rule XXVIII clause 4, the following proceedings occurred:<sup>(15)</sup>

MOTION OFFERED BY MR. STAGGERS

MR. STAGGERS: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Staggers moves that the House recede from its disagreement to the Senate amendments to the House amendment and concur with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

*That this Act may be cited as the "Energy Policy and Conservation Act" . . .*

MR. STAGGERS (during the reading): Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the Record.

THE SPEAKER:<sup>(16)</sup> Is there objection to the request of the gentleman from West Virginia?

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, I reserve the right to object.

MR. [BARRY M.] GOLDWATER [Jr., of California]: Mr. Speaker, I reserve the right to object.

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, I reserve the right to object.

MR. STAGGERS: Mr. Speaker, I would like to explain that what we are referring to is on page 8, commencing with article 4, down to the small "d," which the gentleman from Illinois had objected to, and that has been deleted from the amendment.

MR. ANDERSON of Illinois: Mr. Speaker, reserving the right to object, as the gentleman knows, I was prepared to offer a point of order to section 102 of the bill on the grounds it violates clause 3 of rule XXVIII, in that as the conference report came back from the House it contained a proposition which was not committed to the conference committee. That objection was based on the fact that H.R. 7014, the House bill in the section dealing with incentives to developing underground coal mines, limited it to a \$750 million total program to new coal mines.

On page 8 of the conference report in subparagraph (2)(c)(4) is contained the language:

The term "developing new underground coal mines" includes expansion of existing underground coal mines.

15. 121 CONG. REC. 40681, 40710, 40711, 94th Cong. 1st Sess., Dec. 15, 1975.

16. Carl Albert (Okla.).

Mr. Speaker, existing mines are clearly not the same thing as new mines.

Do I understand that the motion which the gentleman from West Virginia has now sent to the desk would eliminate from the definition of coal mines as contained on page 8 of the conference report that the definition of developing new underground coal mines no longer includes the words, "includes expansion of existing underground coal mines"; has that language, by the gentleman's amendment, been removed from the conference report?

MR. STAGGERS: Mr. Speaker, it has been removed; but the rest of the definition, I will state again that on page 8, the section marked (4) has been deleted down through the small "d," deleted completely, the whole of the section.

### ***Adoption of Conference Report Under Suspension of the Rules***

#### **§ 30.26 The House has agreed to a motion to suspend the rules and adopt a conference report.**

On Dec. 31, 1970,<sup>(17)</sup> Speaker John W. McCormack, of Massachusetts, recognized Thaddeus J. Dulski, of New York, Chairman of the Committee on Post Office and Civil Service, to offer the following motion:

17. 116 CONG. REC. 44282, 44283, 44291, 44292, 91st Cong. 2d Sess.

Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 13000) to implement the Federal employee pay comparability system, to establish a Federal Employee Salary Commission and a Board of Arbitration, and for other purposes. . . .

THE SPEAKER: Is a second demanded?

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection.

THE SPEAKER: The gentleman from New York [Mr. Dulski] is recognized.

After debate had transpired on Mr. Dulski's motion, the proceedings concluded as follows:

THE SPEAKER PRO TEMPORE:<sup>(18)</sup> The question is on the motion of the gentleman from New York that the House suspend the rules and agree to the conference report on H.R. 13000. . . .

The question was taken; and there were—yeas 183, nays 54, not voting 195. . . .

So (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.<sup>(19)</sup>

*Parliamentarian's Note:* The conference report contained several provisions which were in neither the House bill nor the Senate amendment. The conference report was thus subject to a

18. John Slack (W. Va.).

19. See also 81 CONG. REC. 9463–69, 75th Cong. 1st Sess., Aug. 20, 1937.

point of order under Rule XXVIII clause 3. The Member was advised that if the conference report were called up under the regular procedure and a point of order were timely raised, the Speaker could sustain the point of order, and, if the text of the conference report were then offered as an amendment to the Senate amendment, the Speaker could sustain a point of order against such an amendment as being not germane to the Senate amendment.

***By Adoption of Special Order,  
House Rejected Conference  
Report***

**§ 30.27 By adoption of a special order, reported from the Committee on Rules, the House rejected a conference report, receded from its amendment to a Senate concurrent resolution, and concurred therein with a new amendment.**

On Dec. 19, 1985,<sup>(20)</sup> the House utilized a special order from the Committee on Rules to expedite consideration of H.R. 3128, providing for reconciliation pursuant

<sup>20</sup>. 131 CONG. REC. 38329, 38330, 38341, 99th Cong. 1st Sess.

to the concurrent resolution on the budget.

The resolution and the reason for its adoption are carried below.

CONSOLIDATED OMNIBUS RECON-  
CILIATION ACT OF 1985

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 349 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 349

*Resolved*, That upon the adoption of this resolution the conference report on the bill (H.R. 3128) to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1986 (S. Con. Res. 32, Ninety-ninth Congress) shall be considered as having been rejected, and the House shall be considered to have receded from its amendment to the Senate amendment to said bill, and to have concurred in the Senate amendment with an amendment inserting in lieu of the Senate amendment an amendment consisting of the text of the conference report, with the following modification: strike out Subtitle B of Title XIII.

THE SPEAKER PRO TEMPORE:<sup>(1)</sup> The gentleman from South Carolina (Mr. Derrick) is recognized for 1 hour. . . .

MR. DERRICK: Mr. Speaker, this resolution provides that upon adoption of the rule, the House is deemed to have rejected the conference report to accompany H.R. 3128, the Deficit Re-

<sup>1</sup>. Dale E. Kildee (Mich.).

duction Amendments of 1985. It further provides that the House shall be deemed to have receded from its position, and to have concurred in the Senate amendment to the bill, with an amendment.

The amendment to the Senate amendment shall consist of the substitute amendment reported from the committee on conference as modified by the deletion of certain sections of the conference's amendment. The sections which would be stricken from the conference committee's amendment are those which relate to the broad-based tax proposed by the conferees as a means of funding the Superfund Program. The adoption of the rule would effectively remove Superfund funding from the bill, leaving the other body to deal with this modified version of the conferees' decision.

Mr. Speaker, the procedure being employed by this rule is an unusual one. The Rules Committee chose to recommend this approach after sensing that the House indeed wants to see the enactment of a reconciliation measure but has indicated opposition to the use of the broad-based tax to finance the Superfund Program. The committee made its decision after hearing the concerns of several Members of the House earlier this evening who voiced strong opposition to the adoption of the manufacturers' excise tax. While the other body considers the approach an appropriate one, the House clearly rejected it during consideration of Superfund reauthorization legislation on the floor of the House. Further, it has been the position of the House to deal with the taxing provisions related to Superfund

as part of the overall reauthorization of that program. . . .

So the resolution was agreed to. . . .

THE SPEAKER PRO TEMPORE: Pursuant to the provisions of House Resolution 349, the conference report on H.R. 3128 is rejected, and the House recedes from its amendment to the Senate amendment and concurs with an amendment inserting in lieu of the Senate amendment an amendment consisting of the text of the conference report, with the following modifications: Strike out subtitle B of title XIII.

***Adoption of Conference Report,  
and Correction Thereto, by  
Suspension of Rules***

**§ 30.28 A conference report and a concurrent resolution making changes therein (by altering the enrollment) were simultaneously adopted under a motion to suspend the rules.**

On Aug. 1, 1983,<sup>(2)</sup> the House considered House Resolution 293. This was the first instance where a conference report and a concurrent resolution correcting its enrollment in advance of the adoption of the report were considered as one package. The reasons for this unusual procedure are de-

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2. 129 CONG. REC. 21925, 98th Cong. 1st Sess.

tailed in the Record extract included here.

MR. [PARREN J.] MITCHELL [of Maryland]: Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 293) providing that the House shall be considered to have adopted the conference report on the bill (S. 272) to improve small business access to Federal procurement information, to have receded from its amendment to the title of said bill, and to have adopted the concurrent resolution (S. Con. Res. 58) correcting the enrollment of S. 272.

The Clerk read as follows:

H. RES. 293

*Resolved*, That upon the adoption of this resolution the House shall be considered to have adopted the conference report on the bill (S. 272) to improve small business access to Federal procurement information, to have receded from its amendment to the title of said bill, and to have adopted the concurrent resolution (S. Con. Res. 58) correcting the enrollment of S. 272.

THE SPEAKER PRO TEMPORE:<sup>(3)</sup> Is a second demanded?

MR. [JOEL] PRITCHARD [of Washington]: Mr. Speaker, I demand a second.

THE SPEAKER PRO TEMPORE: Without objection, a second will be considered as ordered.

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Mitchell) will be recognized for 20 minutes, and the gentleman from Washing-

ton (Mr. Pritchard) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Maryland (Mr. Mitchell).

MR. MITCHELL: . . . The reason that this conference report is being handled on the suspension calendar is to avoid any possible point of order for exceeding the scope of conference. The provision which is in question is the effective date of the bill. The original House bill, which subsequently became a House amendment to the Senate bill, would have been effective upon enactment. The Senate bill, S. 272, was a more extensive bill and among other things imposes restrictions upon the authority of a contracting officer to enter negotiations for a sole source contract. The Senate bill also changes some of the provisions regarding publication of notice of procurement in the Commerce Business Daily rather than simply imposing timely notice requirements. Presumably, for these reasons the Senate felt a 45-day lead time was in order. Although the House conferees agreed with many of the provisions in the Senate bill, we felt that Federal departments should receive additional time to begin their compliance. As a result, the conferees delayed the effective date of the bill beyond the date specified in the Senate bill and thus may have exceeded the scope of conference. Consideration of the conference report on the suspension calendar avoids the possible raising of this technical violation.

In addition, after the conference report had been filed and after the Senate had approved the conference report, we received a letter from the Department of Defense expressing its concern

3. Dale E. Kildee (Mich.).

over some of the provisions of the conference report. . . . Although I do not necessarily agree with the Defense Department's views or the conclusions as to the impact of the conference report, nonetheless I agreed with my ranking minority member and the principal Senate conferees that it was advisable to adopt minor changes so as to preclude the possibility of erroneous interpretations and unintended results. As my colleagues know, conference reports cannot be amended on the floor as can a bill. The procedure needed to accomplish the changes is for the House and Senate to adopt a resolution for the Secretary of the Senate to make the changes. Such a change was introduced as Senate Concurrent Resolution 58 which basically includes the following: . . .

The Senate agreed to this resolution last Thursday.

Thus, under the motion I have made all we are doing is agreeing to the conference report with minor changes.

### *Procedure After Inadvertent Omission of Amendment*

§ 30.29 Where a House amendment to the title of a Senate bill was in conference, but inadvertently omitted from the conference report, the House adopted the report and then receded from its amendment to the title of the Senate bill.

On Oct. 19, 1967,<sup>(4)</sup> Mr. Harley O. Staggers, of West Virginia, called up the conference report on S. 1160, the Public Broadcasting Act of 1967. After the House adopted the conference report, the Clerk read the House amendment to the title of the bill, which had been omitted from the report. Speaker Pro Tempore Carl Albert, of Oklahoma, recognized Mr. Staggers:

Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Staggers moves that the House recede from its amendment to the title.

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the conference report on the motion to recede from the title amendment was laid on the table.

### *Concurrent Resolution Deleting Item in Enrollment of Conference Report*

§ 30.30 The House adopted a concurrent resolution, directing that in the enrollment of a conference report just adopted, a provision be deleted which was beyond

4. 113 CONG. REC. 29382-88, 90th Cong. 1st Sess.

**the scope of the differences committed to conference.**

On Aug. 20, 1974,<sup>(5)</sup> before calling up the conference report on the Pension Reform Act, H.R. 2, the manager of the conference report announced his intention to ask unanimous consent for the consideration of a concurrent resolution which would have the effect of deleting a controversial provision in the report which was not in either the House bill or the Senate amendment and would subject the conference report to a point of order.

The House adopted both the report and the concurrent resolution on Aug. 20, 1974; the Senate did the same on Aug. 22.

The explanation of the situation facing the House by Mr. Al Ullman, of Oregon, and pertinent parts of the concurrent resolution are carried here.

INTEGRATION BETWEEN PENSION PROGRAMS AND SOCIAL SECURITY SYSTEM

(Mr. Ullman asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

MR. ULLMAN: Mr. Speaker, in connection with the pension reform bill let me alert the Members as to how the

matter of integration between the pension programs and the social security system will be handled.

Many of us have received telegrams expressing concern about one of the provisions in the conference report on the Employee Retirement Security Act of 1974, I am referring to section 1021(g), which appears on pages 131 and 132 of the conference report of the House Committee on Ways and Means. . . .

Immediately following the action by the House on the Conference Report on H.R. 2, the "Employee Retirement Income Security Act of 1974", a concurrent resolution is to be offered for consideration of the House. This concurrent resolution authorizes the enrolling clerk of the House to make a series of clerical and technical corrections to the Conference Report before the enrollment of the bill. In addition to these technical and clerical corrections, however, there is also a provision instructing the enrolling clerk to delete from the Conference Report, section 1021(g) which appears on pages 131-132 of the Conference Report. The explanation of the provision deleted appears in the statement of managers on pages 280 and 281.

Later that day, Mr. Ullman called up House Concurrent Resolution 609:<sup>(6)</sup>

MR. ULLMAN: Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 609) and ask unanimous consent for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

5. 120 CONG. REC. 29190, 29191, 93d Cong. 2d Sess.

6. *Id.* at pp. 29216-19.



*Resolved by the House of Representatives (the Senate concurring),* That in the enrollment of the bill (H.R. 2) to provide for pension reform, the Clerk of the House of Representatives shall make the following corrections:

(1) In the item relating to section 405 of the bill in the Table of Contents, strike out "of" and insert in lieu thereof "by."

(2) In the item relating to part I of subtitle A of title II in the Table of Contents of the bill strike out "Part I" and insert in lieu thereof "Part 1" . . . .

(16) In section 401(a)(14) of the Internal Revenue Code of 1954, which is added by section 1021 of the bill, strike out the matter appearing after subparagraph (C) of such section 401 (a)(14) and insert in lieu thereof the same matter flush with the paragraph margin of such paragraph (14).

(17) In section 1021 of the bill, strike out subsection (g). . . .

MR. ULLMAN: This is the concurrent resolution that I spoke about earlier that deals primarily with technical corrections to the bill. This is a procedure that is used quite often on technical bills, but it also corrects the one substantive matter by removing from the conference report the language of section 1021(g) which was a matter that dealt with the integration between the private pension program and the social security system.

Now, this concurrent resolution will deal with that matter by removing it from the conference report.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

### *Use of Concurrent Resolution To Place New Matter in Conference*

**§ 30.31 By adoption of a concurrent resolution in both Houses, conferees may be authorized to consider a matter not committed to them in the text a bill passed by one House and amended by the other.**

On Dec. 17, 1974,<sup>(7)</sup> the House, by unanimous consent, adopted the following concurrent resolution which had been messaged from the Senate.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 124) relating to conference consideration of the bill (H.R. 17468), and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

<sup>7</sup> 120 CONG. REC. 40472, 93d Cong. 2d Sess.

THE SPEAKER:<sup>(8)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 124

*Resolved by the Senate (the House of Representatives concurring), That, due to an inadvertent omission in the Senate reported version of H.R. 17468, entitled "An act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1975, and for other purposes", in resolving the difference between the Senate and the House on such bill, it shall be deemed that the Senate agreed to an amendment (No. 6) striking from the House-passed bill the following section 111, and the conferees are authorized to consider the same:*

SEC. 111. Notwithstanding any other provision of law, funds available to the Department of Defense during the current fiscal year for the construction of family housing units may be used to purchase sole interest in privately owned and Federal Housing Commissioner held family housing units if the Secretary of Defense determines it is in the best interests of the Government to do so. . . .

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

Other examples of enlarging the scope of conference can be found in 5 Hinds' Precedents, §§ 6437-6439.

8. Carl Albert (Okla.).

### *Reconsideration of Vote*

**§ 30.32 A motion may be entered to reconsider the vote whereby a conference report was rejected.**

On Apr. 22, 1943,<sup>(9)</sup> the following occurred in regard to legislation providing for the payment of overtime compensation to government employees:

MR. [EUGENE] WORLEY [of Texas]: Mr. Speaker, I move to reconsider the action by which H.R. 1860 was on yesterday rejected.

MR. [ALBERT A.] GORE [of Tennessee]: Mr. Speaker, I make the point of order a quorum is not present.

MR. WORLEY: Mr. Speaker, I ask unanimous consent to enter the motion.

MR. GORE: Mr. Speaker, then I withdraw the point of order.

THE SPEAKER:<sup>(10)</sup> Is there objection to the request of the gentleman from Texas [Mr. Worley]?

There was no objection.

**§ 30.33 The House has reconsidered the vote whereby a conference report was rejected and then agreed to the conference report.**

On Apr. 22, 1943, Mr. Eugene Worley, of Texas, entered a motion to reconsider the vote whereby the

9. 89 CONG. REC. 3729, 78th Cong. 1st Sess.

10. Sam Rayburn (Tex.).

conference report on H.R. 1860 was rejected.<sup>(11)</sup> On May 5 of that year the following occurred in the House:<sup>(12)</sup>

MR. [ROBERT] RAMSPECK [of Georgia]: Mr. Speaker, pursuant to rule 18, I call up for consideration the motion to reconsider the vote whereby the conference report on the bill (H.R. 1860) to provide for the payment of overtime compensation to Government employees, and for other purposes, was rejected.

MR. [JOHN] TABER [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(13)</sup> The gentleman will state it.

MR. TABER: Was the motion to reconsider made by one of those who was in the majority upon that question?

THE SPEAKER: It was. It was made by the gentleman from Texas [Mr. Worley]. . . .

The question is: Will the House reconsider the vote whereby the conference report on the bill (H.R. 1860) to provide for the payment of overtime compensation to Government employees, and for other purposes, was rejected? . . .

The question recurs on the motion to reconsider.

The question was taken; and on a division (demanded by Mr. Vorys of Ohio) there were—ayes 169, noes 82.

So the motion to reconsider was agreed to.

THE SPEAKER: The question is on agreeing to the conference report.

MR. RAMSPECK: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The Clerk called the roll; and there were—yeas 275, nays 119, not voting 40. . . .

### *Vacating Adoption of Report*

**§ 30.34 A unanimous-consent request to vacate the proceedings whereby a conference report was agreed to and a motion to reconsider laid on the table, was entertained by the Chair, but objected to.**

On May 22, 1968,<sup>(14)</sup> after the conference report on S. 5 (the Consumer Credit Protection Act) was called up, the following occurred:

THE SPEAKER:<sup>(15)</sup> The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table. . . .

MR. [WILLIAM T.] CAHILL [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. CAHILL: Mr. Speaker, would it be in order for a Member to move to re-

11. See 89 CONG. REC. 3729, 78th Cong. 1st Sess.

12. *Id.* at p. 4001.

13. Sam Rayburn (Tex.).

14. 114 CONG. REC. 14375-96, 14398, 14402-05, 90th Cong. 2d Sess.

15. John W. McCormack (Mass.).

scind the action heretofore taken by the House?

THE SPEAKER: A motion would not be in order. But it would be in order for a unanimous-consent request to be made. . . .

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I ask unanimous consent to vacate the proceedings by which the House adopted the conference report on the bill (S. 5) to assist in the promotion of economic stabilization by requiring the disclosure of finance charges in connection with extension of credit.

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

MR. [WILLIAM L.] HUNGATE [of Missouri]: Mr. Speaker, reserving the right to object, all Members were notified this measure would be before the House today as the first order of business. This legislation has been before this body for 8 years. Objection should have been made before the vote was taken.

Mr. Speaker, I object.

THE SPEAKER: Objection is heard.

**§ 30.35 Before the House has disposed of all Senate amendments reported from a conference in disagreement, and tabled a final motion to reconsider the action taken on all such amendments, a motion to reconsider a particular motion disposing of any of the said amendments is in order while no other**

**motion is pending before the House.**

On Nov. 22, 1981,<sup>(16)</sup> during the consideration of amendments reported from the conference on the continuing appropriation bill, for fiscal year 1982, a parliamentary inquiry was addressed to the Speaker, as follows:

MR. [SILVIO O.] CONTE [of Massachusetts]: . . . Mr. Speaker, I would like to mention that on amendment No. 37 on which I rose and had hoped the Chair would recognize me, I must explain why I rose. I rose because I had a motion at the desk to have the 4.8-percent pay increase apply to the executive branch of the Federal Government.

THE SPEAKER:<sup>(17)</sup> The gentleman is aware that a motion to reconsider is in order at an appropriate time prior to disposition of all the amendments?

MR. CONTE: I thank the Speaker. I may do that if I can work it out.

***Effect of Tabling a Motion To Reconsider Action Taken on an Amendment in Disagreement***

**§ 30.36 Where the House has amended a Senate amendment reported in disagreement from conference, it is in order to move to reconsider**

16. 127 CONG. REC. 28754, 97th Cong. 1st Sess.

17. Thomas P. O'Neill, Jr. (Mass.).

**that action and to move to table that motion; but tabling would not preclude further House action if the Senate subsequently addressed this same amendment by a further stage of amendment.**

At the conclusion of the consideration of the conference report on H.R. 3363, the Interior appropriations bill for fiscal year 1984, and following the disposition of motions dealing with all the amendments reported from conference in disagreement, the Chair<sup>(18)</sup> stated the customary motion which would have the effect of laying on the table all motions to reconsider the various motions previously entertained. Proceedings were as indicated:<sup>(19)</sup>

THE SPEAKER PRO TEMPORE: Without objection, a motion to reconsider the votes whereby the conference report and the various motions on amendments in disagreement were disposed of is laid on the table.

MR. [C. W. BILL] YOUNG of Florida: Mr. Speaker, I reserve the right to object on that unanimous-consent request.

THE SPEAKER PRO TEMPORE: The gentleman will state his reservation.

18. Dale E. Kildee (Mich.).

19. 129 CONG. REC. 27323, 98th Cong. 1st Sess., Oct. 5, 1983.

MR. YOUNG of Florida: Mr. Speaker, I would like to ask the chairman if he would have any objection to that unanimous-consent request excluding amendment No. 91, so that we would have an opportunity to reconsider it when we come back to the House in view of our earlier discussion.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, will the gentleman yield?

MR. YOUNG of Florida: Yes, certainly.

MR. YATES: Mr. Speaker, I do not know the answer.

#### PARLIAMENTARY INQUIRY

MR. YATES: Mr. Speaker, before I reply to the gentleman, may I propound a parliamentary inquiry?

THE SPEAKER PRO TEMPORE: The gentleman from Illinois will state it.

MR. YATES: One, as to whether or not the gentleman's request is in order and, two, whether it is necessary in order to preserve the gentleman's rights.

THE SPEAKER PRO TEMPORE: The motion to reconsider the vote on the motion on amendment No. 91 is in order. But if the Senate subsequently sends over a further amendment to that House amendment to Senate amendment 91, the House could consider that issue at a subsequent time.

The point the Chair is making is that there may be no need to reconsider at this time.

MR. YOUNG of Florida: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Only if the Senate sends over a subsequent amendment to the House amendment, the Chair wants to make that clear to the gentleman.

Without objection, a motion to reconsider is laid upon the table.

There was no objection.

### ***Debate Following Adoption of Report***

**§ 30.37 Following the adoption of a conference report which was agreed to without debate, the House agreed (by unanimous consent) to permit 40 minutes of debate on the matter and to include the debate in the Record preceding the adoption of the report.**

On May 22, 1968,<sup>(20)</sup> the House adopted without debate the conference report on S. 5, the Consumer Credit Protection Act, and laid on the table a motion to reconsider that action. Subsequently, several Members expressed their displeasure at the manner in which the conference report had been adopted. Wright Patman, of Texas, Chairman of the Committee on Banking and Currency, sought unanimous consent to vacate the proceedings by which the report was adopted, but Mr. William L. Hungate, of Missouri, voiced his objection. Speaker John W. McCormack, of Massa-

<sup>20</sup>. 114 CONG. REC. 14375-96, 14398, 14402-05, 90th Cong. 2d Sess.

chusetts, recognized Mr. Carl Albert, of Oklahoma:

Mr. Speaker, I ask unanimous consent that 40 minutes of debate may be had on this matter, to be equally divided between the gentleman from Texas and the gentleman from New Jersey, and that it appear in the Record prior to the adoption of the conference report.

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

The Chair will always preserve the dignity of the proceedings of the House in protecting the rights of the Members.

The question now is: Is there objection to the request of the gentleman from Oklahoma. . . .

There was no objection.

THE SPEAKER: The gentleman from Texas [Mr. Patman] is recognized for 20 minutes and the gentleman from New Jersey [Mr. Widnall] will be recognized for 20 minutes.

### **§ 31. Rejection of Report**

The rejection of a conference report by either House nullifies the agreements reached at the conference, and the legislation returns to the status it held immediately prior to conference.<sup>(1)</sup> The stage of disagreement continues, and

<sup>1</sup>. *House Rules and Manual* § 551 (1997); §§ 31.1-31.3, *infra*; and 5 *Hinds' Precedents* § 6525.

amendments which originally required consideration in the Committee of the Whole need not return there.<sup>(2)</sup> The amendments in disagreement are again reported for consideration by the House, and motions for their disposition are in order.<sup>(3)</sup>

Frequently the House will vote to insist on its disagreement to the Senate amendments and request a further conference.<sup>(4)</sup> If the Houses do not reach an agreement on the amendments in disagreement or agree to a further conference, the legislation will die.

The rejection of a conference report by one House nullifies the prior adoption of the report by the other House. In this event, the amendments in disagreement are called up for consideration in the second House.<sup>(5)</sup>

When a conference report is rejected pursuant to the special procedure providing for separate votes on nongermane matter con-

tained therein, the question before the House immediately occurs on a motion to recede and concur with an amendment containing all of the conference report not rejected by those separate votes.<sup>(6)</sup>

### *Proceedings in Order Following Rejection of Conference Report*

**§ 31.1 Pending a vote on the adoption of a conference report, the Speaker, in response to a parliamentary inquiry, stated that the rejection of the report would leave the Senate amendment in disagreement, and that privileged motions to dispose of the disagreement would be in order and that a new conference could be asked.**

During debate on the conference report on H.R. 6096, the Vietnam Humanitarian Assistance Act of 1975,<sup>(7)</sup> the following inquiry was directed to the Speaker:

2. *House Rules and Manual* § 551 (1997) and 5 Hinds' Precedents § 6589 cited therein are awkwardly worded and hence misleading on this issue.
3. *House Rules and Manual* § 551 (1997); § 31.1, *infra*; and 8 Cannon's Precedents § 3303.
4. §§ 31.9, 31.10, *infra*.
5. §§ 31.6, 31.7, *infra*.

6. See Rule XXVIII clause 4(d), *House Rules and Manual* § 913(b) (1997), and § 30.11, *infra*.
7. 121 CONG. REC. 12761, 94th Cong. 1st Sess., May 1, 1975.

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:<sup>(8)</sup> The gentleman will state it.

MR. OTTINGER: If we vote this down, would it then be in order for the chairman of the Committee on International Relations to go back to conference with instructions that we drop out section 4?

THE SPEAKER: . . . When the House disapproves a conference report, the matter is left in the position it was in before the conference was asked. That is under section 551 found in Jefferson's Manual. In other words, the conferees of the Senate have been discharged. The House would start all over with the House bill and the Senate amendments, and the Chair would recognize the chairman to offer a proper motion to dispose of the Senate amendment.

MR. OTTINGER: I have an additional parliamentary inquiry. Could the chairman request that a new conference be constituted?

THE SPEAKER: The chairman could do that, yes.

### *Reporting Amendments in Disagreement After Rejection of Report*

#### § 31.2 When a conference report is rejected, the Senate amendment is reported for further action by the House.

8. Carl Albert (Okla.).

On Dec. 10, 1969,<sup>(9)</sup> the House was considering the conference report on H.R. 4292, Export Control Act Amendments of 1969.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The question is on the conference report. . . .

The question was taken; and there were—yeas 157, nays 238, not voting 38. . . .

So the conference report was rejected. . . .

THE SPEAKER:<sup>(11)</sup> The Clerk will report the Senate amendment.<sup>(12)</sup>

#### § 31.3 The Speaker has indicated that if a pending conference report was rejected, the last amendment between the Houses—in this case the Senate substitute for the House amendment in the nature of a substitute for the Senate bill—would then be

9. 115 CONG. REC. 38102-06, 38108, 91st Cong. 1st Sess.

10. Carl Albert (Okla.).

11. John W. McCormack (Mass.).

12. See also 107 CONG. REC. 19219-21, 87th Cong. 1st Sess., Sept. 13, 1961; 84 CONG. REC. 2085, 2086, 76th Cong. 1st Sess., Mar. 1, 1939; and 80 CONG. REC. 9743-53, 74th Cong. 2d Sess., June 17, 1936.



**before the House for further action.**

On June 8, 1972,<sup>(13)</sup> the House was considering the conference report on S. 659, the Higher Education Amendments of 1972. After the previous question was ordered on the report, Speaker Carl Albert, of Oklahoma, answered a series of parliamentary inquiries posed by Mr. Joe D. Waggonner, of Louisiana:

Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WAGGONNER: Is it correct to assume that if the House rejected the conference report on S. 659, the bill would then be restored to the status it occupied when the House asked for a conference on March 8, 1972?

THE SPEAKER: The last amendment of the Senate would then be pending.

MR. WAGGONNER: A further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: the gentleman will state it.

MR. WAGGONNER: Am I correct, then, that in the event the House votes its disagreement with the conference report, the status of the bill would be that it would then be restored to the position it occupied before a conference was requested?

THE SPEAKER: The Senate amendment to the House amendment would

be before the House for further consideration.

MR. WAGGONNER: Would the Speaker please clarify that? Is it the Senate amendment which would be before the House, or the House amendment?

THE SPEAKER: The last action would be before the House, which is the Senate amendment.

***Special Order Limiting Options if Conference Report Rejected***

**§ 31.4 The House has on occasion adopted a special order precluding further action on amendments in disagreement if a conference report is rejected.**

On Oct. 4, 1990,<sup>(14)</sup> the House adopted H. Res. 488, providing for consideration of the conference report on the concurrent resolution on the budget for fiscal years 1991 through 1995. The rule waived points of order, waived the requirements for reading the report, divided the debate time, and provided that if the report were rejected, any further action on the amendment in disagreement would have to await a further order of the House. The rule also provided for putting in place the

13. 118 CONG. REC. 20339, 20340, 92d Cong. 2d Sess.

14. 136 CONG. REC. 27590, 101st Cong. 2d Sess.

budget allocations under 302(a) of the Budget Act and also specified that agreement to the resolution would not automatically send to the Senate a new debt limit bill under Rule XLIX.

SETTING FORTH THE CONGRESSIONAL  
BUDGET FOR THE U.S. GOVERNMENT  
FOR FISCAL YEARS 1991, 1992, 1993,  
1994, AND 1995

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 488 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 488

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report on the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration. Debate on the conference report shall be limited to not more than 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

SEC. 2. Following disposition of the conference report, on motion with respect to disposition of H. Con. Res. 310 shall be in order except pursuant to a subsequent order of the House.

SEC. 3. The allocations of spending and credit responsibility to the committees of the House, to be printed in

the *Congressional Record* by the chairman of the Committee on the Budget as soon as practicable, shall be considered to be the allocations required to be printed in the joint statement of managers on H. Con. Res. 310 pursuant to section 302(a) of the Congressional Budget Act of 1974.

SEC. 4. Rule XLIX shall not apply with respect to the adoption by the Congress of the conference report on the concurrent resolution (H. Con. Res. 310). . . .

MR. DERRICK: . . . The rule provides for 2 hours of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Budget Committee. After disposition of the conference report, no other motion with respect to the disposition of the conference report is in order, except by subsequent rule.

The rule also provides that as soon as practicable, the Budget Committee chairman will cause to be printed in the *Congressional Record* allocations of spending and credit which will be considered to be the allocations required under section 302(a) of the Budget Act.

Finally, the rule provides that rule XLIX will not apply with respect to the conference report on House Concurrent Resolution 310. Rule XLIX provides that when Congress adopts the conference report on the budget resolution which contemplates a level of public debt different than that currently allowed by law, the House is deemed to have adopted a joint resolution either increasing or decreasing the statutory limit on the public debt. Because the House has already passed and sent over to the Senate H.R. 5355, a long-term debt limit bill, there is no need for

the conference report on the budget resolution to generate another debt limit bill.

***Special Order Recommitting Rejected Conference Report***

**§ 31.5 Following its rejection of a conference report, the House considered and adopted a unique special order providing for the recommitment of the report to the committee on conference, notwithstanding the prior action.**

When the House defeated the conference report on a concurrent resolution on the budget on Oct. 4, 1990, the papers had not been sent to the Senate but were still in possession of the House. Since the Senate had not acted, adoption of this special order—"deeming" the conference report "recommitted"—left the conference in place, obviated the necessity to appoint new managers, and precluded any motion to instruct. The rule also protected and provided for consideration of any subsequent report filed by the conferees and included provisions identical to those in the special order which had provided for consideration of the rejected conference report. The pertinent

proceedings of Oct. 6, 1990,<sup>(15)</sup> follow:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 310, CONGRESSIONAL BUDGET FOR THE U.S. GOVERNMENT FOR FISCAL YEARS 1991, 1992, 1993, 1994, AND 1995

MR. [JOE] MOAKLEY [of Massachusetts]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 496 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 496

*Resolved*, That upon adoption of this resolution the conference report on the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, shall be considered as recommitted to conference, notwithstanding the prior action of the House on the conference report.

SEC. 2. All points of order against any subsequent conference report on House Concurrent Resolution 310 and against its consideration are hereby waived. Any such conference report shall be considered as read when called up for consideration. Debate on any conference report shall be limited to not more than 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

SEC. 3. No motion with respect to disposition of House Concurrent

15. 136 CONG. REC. 27919-21, 101st Cong. 2d Sess.

Resolution 310 shall be in order except pursuant to this resolution or a subsequent order of the House.

SEC. 4. The allocations of spending and credit responsibility to the committees of the House, to be printed in the *Congressional Record* by the chairman of the Committee on the Budget as soon as practicable, shall be considered to be the allocations required to be printed in the joint statement of the managers on House Concurrent Resolution 310 pursuant to section 302(a) of the Congressional Budget Act of 1974.

SEC. 5. Rule XLIX shall not apply with respect to the adoption by the Congress of any conference report on the concurrent resolution (H. Con. Res. 310).

THE SPEAKER PRO TEMPORE:<sup>(16)</sup> The gentleman from Massachusetts [Mr. Moakley] is recognized for 1 hour.

MR. MOAKLEY: . . . Mr. Speaker, House Resolution 496 sets the process in motion to bring a new budget agreement to the floor. This is a procedural matter; it is not an attempt to reconsider the budget we recently defeated.

The rule provides that the conference report on the budget will be recommitted to conference upon adoption of the rule. The rule waives all points of order against any subsequent conference report on H. Con. Res. 310 and against its consideration. . . .

Mr. Speaker, the Federal Government has been shut down. The President has vetoed the short-term continuing resolution and has vowed to veto any other attempt to keep the Government running at full power at

least until a budget agreement has been reached. . . .

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

MR. [GERALD B. H.] SOLOMON [of New York]: Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 285, noes 105, answered not voting 43, as follows: . . .

So the resolution was agreed to.

***House Rejection of Report Following Senate Action***

**§ 31.6 After the Senate adopted a conference report, which recommended that the Senate recede from its amendments, the House must also act upon the report and, in the event of its rejection, a motion to recede and concur in the Senate amendment would be in order.**

On Mar. 15, 1956,<sup>(17)</sup> the Senate adopted the conference report on H.R. 8320 (amending the Agricultural Acts of 1949 and 1954 to

16. Kweisi Mfume (Md.).

17. 102 CONG. REC. 4797–801, 84th Cong. 2d Sess.

provide for school milk and brucellosis eradication programs) which provided that the Senate recede from its amendments to the text and title of the bill. On Mar. 21,<sup>(18)</sup> the following occurred in the House:

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Speaker, I call up the conference report on the bill (H.R. 8320) to amend the Agricultural Act of 1949 and the Agricultural Act of 1954 with respect to the special school milk program and the brucellosis-eradication program for the fiscal year ending June 30, 1956.

After the Clerk read the report, Mr. Cooley then sought unanimous consent that the statement of the managers on the part of the House be read also. Mr. Charles A. Halleck, of Indiana, then rose:

MR. HALLECK: Mr. Speaker, reserving the right to object, I would like to submit a parliamentary inquiry at this point.

THE SPEAKER PRO TEMPORE:<sup>(19)</sup> The gentleman will state it.

MR. HALLECK: Mr. Speaker, if this conference report is voted down, would it then be in order immediately thereafter for any Member to offer a motion that the House recede and concur in the Senate amendments?

THE SPEAKER PRO TEMPORE: If the conference report is voted down, the

Senate amendments would then be before the House for further action, and involved in that action a motion to recede and concur would be one of the parliamentary steps that could be employed.

**§ 31.7 The House rejected a conference report, which recommended that the Senate recede from its amendments, although the Senate had adopted the report. The House then proceeded to agree to the Senate amendments to the bill, thus providing for the enrollment of the bill with Senate amendments.**

On Mar. 15, 1956,<sup>(20)</sup> the Senate adopted the conference report on H.R. 8320, amending the Agricultural Acts of 1949 and 1954 to provide for school milk and brucellosis eradication programs. On Mar. 21,<sup>(1)</sup> Mr. Harold D. Cooley, of North Carolina, called up this conference report in the House.

The Clerk read the conference report.

The conference report and statement are as follows:

**20.** 102 CONG. REC. 4797-801, 84th Cong. 2d Sess.

**1.** *Id.* at pp. 5268, 5277-79.

**18.** *Id.* at p. 5268.

**19.** John W. McCormack (Mass.).

CONFERENCE REPORT (H. REPT. NO.  
1898)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8320) to amend the Agricultural Act of 1949 and the Agricultural Act of 1954 with respect to the special school milk program and the brucellosis eradication program for the fiscal year ending June 30, 1956, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments to the text of the bill and to the title of the bill.

HAROLD D. COOLEY,  
W. R. POAGE,  
T. G. ABERNETHY,  
*Managers on the Part of  
the House.*

ALLAN ELLENDER,  
OLIN D. JOHNSTON,  
SPESSARD L. HOLLAND,  
MILTON R. YOUNG,  
*Managers on the Part of  
the Senate.*

#### STATEMENT

The managers on the part of the House at the conference on the disagreeing positions of the two Houses on H.R. 8320, providing additional authority for the special school milk program and the brucellosis eradication program for the current fiscal year, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report: . . .

In view of these considerations, the Senate has receded from its position and the bill as agreed upon and reported by the committee of conference is identical with the bill passed by the House.

HAROLD D. COOLEY,  
W. R. POAGE,  
T. G. ABERNETHY,  
*Managers on the Part of  
the House*

After the Clerk read the report, Mr. Charles A. Halleck, of Indiana, under a reservation of a right to object to a request by Mr. Cooley that the managers statement might also be read, raised a parliamentary inquiry.

MR. HALLECK: Mr. Speaker, if this conference report is voted down, would it then be in order immediately thereafter for any Member to offer a motion that the House recede and concur in the Senate amendments?

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> If the conference report is voted down, the Senate amendments would then be before the House for further action, and involved in that action a motion to recede and concur would be one of the parliamentary steps that could be employed.

MR. HALLECK: Mr. Speaker, if that motion should prevail, would it have the effect of sending the bill as amended in the other body to the White House for approval?

THE SPEAKER PRO TEMPORE: Assuming that the House was to take such action—and I am not passing any opinion on it at this time—there could be a definite conclusion of legislative action, and the answer to the gentleman's question would be in the affirmative.

2. John W. McCormack (Mass.).

MR. HALLECK: Mr. Speaker, as a matter of further parliamentary inquiry, if the conference report is voted up or if it is voted down and such a motion to recede and concur should prevail, action on the legislation would be finally completed today.

THE SPEAKER PRO TEMPORE: If the conference report is agreed to, action is concluded legislatively. On the other hand, if the conference report is rejected and the necessary motion is made and adopted, why, that would also conclude it. The answer to both of the gentleman's questions is in the affirmative.

After debate on the conference report the following occurred:

MR. COOLEY: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the conference report.

MR. AUGUST H. ANDRESEN [of Minnesota]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 195, nays 215, not voting 23. . . .

So the conference report was rejected. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the Senate amendments.

After the Clerk read the Senate amendments the Speaker Pro Tempore recognized Mr. August H. Andresen, of Minnesota:

Mr. Speaker, I offer a motion to recede and concur.

The Clerk read as follows:

Mr. August H. Andresen moves that the House recede from its disagreement to the Senate amendments to H.R. 8320 and concur therein.

THE SPEAKER PRO TEMPORE: The gentleman from Minnesota is recognized for 1 hour.

MR. AUGUST H. ANDRESEN: Mr. Speaker, I yield back my time and move the previous question on the motion.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion.

MR. AUGUST H. ANDRESEN: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken and there were—yeas 406, nays 0, not voting 27. . . .

So the motion was agreed to.

**§ 31.8 Rejection of a conference report on a House bill leaves the Senate amendment in disagreement pending for disposition by motion; a motion for a further conference is also in order but a motion to instruct the managers is in order only if the request for a further conference is agreed to.**

To a parliamentary inquiry concerning the alternatives available if a pending conference report, which had been agreed to by the

Senate, were to be rejected in the House, the Chair responded as indicated in the following excerpt from the House proceedings of May 1, 1975:<sup>(3)</sup>

MR. [RICHARD L.] OTTINGER [of New York]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER:<sup>(4)</sup> The gentleman will state it.

MR. OTTINGER: If we vote this down, would it then be in order for the chairman of the Committee on International Relations to go back to conference with instructions that we drop out section 4?

THE SPEAKER: The answer is "no."

When the House disapproves a conference report, the matter is left in the position it was in before the conference was asked. That is under section 551 found in Jefferson's Manual. In other words, the conferees of the Senate have been discharged. The House would start all over with the House bill and the Senate amendments, and the Chair would recognize the chairman to offer a proper motion to dispose of the Senate amendment.

MR. OTTINGER: I have an additional parliamentary inquiry. Could the chairman request that a new conference be constituted?

THE SPEAKER: The chairman could do that, yes.

***Motion To Further Insist and Ask for Further Conference***

3. 121 CONG. REC. 12761, 94th Cong. 1st Sess.

4. Carl Albert (Okla.).

**§ 31.9 The House may reject a conference report, further insist on disagreement to the Senate amendment, and ask for a further conference.**

On Sept. 26 (legislative day of Sept. 25), 1961,<sup>(5)</sup> Mr. John L. McMillan, of South Carolina, called up the conference report on H.R. 258, amending the District of Columbia Sales Tax Act. At the conclusion of debate on the report the following occurred:

MR. McMILLAN: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> The question is on the conference report. . . .

The question was taken; and there were—yeas 97, nays 173, not voting 164. . . .

So the conference report was rejected. . . .

THE SPEAKER PRO TEMPORE: The Clerk will report the Senate amendment.

After the Clerk read the Senate amendment, the Chair recognized Mr. McMillan:

Mr. Speaker, I move that the House further insist on disagreement to the Senate amendment and ask for a conference with the Senate.

5. 107 CONG. REC. 21427-40, 87th Cong. 1st Sess.

6. John W. McCormack (Mass.).



The motion was agreed to.

THE SPEAKER PRO TEMPORE: The Chair appoints the following conferees: Messrs. McMillan, Whitener, and Broyhill.<sup>(7)</sup>

**§ 31.10 A conference report having been voted down and a motion to further insist on disagreement and appoint conferees being agreed to, the bill returns to conference; but if such motion fails of adoption, the bill remains on the Speaker's table for further action.**

On Oct. 7, 1940,<sup>(8)</sup> after the House ordered the previous question on the conference report on H.R. 960, extending Classified Civil Service, the following occurred:

THE SPEAKER:<sup>(9)</sup> The question is on agreeing to the conference report. . . .

The question was taken; and there were—yes 132, nays 181, not voting 116. . . .

So the conference report was rejected. . . .

Mr. [Robert] Ramspeck [of Georgia] and Mrs. Rogers of Massachusetts rose.

7. See also 110 CONG. REC. 20121, 20127, 88th Cong. 2d Sess., Aug. 18, 1964; and 88 CONG. REC. 5573–83, 77th Cong. 2d Sess., June 25, 1942.

8. 86 CONG. REC. 13333, 13334, 76th Cong. 3d Sess.

9. Sam Rayburn (Tex.).

THE SPEAKER: The Chair recognizes the gentleman from Georgia.

MR. RAMSPECK: Mr. Speaker, I move that the House further insist upon its disagreement to the amendments of the Senate to the bill (H.R. 960) extending the classified civil service of the United States and appoint conferees.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MICHENER: If the motion made by the gentleman from Georgia prevails, then the bill will be back in the same position it was before this procedure. Is this correct?

THE SPEAKER: If the motion prevails, the bill goes back to conference.

MR. MICHENER: And if the motion does not prevail, the bill will not be in conference and very likely will not be disposed of this session.

THE SPEAKER: It will be on the Speaker's table.

***Recognition Following Rejection of Conference Report***

**§ 31.11 Upon rejection of a conference report on a House bill with Senate amendments, the manager is entitled to priority in recognition to offer a motion to dispose of the amendments; and he may move to disagree with all the amendments and request a further conference,**

**although this motion is not of the highest priority.**

On Oct. 20, 1990,<sup>(10)</sup> the House ordered the previous question on, and then rejected, the conference report on H.R. 5311, the District of Columbia Appropriations Act, 1991. After the conference report was rejected, the following proceedings occurred:

APPOINTMENT OF CONFEREES ON H.R. 5311, DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 1991

MR. [JULIAN C.] DIXON [of California]: Mr. Speaker, I move to insist on the disagreement to all Senate amendments to the bill, H.R. 5311, and request a further conference with the Senate thereon.

THE SPEAKER PRO TEMPORE:<sup>(11)</sup> The question is on the motion offered by the gentleman from California [Mr. Dixon].

The motion was agreed to.

THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Dixon, Natcher, Stokes . . . and Conte.

There was no objection.

*Parliamentarian's Note:* Chairman Dixon could have been preempted by a more preferential motion. The stage of disagreement having been reached when the House initially disagreed to the

10. 136 CONG. REC. 31493, 101st Cong. 2d Sess.

11. William H. Gray III (Pa.).

Senate amendments and agreed to the conference, the following motions are privileged and have the precedence indicated: (1) to recede and concur; (2) to recede and concur with amendment; (3) to insist on disagreement and request a further conference; (4) to insist on disagreement; and (5) to adhere.

***Recognition of Minority Member for Motion***

§ 31.12 **A conference report was rejected and (when the manager of the conference did not seek recognition) the Speaker recognized a minority member of the committee to move to concur in the Senate amendment with an amendment.**

On Dec. 10, 1969,<sup>(12)</sup> Mr. Wright Patman, of Texas, called up the conference report on H.R. 4293, the Export Control Act amendments of 1969. The House rejected the report and the Clerk proceeded to read the Senate amendment in disagreement.

MR. [GARRY E.] BROWN of Michigan (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the amendment be dis-

12. 115 CONG. REC. 38077, 38102-06, 38108, 91st Cong. 1st Sess.

pensed with and it be printed in the Record.

THE SPEAKER:<sup>(13)</sup> Is there objection to the request of the gentleman from Michigan?

There was no objection.

MR. BROWN of Michigan: Mr. Speaker, I offer a motion.<sup>(14)</sup>

The Clerk read as follows:

Mr. Brown of Michigan moves that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: . . .

THE SPEAKER: The question is on the motion offered by the gentleman from Michigan (Mr. Brown).

The motion was agreed to.

***Where Senate Amendment Is Laid on the Table, Effect on Bill***

**§ 31.13 Where a conference report is rejected, and the manager moves to insist on its disagreement, a motion to lay the Senate amendment on the table is preferential**

13. John W. McCormack (Mass.).

14. Mr. Brown, who was the 10th ranking minority member on the Committee on Banking and Currency in the 91st Congress, had been appointed as a conferee on H.R. 4293 on Oct. 27, 1969, 115 CONG. REC. 31571, but did not sign the conference report, *Id.* at pp. 35584, 35585, Nov. 24, 1969.

**and if adopted, carries the amendment and the bill to the table.**

When the conference report on the Federal Trade Commission Amendments of 1978 (H.R. 3816) was called up on Sept. 28, 1978, the previous question was ordered but on the question of the adoption of the report, the noes prevailed, 214 to 175.

The manager's motion that the House insist on its disagreement was then preempted by a motion to lay the Senate amendment on the table. Proceedings were as indicated below.<sup>(15)</sup>

THE SPEAKER PRO TEMPORE: The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. [BOB] ECKHARDT [of Texas]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members. . . .

So the conference report was rejected.

The result of the vote was announced as above recorded.

15. 124 CONG. REC. 32334, 32335, 95th Cong. 2d Sess.

A motion to reconsider was laid on the table.

MOTION OFFERED BY MR. ECKHARDT

MR. ECKHARDT: Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Eckhardt moves that the House insist on its disagreement to the Senate amendment.

PREFERENTIAL MOTION OFFERED BY  
MR. BROYHILL

MR. [JAMES T.] BROYHILL [of North Carolina]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

Mr. Broyhill moves to lay on the table the amendment of the Senate to the bill, H.R. 3816.

THE SPEAKER: The question is on the preferential motion to lay on the table offered by the gentleman from North Carolina (Mr. Broyhill).

The preferential motion to table was agreed to.

A motion to reconsider was laid on the table.

So the Senate amendment and the bill H.R. 3816 were laid on the table.

### *Referred to Standing Committee*

**§ 31.14 A House bill with Senate amendments was by unanimous consent referred to the committee which originally reported it after the House agreed to a conference report thereon and**

**the Senate rejected the conference report.**

On Mar. 27, 1945,<sup>(16)</sup> the House adopted the conference report on H.R. 1752, to amend the Selective Training and Service Act of 1940. On Apr. 3 of that year<sup>(17)</sup> the Senate rejected this conference report. On Apr. 23,<sup>(18)</sup> the following occurred in the House:

MR. [ANDREW J.] MAY [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1752) to amend the Selective Training and Service Act of 1940 and for other purposes, with Senate amendments thereto, and ask that the same be referred to the Committee on Military Affairs.

THE SPEAKER:<sup>(19)</sup> Is there objection to the request of the gentleman from Kentucky?

There was no objection.

### **§ 32. Recommittal; Motions To Recommit**

A motion to recommit a conference report to the committee of conference is in order in the House which first considers the report.<sup>(20)</sup>

16. 91 CONG. REC. 2837-57, 79th Cong. 1st Sess.

17. *Id.* at p. 3074.

18. *Id.* at p. 3664.

19. Sam Rayburn (Tex.).

20. § 32.1, *infra*.

The adoption or rejection of the report by this House results in the discharge of its managers, which dissolves the committee of conference, and generally precludes the second House from recommitting the report.<sup>(1)</sup> However, a report may be recommitted after one House has acted on it, pursuant to a concurrent resolution approved by both Houses;<sup>(2)</sup> but such a resolution is not privileged for consideration in the House and must be called up by unanimous consent.<sup>(3)</sup>

When a conference produces an agreement, the managers on the part of the House which had agreed to the conference are directed by Jefferson's Manual to take possession of the official papers from the managers of the asking House<sup>(4)</sup> thereby providing for prior consideration of the report in the agreeing House, thereby preserving to it the opportunity to recommit. However, if the managers on the part of the

agreeing House fail to take possession of the papers, the House which requested the conference may act first on the report and preclude the agreeing House from recommitting it.<sup>(5)</sup>

Conference reports may be recommitted by unanimous consent,<sup>(6)</sup> and in one instance a report in total disagreement was by unanimous consent recommitted to the committee of conference despite the fact that conferees are generally considered to be discharged when they report in this manner.<sup>(7)</sup> They may also be recommitted pursuant to a motion to suspend the rules.<sup>(8)</sup>

A conference report may not be recommitted to a standing committee.<sup>(9)</sup>

The motion to recommit a conference report is not in order until after the previous question has been ordered on the report,<sup>(10)</sup> and comes too late once the report has been agreed to.<sup>(11)</sup>

Recognition to offer the motion to recommit is reserved for Mem-

1. §§ 32.4–32.6, *infra*.

2. 8 Cannon's Precedents § 3316. See also § 32.46, *infra*.

3. 8 Cannon's Precedents § 3309, and 5 Hinds' Precedents §§ 6554, 6557.

4. *House Rules and Manual*, Jefferson's Manual § 555 (1997). See generally § 24, *supra*.

5. § 32.5, *infra*.

6. §§ 32.40–32.43, *infra*.

7. § 32.7, *infra*.

8. § 32.45, *infra*.

9. 5 Hinds' Precedents § 6558.

10. §§ 32.10, 32.11, *infra*.

11. § 32.13, *infra*.

bers opposed to the conference report,<sup>(12)</sup> and one opposed to the report unequivocally has priority over one merely opposed to the report in its present form.<sup>(13)</sup> Members of the minority party are accorded preference in recognition to offer the motion,<sup>(14)</sup> although the Speaker will recognize a member of the majority if no minority member seeks recognition.<sup>(15)</sup>

Neither the straight motion to recommit a conference report nor the motion to recommit with instructions to the House managers may be debated.<sup>(16)</sup> After the mo-

12. § 32.15, *infra*.

13. § 32.16, *infra*.

14. § 32.17, *infra*.

15. §§ 32.19, 32.20, *infra*.

16. *Parliamentarian's Note*: Although the third sentence of Rule XVI clause 4, *House Rules and Manual* § 782 (1997), states that 10 minutes of debate may be had on any motion to recommit with instructions, it has been held that the second sentence of that clause limits its application to bills and joint resolutions. Thus, on Nov. 15, 1973, the Speaker ruled that there could be no debate on a motion to recommit a simple resolution with instructions to a standing committee. 119 CONG. REC. 37141, 37142, 37149-51, 93d Cong. 1st Sess. This had been construed to preclude debate on a motion to recommit a conference report with instructions to the managers on the part of the House.

tion has been read, the previous question thereon is considered pending. However, should the previous question be defeated, the motion may be amended<sup>(17)</sup> to add instructions to the House conferees<sup>(18)</sup> or to modify the instructions proposed in the original motion. The motion may not be divided to provide a separate vote on the instructions or parts thereof.<sup>(19)</sup>

The managers on the part of the House function as agents of the House. Therefore, their authority may be no greater than that possessed by the House itself. Thus, instructions contained in a motion to recommit may not authorize the managers to do something the House itself could not do—amend its own bill after its passage.<sup>(20)</sup> However, a motion to recommit may instruct the House managers to agree to a Senate amendment containing an appropriation not authorized by law, since the vote on this motion satisfies the requirement of Rule XX clause 2<sup>(1)</sup> that specific authority to agree to such amendments be given by the

17. § 32.22, *infra*.

18. § 32.23, *infra*.

19. §§ 32.27, 32.28, *infra*.

20. § 32.32, *infra*.

1. *House Rules and Manual* § 829 (1997).

House before the managers go to conference.<sup>(2)</sup> Although a motion to recommit may instruct the managers to agree to such an amendment or other legislative amendments to a general appropriation bill, it may not instruct them to concur therein with an amendment which adds further legislation.<sup>(3)</sup> This objective may be accomplished by reporting to the House a disagreement to the Senate legislative amendment. When this occurs, the House may consider the amendment<sup>(4)</sup> and may at this stage add further legislative provisions thereto, providing they are germane to the Senate amendment.<sup>(5)</sup>

Recommittal of a conference report places the entire matter before the conferees.<sup>(6)</sup> This is the case even when the report has been recommitted with instructions affecting some but not all of the provisions sent to conference.<sup>(7)</sup> The conferees must reach a new agreement and file a new report<sup>(8)</sup>

2. § 32.36, *infra*.

3. § 32.37, *infra*.

4. § 29.33, *supra*.

5. § 29.35, *supra*, especially *Parliamentarian's Note*.

6. § 32.47, *infra*.

7. § 32.50, *infra*.

8. § 32.49, *infra*.

which is given a new number and considered as a new and separate report.<sup>(9)</sup>

Although only one valid motion to recommit a conference report is in order at any particular stage in the proceedings,<sup>(10)</sup> a subsequent report filed upon recommitment of the original report is also subject to recommittal.<sup>(11)</sup>

### *When in Order; Effect of Discharge of Managers*

**§ 32.1 A motion to recommit a conference report is in order if the other House has not acted on the report and thus discharged its managers.**

On Mar. 29, 1961,<sup>(12)</sup> pending a unanimous-consent request to send to conference H.R. 5463, to amend the Sugar Act of 1948, Mr. Charles A. Halleck, of Indiana, posed a parliamentary inquiry:

MR. HALLECK: When the conference report comes back, would a motion to recommit be in order at that time?

9. § 32.48, *infra*.

10. 8 Cannon's Precedents § 2737, and 5 Hinds' Precedents § 5582.

11. 8 Cannon's Precedents § 3325.

12. 107 CONG. REC. 5288, 87th Cong. 1st Sess.

THE SPEAKER:<sup>(13)</sup> If the House acts first.

MR. HALLECK: In other words, if the House acts first, when the conference report comes back, then a motion to recommit would be in order?

THE SPEAKER: If the House acts first, a motion to recommit a conference report would be in order.<sup>(14)</sup>

***Recommittal to Same Conference Committee***

**§ 32.2 Where a conference report is recommitted in the House, the same conferees remain appointed; but when a new conference report is filed, the managers must again sign the new report and statement.**

The conference report on the Omnibus Budget Reconciliation Act of 1982 was recommitted, by motion, where it was discovered that a new provision had been inserted, not in either version, relating to federal pay. Since the Senate had not acted, the conference committee was still viable, and the Chair announced to the House that the same conferees would continue their deliberations. He informally advised the managers that all conferees on the part of

the House must sign the new report before it could be received.

The relevant proceedings in the House on Aug. 17, 1982,<sup>(15)</sup> were as follows:

MR. [JAMES R.] JONES of Oklahoma: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER:<sup>(16)</sup> The Chair, without getting into any debate, wants the House to be aware of the parliamentary situation. It is understood that there will be a motion to recommit. If the motion to recommit prevails, then the bill will have to go back to the conference committee and the Chair struggles to see how we could possibly bring this bill up again before the tax bill. The leadership has scheduled the tax bill for Thursday, but this conference committee would have to go back, it would have to get unanimous consent to have it brought up when filed; so the Chair just wants Members to have in mind the technicality of what is happening.

MOTION TO RECOMMIT OFFERED BY  
MR. DERWINSKI

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the conference report?

13. Sam Rayburn (Tex.).

14. See also 109 CONG. REC. 25249, 88th Cong. 1st Sess., Dec. 19, 1963.

15. 128 CONG. REC. 21397, 21398, 97th Cong. 2d Sess.

16. Thomas P. O'Neill, Jr. (Mass.).



MR. DERWINSKI: I am in its present form, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Derwinski moves to recommit the conference report to accompany the bill, H.R. 6955, to the committee of conference.

THE SPEAKER: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER: The question is on the motion to recommit. . . .

The vote was taken by electronic device, and there were—yeas 266, nays 145, not voting 23. . . .

PERMISSION TO FILE CONFERENCE  
REPORT ON H.R. 6955

MR. JONES of Oklahoma: Mr. Speaker, I ask unanimous consent that the managers have until midnight tonight to file a conference report, and that this conference report may be taken up tomorrow or any day thereafter, and again that we would waive all points of order.

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

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

THE SPEAKER: For the information of the House, the conferees automatically remain appointed to the same conference.

*Parliamentarian's Note:* The managers were advised that all must sign the new report, even

though there were "general conferees on the whole bill" from the Committee on the Budget, and jurisdictional conferees from many House committees. The offending insert was in the portion of the report written by the Committee on Government Operations; this was the only segment of the complex report actually changed in the new report.

The Senate position, as reflected in the signature sheets, was to require signatures only of the general conferees and those from its Committee on Governmental Affairs. The signatures affixed to the first conference report filed were also attached as part of the official papers.<sup>(17)</sup>

*Where Conference Report Was  
Recommitted for a Second  
Time*

**§ 32.3 The House twice recommit-  
ted a conference report  
on a general appropriation  
bill but finally agreed to the  
third report of the conferees.**

Both the first and second conference reports were called up under the protection of special orders which waived points of

17. See 128 CONG. REC. 21453, 21454, 97th Cong. 2d Sess., Aug. 17, 1982.

order against the reports and their consideration.<sup>(18)</sup> Such blanket protection was required since all amendments in disagreement were brought back inside the reports.

The motion offered by the ranking minority member of the Subcommittee on the Interior, Sidney R. Yates, of Illinois, is shown below in a portion of the debate defining the matters of major controversy which motivated the motion to recommit.<sup>(19)</sup>

MR. YATES: Mr. Speaker, 7 weeks ago I offered a motion to recommit this conference report in order to improve this dreadful bill and restore the mining moratorium. Well, the conference committee reconvened. Instead of improving the bill, they made it worse. If my colleagues voted for my motion to recommit the Interior appropriations conference report in September, they

18. The first conference report (H. Rept. 104-259) was recommitted on Sept. 29, 1995 (141 CONG. REC. 26940, 26941, 104th Cong. 1st Sess.). The second report (H. Rept. 104-300) was recommitted on Nov. 15, 1995 (141 CONG. REC. 32625, 32626, 104th Cong. 1st Sess.). The third and final report (H. Rept. 104-402) was agreed to on Dec. 13, 1995 (141 CONG. REC. 36322, 36323, 104th Cong. 1st Sess.).
19. See 141 CONG. REC. 32619, 32625, 32626, 104th Cong. 1st Sess., Nov. 15, 1995 (H.R. 1977, Interior appropriations for fiscal year 1996).

must vote for the motion to recommit that I will offer at the appropriate time today for two reasons: one, that the mining moratorium has not met the expectations of the House; and, second, because of what has been, what is being proposed for the Tongass National Forest. . . .

MOTION TO RECOMMIT OFFERED BY  
MR. YATES

MR. YATES: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> Is the gentleman opposed to the conference report?

MR. YATES: I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Yates moves to recommit the conference report on the bill H.R. 1977 to the committee of conference with instructions to the managers on the part of the House to insist on the House position on the amendments of the Senate numbered 108 and 158.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [RALPH] REGULA [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present

20. Scott McInnis (Colo.).

and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 230, nays 199, not voting 4. . . .

### *When Motion To Recommit Is Precluded*

**§ 32.4 A motion to recommit a conference report is not in order when the other House has, by acting on the report, discharged its managers.**

On June 5, 1968,<sup>(1)</sup> at the end of debate on the conference report on H.R. 11308 (amending the National Foundation of Arts and Humanities Act of 1965) the following occurred:

MR. [FRANK] THOMPSON [Jr.] of New Jersey: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MR. [WILLIAM J.] SCHERLE [of Iowa]: Mr. Speaker, I offer a motion to recommit.

MR. THOMPSON of New Jersey: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE:<sup>(2)</sup> The gentleman will state the point of order.

1. 114 CONG. REC. 16058, 90th Cong. 2d Sess.

2. Carl Albert (Okla.).

MR. THOMPSON of New Jersey: Mr. Speaker, I make a point of order against the motion to recommit on the ground that the other body has already acted.

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

The question is on the conference report.<sup>(3)</sup>

**§ 32.5 If the managers on the part of the House, which had agreed to a conference, fail to take possession of the papers at the close of that conference, the Senate may act first on the conference report and thereby preclude a motion to recommit in the House.**

On July 3, 1952,<sup>(4)</sup> the Senate requested a conference with the House on the disagreeing votes on S. 3066, to amend the defense housing laws. Later that day<sup>(5)</sup> the Senate agreed to the conference report on S. 3066. The next day<sup>(6)</sup> the report was called up in the House. At the conclusion of the debate thereon the following occurred:

3. See also 102 CONG. REC. 13755, 13764, 84th Cong. 2d Sess., July 20, 1956.

4. 98 CONG. REC. 9048, 9049, 82d Cong. 2d Sess.

5. *Id.* at p. 9169.

6. *Id.* at pp. 9379, 9380.

MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MR. [ABRAHAM J.] MULTER [of New York]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(7)</sup> The Chair will state to the gentleman from New York that a motion to recommit is not in order, the Senate having acted on the conference report.

MR. MULTER: Mr. Speaker, if they did, they acted improperly, because this should have been acted on in the House first.

THE SPEAKER: The Chair is not aware that the Senate has acted improperly. We have received a message that they agreed to the conference report.

The question is on the conference report. . . .

The question was taken; and there were—yeas 296, nays 22, not voting 112.

**§ 32.6 Where one House has acted first on a conference report (notwithstanding the fact that it had requested the conference) and thereby discharged its managers, the other House cannot recommit the report, but only has the option of accepting or rejecting it.**

7. Sam Rayburn (Tex.).

On Oct. 19, 1965,<sup>(8)</sup> the Senate agreed to the conference report on S. 2300, the Rivers and Harbors Act of 1965. On Oct. 20, 1965,<sup>(9)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. George H. Fallon, of Maryland, to call up this conference report in the House. Mr. William C. Cramer, of Florida, noted that although the Senate had requested the conference<sup>(10)</sup> its managers had refused to surrender the papers to their House counterparts, contrary to the customary practice of the two Houses.

MR. CRAMER: . . . So far as I am concerned, the action taken leaves, in my opinion, if the proper rights of the House and the prerogatives of this great coequal legislative body, coequal with the Senate, if we are to sustain our rights as conferees and as a coequal body, little alternative but to vote down the conference report. . . .

If we thus let them subvert the rules of this House, which are very clear, that the party asking for the conference, the other body has the right to act first on the conference report—and if that had been done, we would have had an opportunity to vote on a motion to recommit, for or against the Dickey-Lincoln School project a second time and so instruct the conferees—we will

8. 111 CONG. REC. 27346–60, 89th Cong. 1st Sess.

9. *Id.* at pp. 27698–717.

10. *Id.* at pp. 24841–49.

see that the other body is acting to prevent us from acting. . . .

In conference a member of the conferees asked the chairman the question: "Is it not true that the other body, the Senate, having asked for this conference, we, the House, have a right to the papers and to act first?" The answer was "Yes" by the chairman of the conference, the distinguished Senator from Michigan, Mr. McNamara.

The House adopted the conference report.

*Parliamentarian's Note:* The Senate was anxious to act first on this conference report so that it could enforce its position with respect to the controversial Dickey-Lincoln School project on the St. John's River. The House had, on Sept. 22, 1965, rejected this project, but it had been restored, at the insistence of the Senate conferees, in the conference. Had the House acted first on the report, a motion to recommit would have been in order. The House conferees were advised to insist on their right to possession of the papers before they signed the report. In the conference, however, Senator Patrick V. McNamara, of Michigan, insisted on retaining the papers, notwithstanding the objections of the House conferees.

### *Effect of Report in Total Disagreement*

**§ 32.7 By unanimous consent, the House recommitted a conference report which had been filed but not called up and in which the conferees had reported in total disagreement, although under the usual procedure House conferees are discharged upon reporting their inability to agree.**

On Oct. 19, 1971,<sup>(11)</sup> Mr. Paul G. Rogers, of Florida (on behalf of Mr. Harley O. Staggers, of West Virginia), filed the conference report in total disagreement on Senate Concurrent Resolution 6, closing Public Health Service hospitals and clinics. The House took no action on the report until Dec. 1 of that year<sup>(12)</sup> when the following occurred:

MR. STAGGERS: Mr. Speaker, I ask unanimous consent that the conference report on the Senate concurrent resolution, Senate Concurrent Resolution 6, be recommitted to the committee of conference.

11. 117 CONG. REC. 36867, 92d Cong. 1st Sess.

12. *Id.* at p. 43835.

THE SPEAKER:<sup>(13)</sup> Is there objection to the request of the gentleman from West Virginia?

There was no objection.

*Parliamentarian's Note:* The usual rule is illustrated at 8 Cannon's Precedents § 3240, where Speaker Champ Clark, of Missouri, held that the managers on the part of the House had been discharged when they filed their report in total disagreement.

### ***No Debate on Motion To Re-commit Conference Report***

#### **§ 32.8 A motion to recommit a conference report with instructions is not subject to debate.**

Rule XVI clause 4,<sup>(14)</sup> relating to the motion to recommit a bill or joint resolution after the previous question is ordered, specifies that such a motion is subject to limited debate. However, a conference report does not fall under this clause, a report not being a "bill or joint resolution." The motion to recommit a conference report pending the previous question, or after the previous question is

ordered, is authorized not by Rule XVI but by Rule XVII clause 1.<sup>(15)</sup>

There is often confusion about which of these rules is applicable and for this reason the Chair sometimes clarifies the matter without waiting for an inquiry from the floor:<sup>(16)</sup>

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> Without objection, the previous question is ordered on the conference report.

There was no objection.

MOTION TO RECOMMIT OFFERED BY  
MR. MILLER OF CALIFORNIA

MR. [GEORGE] MILLER of California: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. MILLER of California: Mr. Speaker, yes; I am.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Miller of California moves to recommit the conference report on the bill S. 395 to the committee of conference with instructions to the managers on the part of the House to insist on the provisions of the House amendment No. 5 which strike title III of S. 395.

THE SPEAKER PRO TEMPORE: This motion is not debatable.

13. Carl Albert (Okla.).

14. *House Rules and Manual* § 782 (1997).

15. *Id.* at § 804.

16. See 141 CONG. REC. 31761, 104th Cong. 1st Sess., Nov. 8, 1995.

17. Scott McInnis (Colo.).

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

***Effect of Debate Subsequent to Adoption of Report; Effect on Motion To Recommit***

**§ 32.9 An agreement to permit debate of a conference report, even though the report had already been agreed to, and to insert this debate in the Record preceding that point where the conference report was agreed to, does not reopen the report to permit the making of any motions, such as the motion to recommit, the adoption of which would alter the prior action of the House in agreeing to the report.**

On May 22, 1968,<sup>(18)</sup> Mr. Wright Patman, of Texas, called up the conference report on S. 5, the Consumer Credit Protection Act, which the House then adopted without debate. Several Members expressed a desire to reopen these proceedings so that debate on the report might be in order. To accommodate the wishes of these Members, Speaker John W.

18. 114 CONG. REC. 14375-96, 14398, 14402-05, 90th Cong. 2d Sess.

McCormack, of Massachusetts, recognized the Majority Leader, Carl Albert, of Oklahoma.

MR. ALBERT: Mr. Speaker, I ask unanimous consent that 40 minutes of debate may be had on this matter, to be equally divided between the gentleman from Texas and the gentleman from New Jersey, and that it appear in the Record prior to the adoption of the conference report.

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

The Chair will always preserve the dignity of the proceedings of the House in protecting the rights of the Members.

The question now is: Is there objection to the request of the gentleman from Oklahoma?

MR. [RICHARD H.] POFF [of Virginia]: Mr. Speaker, I reserve the right to object.

THE SPEAKER: The gentleman from Virginia reserves the right to object.

MR. POFF: Mr. Speaker, I reserve the right to object in order to propound a question to the distinguished majority leader. In the event the House agrees to the request of the gentleman, would the minority maintain the right under the rules of the House to offer motions to recommit if it were so disposed?

THE SPEAKER: The gentleman ought to address his question to the Chair. That question should be addressed to the Chair, and, assuming that the gentleman did address the Chair, the Chair will state that point has gone by, and a motion to recommit under those circumstances would not be in order.

*Time For Motion*

§ 32.10 A motion to recommit a conference report is not in order until the previous question has been ordered on the conference report.

On Dec. 15, 1970,<sup>(19)</sup> the House had debated the conference report on H.R. 17755, Department of Transportation appropriations, fiscal 1971, and Mr. Edward P. Boland, of Massachusetts, had moved the previous question thereon. Mr. Sidney R. Yates, of Illinois, rose.

MR. YATES: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(20)</sup> The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Speaker, as I understand, in order to have specific instructions given to the conferees it is necessary that the previous question be voted down; is that correct? I mean on the motion to recommit?

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman from Illinois is in error. The previous question on the conference report has to be ordered before there can be a motion to recommit.

19. 116 CONG. REC. 41502, 91st Cong. 2d Sess.

20. Wilbur D. Mills (Ark.).

§ 32.11 A motion to recommit a conference report is in order after the previous question has been ordered on the adoption of the report.

On June 28, 1955,<sup>(1)</sup> after the House ordered the previous question on the conference report on H.R. 3005, amending the Universal Military Training and Service Act, Mr. Noah M. Mason, of Illinois, raised a parliamentary inquiry.

MR. MASON: When is the proper time to offer a motion to recommit?

THE SPEAKER:<sup>(2)</sup> The proper time to offer a motion to recommit is after the ordering of the previous question.<sup>(3)</sup>

*Timing of Motion To Recommit*

§ 32.12 A motion to recommit a conference report is in order after debate and the ordering of the previous question and is not affected by a special order waiving the reading.

The Speaker's response to the following parliamentary inquiry

1. 101 CONG. REC. 9379, 84th Cong. 1st Sess.
2. Sam Rayburn (Tex.).
3. See also 109 CONG. REC. 25409, 88th Cong. 1st Sess., Dec. 21, 1963; and 107 CONG. REC. 20533, 20534, 87th Cong. 1st Sess., Sept. 21, 1961.



made on Aug. 2, 1977,<sup>(4)</sup> relates to the proper time to make a motion to recommit a conference report.

MR. [ELLIOTT] LEVITAS [of Georgia]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(5)</sup> The gentleman will state the parliamentary inquiry.

MR. LEVITAS: Mr. Speaker, will it be in order, since the rule waives a reading of the conference report, will it be in order to offer a motion to recommit and, if so, at what point would it be in order?

THE SPEAKER: It would be in order after the debate on the conference report. A motion to recommit is in order after the previous question is ordered.

**§ 32.13 A motion to recommit comes too late after a conference report has been agreed to.**

On May 22, 1968,<sup>(6)</sup> the House adopted without debate the conference report on S. 5, the Consumer Credit Protection Act, and laid on the table a motion to reconsider that action. After several Members expressed a desire to reopen these proceedings, the Majority Leader, Carl Albert, of Oklahoma, asked unanimous consent that 40 minutes of debate

4. 123 CONG. REC. 26105, 95th Cong. 1st Sess.

5. Thomas P. O'Neill, Jr. (Mass.).

6. 114 CONG. REC. 14375-96, 14398, 14402-05, 90th Cong. 2d Sess.

be allowed on the report, and that this debate appear in the Record prior to the adoption of the report. Speaker John W. McCormack, of Massachusetts, recognized Mr. Richard H. Poff, of Virginia, under a reservation of the right to object.

MR. POFF: Mr. Speaker, I reserve the right to object in order to propound a question to the distinguished majority leader. In the event the House agrees to the request of the gentleman, would the minority maintain the right under the rules of the House to offer motions to recommit if it were so disposed?

THE SPEAKER: The gentleman ought to address his question to the Chair. That question should be addressed to the Chair, and assuming that the gentleman did address the Chair, the Chair will state that point has gone by, and a motion to recommit under those circumstances would not be in order.

***Recognition To Offer Motion***

**§ 32.14 The mere fact that a Member states he has a motion to recommit a conference report does not extend recognition by the Chair for such motion.**

On June 28, 1955,<sup>(7)</sup> after the House ordered the previous question on the conference report on H.R. 3005, amending the Univer-

7. 101 CONG. REC. 9379, 84th Cong. 1st Sess.

sal Military Training and Service Act, the following occurred:

THE SPEAKER:<sup>(8)</sup> The question is on agreeing to the conference report.

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I have a motion to recommit.

MR. [NOAH M.] MASON [of Illinois]: Mr. Speaker, I have a motion to recommit. . . .

MR. SMITH of Virginia: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. SMITH of Virginia: I offered a motion to recommit and I was recognized.

THE SPEAKER: The gentleman had not been recognized by the Chair.

MR. SMITH of Virginia: I had been recognized. I was looking at the Speaker and the Speaker was looking at me.

THE SPEAKER: The point of order is overruled. The Clerk will report the motion to recommit of the gentleman from Illinois.

**§ 32.15 In recognizing Members to move to recommit a conference report the Chair gives preference to Members opposed to the report.**

On Sept. 11, 1940,<sup>(9)</sup> the House ordered the previous question on the conference report on S. 3550,

8. Sam Rayburn (Tex.).

9. 86 CONG. REC. 11938, 76th Cong. 3d Sess.

prohibiting the transportation of convict-made goods in interstate commerce, after which the following occurred:

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Is the gentleman opposed to the conference report?

MR. MICHENER: Certainly.

THE SPEAKER PRO TEMPORE: The gentleman qualifies.

The Clerk read as follows:

Mr. Michener moves to recommit the conference report to the conference committee. . . .

THE SPEAKER PRO TEMPORE: . . . The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. Michener) there were—ayes 28, noes 94.

***Speaker's Discretion***

**§ 32.16 A Member opposed to a conference report in its present form qualifies to move to recommit such report, but if another Member unequivocally opposed to the report desired recognition to make the motion, the Speaker indicated he would be given priority.**

10. Sam Rayburn (Tex.).

On Oct. 18, 1949,<sup>(11)</sup> after the previous question was ordered on the conference report on H.R. 5856, Fair Labor Standards Amendments of 1949, the following occurred:

MR. [A. S. MIKE] MONRONEY [of Oklahoma]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(12)</sup> Is the gentleman opposed to the conference report?

MR. MONRONEY: I am, Mr. Speaker, in its present form.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Monroney moves to recommit the conference report to the conference committee with instructions to the managers on the part of the House to further insist upon the House provisions for the exemption of employees of newspapers of circulation of 5,000 or under.

MR. [WALTER E.] BREHM [of Ohio]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. BREHM: If I understood the gentleman from Oklahoma correctly, he said he was opposed to the bill in its present form. If I understand the rules correctly, that is incorrect. He is either opposed to it or he is for it. I wonder if the gentleman will state his position?

THE SPEAKER: If the gentleman is opposed to the bill in its present form he would be opposed to it. However, if

11. 95 CONG. REC. 14943, 81st Cong. 1st Sess.

12. Sam Rayburn (Tex.).

some other Member had asked to qualify to submit a motion to recommit, and said he was absolutely opposed to the bill, unequivocally, as a gentleman said the other day, then of course the Speaker would recognize him.

The question is on the motion to recommit.

The motion to recommit was rejected.

### § 32.17 Members of the minority party have preference in recognition for a motion to recommit.

On June 28, 1955,<sup>(13)</sup> the previous question had been ordered on the conference report on H.R. 3005, amending the Universal Military Training and Service Act. The following occurred:

THE SPEAKER:<sup>(14)</sup> The question is on agreeing to the conference report.

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I have a motion to recommit.

MR. [NOAH M.] MASON [of Illinois]:<sup>(15)</sup> Mr. Speaker, I have a motion to recommit. . . .

THE SPEAKER: . . . Is the gentleman from Illinois opposed to the bill?

MR. MASON: I am, definitely.

MR. SMITH of Virginia: Mr. Speaker, a point of order.

13. 101 CONG. REC. 9379, 84th Cong. 1st Sess.

14. Sam Rayburn (Tex.).

15. *Parliamentarian's Note*: Mr. Smith was a member of the majority party, the Democrats. Mr. Mason was a Republican.

THE SPEAKER: The gentleman will state it.

MR. SMITH of Virginia: I offered a motion to recommit and I was recognized.

THE SPEAKER: The gentleman had not been recognized by the Chair.

MR. SMITH of Virginia: I had been recognized. I was looking at the Speaker and the Speaker was looking at me.

THE SPEAKER: The point of order is overruled. The Clerk will report the motion to recommit of the gentleman from Illinois.

### *Recognition for Motion To Recommitt Conference Report*

**§ 32.18 The Chair's recognition for a motion to recommit a conference report, while guided by precedent, is not subject to challenge and there is no appeal from his decision of whom to recognize where a choice has to be made between a minority conferee and a more senior member of the committee of jurisdiction who is not a conferee.**

The proceedings of June 27, 1980,<sup>(16)</sup> during consideration of the conference report on S. 1308,

16. 126 CONG. REC. 17371, 96th Cong. 2d Sess.

the Energy Mobilization Board Act, were as indicated below.

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> All time has expired.

MR. [JOHN D.] DINGELL [Jr., of Michigan]: Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

#### MOTION TO RECOMMIT

THE SPEAKER PRO TEMPORE: For what reason does the gentleman from Ohio (Mr. Devine) rise?

MR. [SAMUEL L.] DEVINE [of Ohio]: Mr. Speaker, I offer a motion to recommit.

MR. [MANUEL] LUJAN [Jr., of New Mexico]: Mr. Speaker, I am a member of the conference committee, and I am opposed to the bill.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Ohio (Mr. Devine).

MR. DEVINE: Mr. Speaker, I offer a motion to recommit, and I am opposed to the bill.

THE SPEAKER PRO TEMPORE: The gentleman qualifies.

#### PARLIAMENTARY INQUIRY

MR. LUJAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. LUJAN: Mr. Speaker, does not a member of the conference committee have preference in recognition to the ranking minority member on the

17. John P. Murtha (Pa.).

standing committee working on the bill?

THE SPEAKER PRO TEMPORE: The gentleman from Ohio (Mr. Brown) was on his feet at the time of the recommittal motion. Does the gentleman from Ohio, the second ranking minority member of the conference committee, have a motion?

MR. [CLARENCE J.] BROWN of Ohio: I am unqualified for the motion to recommit. I was standing, however, to make sure that the motion to recommit was protected for the minority, and when the Chair recognized the gentleman from Ohio (Mr. Devine), the ranking minority member of the Commerce Committee, I took my seat.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio (Mr. Devine) is recognized as the senior Member.

MR. LUJAN: Mr. Speaker, I did not hear an answer to my parliamentary inquiry.

THE SPEAKER PRO TEMPORE: As the gentleman knows, the Chair's control over recognition is not subject to challenge and the Chair recognized the gentleman from Ohio (Mr. Devine).

The gentleman from Ohio (Mr. Devine) is recognized for a motion.

MR. DEVINE: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. DEVINE: I am opposed to the bill, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman qualifies.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Devine moves to recommit the conference report to accompany the Senate bill, S. 1308, to the committee of conference.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 232, nays 131, answered “present” 1, not voting 69.

**§ 32.19 Members of the minority have preference of recognition for motions to recommit and when such motion is offered by a Member of the majority the Speaker inquires as to whether any Member of the minority demands recognition.**

On June 27, 1947,<sup>(18)</sup> after the House had completed debate on

<sup>18</sup> 93 CONG. REC. 7845, 80th Cong. 1st Sess.

the conference report on H.R. 3737, providing revenue for the District of Columbia, the following occurred:

MR. [JOSEPH P.] O'HARA [of Minnesota]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(19)</sup> Is the gentleman opposed to the bill?

MR. O'HARA: I am, Mr. Speaker.

THE SPEAKER: Does any Member of the minority demand recognition? If not, the gentleman is recognized.

The Clerk will report the motion to recommit.<sup>(20)</sup>

**§ 32.20 The Speaker recognized a majority Member to offer a motion to recommit a conference report in the absence of a minority Member seeking recognition to offer the motion.**

On July 23, 1970,<sup>(1)</sup> after the previous question was ordered on the conference report on H.R. 14705 (providing a federal-state unemployment compensation program) the following occurred:

19. Joseph W. Martin, Jr. (Mass.).

20. See also 92 CONG. REC. 9776, 79th Cong. 2d Sess., July 23, 1946.

1. 116 CONG. REC. 25616, 91st Cong. 2d Sess.

MR. [JAMES G.] O'HARA [of Michigan]:<sup>(2)</sup> Mr. Speaker, I offer a motion to recommit.

THE SPEAKER:<sup>(3)</sup> Is the gentleman opposed to the conference report?

MR. O'HARA: I am, in its present form, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

**§ 32.21 Where his privilege of offering a motion to recommit a conference report was usurped by a designee of the Republican Minority Leader, the ranking minority manager voiced his objections during floor debate on the conference report.**

The comments carried here were made during consideration of the conference report on H.R. 3345, the Federal Workforce Restructuring Act of 1994.<sup>(4)</sup>

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today with somewhat mixed feelings and emotions. I hope I can express myself, where I stand. This is the third time that this same issue has come before this body. The other two times I have supported

2. *Parliamentarian's Note*: Mr. O'Hara was a Democrat, the majority party in the 91st Congress.

3. John W. McCormack (Mass.).

4. See 140 CONG. REC. 6096, 6097, 103d Cong. 2d Sess., Mar. 23, 1994.

it, without any hesitation. However, the procedure that will probably be adopted today makes it very difficult for me to support the legislation. . . .

So reluctantly today I want to see what happens on the motion to recommit. And I admit, the procedure being used today is one that has been used not too often around here. I am not disagreeing with the procedure that the leader's designee will offer the motion to recommit. It has not been used too many times around here, but I understand the rules of the House and there is no way I can object to it. But it is a procedure that should not be used very often, only most reluctantly when there is something wrong with the legislation.

*Parliamentarian's Note:* The rules of the Republican Conference, in effect on the date of Mr. Myers' remarks, provided as follows: "Whenever more than one Republican Member proposes to offer such a motion [to recommit], the Republican leader (or if not present and in the absence of a stated position, the most senior elected Member of the Leadership available) shall determine the course of action that best reflects the position of the Conference and the Leadership. Any Republican Member having priority in recognition to offer such a motion shall act in accordance with that determination, including if necessary, yielding one's rights to offer such a

motion to another Republican Member."

It should be noted that this conference declaration does not have the status of a House rule. The power of recognition, even on a motion to recommit, resides in the Speaker, who, where possible, follows precedent in determining which Member to recognize. A conference or caucus rule would not bind the Speaker but it is likely that he would show deference to the wishes of the Minority Leader in cases where there is a conflict among those seeking recognition to recommit.

#### *Motion as Subject to Amendment*

**§ 32.22 The Speaker has indicated that a motion to recommit a conference report may be amended if the previous question is voted down on the motion to recommit.**

On Dec. 30, 1970,<sup>(5)</sup> after the previous question had been ordered on the conference report on H.R. 18582, amending the Food Stamp Act of 1964, Mr. George A. Goodling, of Pennsylvania, offered the following motion:

5. 116 CONG. REC. 44169, 91st Cong. 2d Sess.

Mr. Goodling moves to recommit the conference report on the bill H.R. 18582 to the Committee on Conference.

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Speaker, I move the previous question on the motion to recommit.

THE SPEAKER:<sup>(6)</sup> The question is on ordering the previous question on the motion to recommit. . . .

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. FOLEY: Mr. Speaker, if the vote on the previous question on the motion to recommit does not carry, would it then be in order for a Member to seek recognition for the purpose of offering an amendment to the motion to recommit?

THE SPEAKER: The answer to that is, it would be under the precedents and practices of the House.<sup>(7)</sup>

**§ 32.23 Procedure in the House where the House rejects the motion for the previous question on a straight motion to recommit a conference report and amends the motion by the addition of instructions.**

6. John W. McCormack (Mass.).

7. See also 101 CONG. REC. 9379, 84th Cong. 1st Sess., June 28, 1955; and 96 CONG. REC. 12674, 12684, 81st Cong. 2d Sess., Aug. 16, 1950.

Where the previous question is rejected on a motion which is not subject to debate, the consideration of an amendment to the motion also proceeds without debate.

When considering the conference report on a general appropriation bill,<sup>(8)</sup> the House rejected a straight motion to recommit (which is not subject to debate) and then when an amendment was offered to add instructions that the managers insist on disagreement to a certain amendment, debated the amendment under a reservation of the right to object to dispensing with the reading of the amendment.<sup>(9)</sup>

MOTION TO RECOMMIT OFFERED BY  
MR. MYERS OF INDIANA

MR. [JOHN T.] MYERS of Indiana: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> Is the gentleman opposed to the conference report?

MR. MYERS of Indiana: Mr. Speaker, in its present form, I am.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

8. H.R. 2445 (energy and water appropriations for fiscal year 1994).

9. See 139 CONG. REC. 25330, 25331, 103d Cong. 1st Sess., Oct. 19, 1993.

10. William J. Hughes (N.J.).



Mr. Myers of Indiana moves to recommit the conference report on H.R. 2445 to the committee of conference.

THE SPEAKER PRO TEMPORE: The question is on ordering the previous question on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [JIM] SLATTERY [of Kansas]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 159, nays 264, not voting 10. . . .

So the previous question on the motion to recommit was rejected. . . .

AMENDMENT OFFERED BY MR. SLATTERY TO THE MOTION TO RECOMMIT OFFERED BY MR. MYERS OF INDIANA

MR. SLATTERY: Mr. Speaker, I offer an amendment to the motion to recommit.

The Clerk read as follows:

Amendment offered by Mr. Slattery to the motion to recommit offered by Mr. Myers of Indiana: Insert before the period at the end the following: "with instructions to the managers on the part of the House to insist on disagreement to the amendment of the Senate numbered 33".

MR. SLATTERY (during the reading): Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kansas?

MR. [SHERWOOD L.] BOEHLERT [of New York]: Mr. Speaker, reserving the

right to object, I will not object, but I would ask my colleague from Kansas to explain the motion to recommit, because there is some question as to whether or not this motion would affect projects other than the SSC.

MR. SLATTERY: Mr. Speaker, will the gentleman yield? . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kansas?

There was no objection.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the amendment offered by the gentleman from Kansas [Mr. Slattery] to the motion to recommit offered by the gentleman from Indiana [Mr. Myers] and on the motion to recommit.

There was no objection.

THE SPEAKER PRO TEMPORE: The question is on the amendment to the motion to recommit offered by the gentleman from Kansas [Mr. Slattery].

The question was taken; and the Speaker announced that the noes appeared to have it.

MR. SLATTERY: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 282, nays 143, not voting 8. . . .

So the amendment to the motion to recommit was agreed to. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit, as amended.

The motion to recommit, as amended, was agreed to.

A motion to reconsider was laid on the table.

**§ 32.24 A motion to recommit a conference report may be amended to include instructions to the House conferees if the previous question is voted down on the motion to recommit.**

On Dec. 15, 1970,<sup>(11)</sup> after the House had completed debating the conference report on H.R. 17755, Department of Transportation appropriations, fiscal 1971, the following occurred:

MR. [EDWARD P.] BOLAND [of Massachusetts]: Mr. Speaker, I move the previous question on the conference report.

THE SPEAKER PRO TEMPORE:<sup>(12)</sup> Without objection, the previous question is ordered.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I object. I was on my feet, and I request a rollcall on ordering the previous question.

THE SPEAKER PRO TEMPORE: The gentleman from Illinois wants a rollcall on ordering the previous question?

MR. YATES: I do, Mr. Speaker, on the ground that a quorum is not present. I make the point of order that a quorum is not present.

PARLIAMENTARY INQUIRY

MR. YATES: Mr. Speaker, a parliamentary inquiry.

11. 116 CONG. REC. 41502, 41503, 91st Cong. 2d Sess.

12. Wilbur D. Mills (Ark.).

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. YATES: Mr. Speaker, as I understand, in order to have specific instructions given to the conferees it is necessary that the previous question be voted down; is that correct? I mean on the motion to recommit?

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman from Illinois is in error. The previous question on the conference report has to be ordered before there can be a motion to recommit.<sup>(13)</sup>

MR. YATES: Then, Mr. Speaker, I withdraw my point of order.

THE SPEAKER PRO TEMPORE: The question is on ordering the previous question.

The previous question was ordered.

13. *Parliamentarian's Note*: The inquiry posed by Mr. Yates was premature. The question before the House at the time of the inquiry was on ordering the previous question on the conference report. This question required approval before any motion to recommit the conference report would have been in order. Mr. Yates attempted to clarify his inquiry to indicate that he was concerned with amending the motion to recommit if the previous question were voted down on that motion (which was still not in order). The Speaker Pro Tempore ignored this attempted clarification since the inquiry as clarified was nevertheless still premature. However, Mr. Yates' contention is supported at 8 Cannon's Precedents §§ 2695, 2762.

MR. [MARK] ANDREWS of North Dakota: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. ANDREWS of North Dakota: I am, Mr. Speaker, in its present form.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

MR. YATES: Mr. Speaker, as I understand it, the gentleman from North Dakota has filed a motion to recommit. In view of the fact that the previous question has not been ordered—

THE SPEAKER PRO TEMPORE: The previous question on the conference report has been ordered.

MR. YATES: But it has not been ordered on the motion to recommit, Mr. Speaker, because I would object to it.

THE SPEAKER PRO TEMPORE: The Chair will state that the Clerk has not reported the motion to recommit as yet.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Andrews of North Dakota moves to recommit the conference report on H.R. 17755 to the Committee of Conference.

MR. BOLAND: Mr. Speaker, I move the previous question on the motion to recommit. . . .

The question was taken; and there were—yeas 205, nays 185, not voting 43. . . .

So the previous question was ordered. . . .

THE SPEAKER:<sup>(14)</sup> The question is on the motion to recommit.

The motion to recommit was rejected.

**§ 32.25 A motion to recommit a conference report with instructions is not subject to amendment after the previous question is ordered on the motion.**

On Sept. 20, 1962,<sup>(15)</sup> the House debated the conference report on H.R. 12391, the Food and Agricultural Act of 1962. After the previous question had been ordered on the conference report, Mr. Charles B. Hoeven, of Iowa, offered a motion to recommit the report with instructions to the managers on the part of the House.

MR. [HAROLD D.] COOLEY [of North Carolina]: Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

MR. [THOMAS G.] ABERNETHY [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman will state it.

MR. ABERNETHY: Mr. Speaker, is it in order to offer a substitute motion in the form of a simple motion to recommit the conference report?

14. John W. McCormack (Mass.).

15. 108 CONG. REC. 20094-129, 87th Cong. 2d Sess.

16. John W. McCormack (Mass.).

THE SPEAKER: Not after the previous question has been ordered.

MR. ABERNETHY: Has the previous question been ordered?

THE SPEAKER: The previous question has been ordered.

***Special Order Prohibiting Instructions in Motion To Recommit Conference Report***

**§ 32.26 The House considered and rejected a special order reported from the Committee on Rules which, *inter alia*, waived points of order against a conference report and prohibited instructions in any motion to recommit.**

The text of the special order, called up in the House on Apr. 19, 1988,<sup>(17)</sup> is carried here.

CONFERENCE REPORT ON H.R. 5,  
ELEMENTARY AND SECONDARY EDUCATION

MR. [MARTIN] FROST [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 427 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 427

*Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on

the bill (H.R. 5) to improve elementary and secondary education, and all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration. A motion to recommit the conference report may not contain instructions.

SEC. 2. At any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of a bill containing the text printed in section three of this resolution, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed thirty minutes, equally divided and controlled by a proponent and an opponent, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order in the House or in the Committee of the Whole. At the conclusion of the consideration of the bill, the Committee shall rise and report the bill to the House, and the previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to commit, which may not contain instructions.

SEC. 3. The text of the bill as follows:

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

*“Section 223(b) of the Communications Act of 1934 is amended—*

*“(1) in paragraph (1)(A), by striking out ‘under eighteen years of age or to any other person without that person’s consent’;*

*“(2) by striking out paragraph (2);*

17. 134 CONG. REC. 7345, 100th Cong. 2d Sess.

“(3) in paragraph (4), by striking out ‘paragraphs (1) and (3)’ and inserting in lieu thereof ‘paragraphs (1) and (2)’; and

“(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.”.

*Parliamentarian’s Note:* The reported rule specified that all points of order were waived against the conference report and against its consideration. One reason for this waiver was that the conferees appointed to consider the nongermane issue, the so-called “dial-a-porn” provision added in the Senate and modified in conference, never actually met. They evidently conferred among themselves without holding a formal meeting in open session.

The second rare provision in the rule was the restriction on including instructions in the motion to recommit. This was the first instance where the Committee on Rules recommended such a limitation on a motion to recommit a conference report.

### *Divisibility of Motion*

§ 32.27 **A motion to recommit a conference report with instructions is not divisible.**

On June 27, 1947,<sup>(18)</sup> after the previous question had been ordered on the conference report on H.R. 3737, to provide revenue for the District of Columbia, Mr. Joseph P. O’Hara, of Minnesota, offered a motion to recommit the report with instructions to the managers on the part of the House. Mr. Everett M. Dirksen, of Illinois, rose.

MR. DIRKSEN: Mr. Speaker, a point of order.

THE SPEAKER:<sup>(19)</sup> The gentleman will state it.

MR. DIRKSEN: Would not the motion be divisible?

THE SPEAKER: A motion to recommit is not divisible.

§ 32.28 **On a motion to recommit a conference report with instructions, it is not in order to demand a separate vote on the instructions or various branches thereof.**

On Apr. 11, 1956,<sup>(20)</sup> Mr. Joseph W. Martin, Jr., of Massachusetts, offered a motion to recommit the conference report on H.R. 12, to amend the Agricultural Act of 1949, with five specific instruc-

18. 93 CONG. REC. 7845, 80th Cong. 1st Sess.

19. Joseph W. Martin, Jr. (Mass.).

20. 102 CONG. REC. 6157, 84th Cong. 2d Sess.

tions to the managers on the part of the House.

MR. [ARTHUR L.] MILLER of Nebraska: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:<sup>(1)</sup> The gentleman will state it.

MR. MILLER of Nebraska: Since the motion to recommit applies to several titles and sections of the bill, is it possible under the rules of the House to get a separate vote on the various amendments that seek to strike certain matter from the bill?

THE SPEAKER: A motion to recommit is not subject to division.

### ***Restrictions on Motion To Recommit***

#### **§ 32.29 The Committee on Rules has reported, and the House has adopted, a special order restricting the motion to recommit a conference report to one offered by the Minority Leader and specifying the debate time thereon.**

The special order, as excerpted from the *Congressional Record* of Apr. 21, 1988,<sup>(2)</sup> is carried in full here.

CONFERENCE REPORT ON H.R. 3, TRADE AND INTERNATIONAL ECONOMIC POLICY REFORM ACT OF 1987

1. Sam Rayburn (Tex.).
2. 134 CONG. REC. 8102, 100th Cong. 2d Sess.

MR. [CLAUDE] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 430 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 430

*Resolved*, That upon the adoption of this resolution the House shall proceed to consider, without intervening motion, the conference report on the bill (H.R. 3) to enhance the competitiveness of American industry, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration. Debate on the conference report shall continue not to exceed four hours, equally divided between the majority party and the minority party. Any motion to recommit the conference report with instructions, if offered by Representative Michel of Illinois, or his designee, shall be debatable for not to exceed twenty minutes, equally divided and controlled by the proponent and a Member opposed.

THE SPEAKER:<sup>(3)</sup> The gentleman from Florida [Mr. Pepper] is recognized for 1 hour.

### ***Motion To Instruct Not Subject to Demand for Division of Question***

#### **§ 32.30 The motion to recommit a bill to conference with various instructions is not**

3. James C. Wright, Jr. (Tex.).

**subject to a demand for a division of the question under Rule XVI clause 6; since only one proper motion to recommit is in order.**

In the 103d Congress,<sup>(4)</sup> Mr. George W. Gekas, of Pennsylvania, offered a motion to recommit the conference report on S. 349, the Lobbying Disclosure Act of 1994. The motion included instructions pertaining to several sections of the conference agreement. After a series of parliamentary inquiries, the proponent of the motion directed the following inquiry to the Speaker:

MR. GEKAS: Madam Speaker, I have a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(5)</sup> The gentleman will state it.

MR. GEKAS: Madam Speaker, is the motion in order insofar as it seeks to clarify the ambiguous language that we feel is contained in this legislation on grassroots lobbying?

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule on the point of order of the gentleman from Texas.

MR. GEKAS: Madam Speaker, I have a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. GEKAS: Madam Speaker, I think I know the answer to this, but I must pose it for the record.

Is the motion that I have made divisible in any way?

THE SPEAKER PRO TEMPORE: The gentleman's motion is not divisible. The gentleman may offer one, proper motion to recommit.

MR. GEKAS: I understand that. I will yield to the decision of the Chair on this matter.

***Waiver of Points of Order Against Conference Report Does Not Protect Motion To Instruct***

**§ 32.31 A waiver of all points of order against a conference report does not protect a motion to recommit the conference report with instructions.**

The conference report on S. 349, the Lobbying Disclosure Act of 1994, had been called up after the adoption of a special order<sup>(6)</sup> waiving all points of order against the report and its consideration. The Speaker was asked, by way of a parliamentary inquiry, whether the waivers granted in the rule

4. 140 CONG. REC. 26781, 103d Cong. 2d Sess., Sept. 29, 1994.

5. Nancy Pelosi (Calif.).

6. H. Res. 550, adopted by the House on Sept. 29, 1994. See 140 CONG. REC. 26753, 103d Cong. 2d Sess.

protected the motion to recommit.<sup>(7)</sup>

MR. [DICK] ARMEY [of Texas]: Madam Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The gentleman will state it.

MR. ARMEY: Madam Speaker, I see by the rule just passed that allows this bill to be under consideration that in this rule, it says all points of order against conference report and against its consideration are waived except the provisions of clause 2. If in fact the majority is able to bring the bill to the floor by waiving all points of order against the bill, would that waiver not also cover the gentleman's motion to recommit?

THE SPEAKER PRO TEMPORE: The waiver does not inure to the motion to recommit.

MR. ARMEY: The waiver only applies to the bill brought to the floor by the majority, not to the motion to recommit offered by the minority?

THE SPEAKER PRO TEMPORE: To the conference report.

### *Scope of Instructions Permitted in Motion*

**§ 32.32 A motion to recommit a conference report to the committee of conference with instructions to do something which the House itself**

**does not have the power to do—to amend its own bill after its passage—is not in order.**

On Aug. 25, 1950,<sup>(9)</sup> after the House had finished considering the conference report on H.R. 7786, the general appropriation bill for fiscal 1951, Mr. Vito Marcantonio, of New York, offered a motion to recommit.

THE SPEAKER:<sup>(10)</sup> The Clerk will report the motion of the gentleman from New York [Mr. Marcantonio].

The Clerk read as follows:

Mr. Marcantonio moves to recommit the conference report on H.R. 7786 to the committee of conference with instructions to the managers on the part of the House to incorporate in the conference report the following provision: At the end of chapter XI, titled "General Provisions," add the following:

"None of the funds appropriated in this act shall be paid to any person, firm, partnership, or corporation which refuses equality in employment to any person because of race, or creed."

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I make a point of order against the motion.

THE SPEAKER: The gentleman will state the point of order.

MR. CANNON: Mr. Speaker . . . the provision which the gentleman from New York seeks to add to the confer-

7. See 140 CONG. REC. 26781, 103d Cong. 2d Sess., Sept. 29, 1994.

8. Nancy Pelosi (Calif.).

9. 96 CONG. REC. 13476, 81st Cong. 2d Sess.

10. Sam Rayburn (Tex.).



ence report does not appear in either the House bill or the Senate bill. It is therefore not in conference. It is not in difference between the two Houses. . . . [T]he motion to recommit is not in order. . . .

THE SPEAKER: The Chair is ready to rule. . . . The motion to recommit calls upon the committee of conference to do something which the House itself does not have the power to do, namely to amend its own bill after its passage. This matter, not being in either the House version or the Senate version of the bill, the Chair holds that the point of order is well taken and sustains the point of order.<sup>(11)</sup>

**§ 32.33 A motion to recommit a conference report with instructions to include a matter not in either the House or Senate version of the bill is not in order.**

On Aug. 25, 1950,<sup>(12)</sup> the House was considering the conference report on H.R. 7786, the general appropriation bill, fiscal 1951. Mr. Vito Marcantonio, of New York, offered the following motion to recommit:

Mr. Marcantonio moves to recommit the conference report on H.R. 7786 to the committee of conference with in-

11. See also 101 CONG. REC. 5846, 5870, 5871, 84th Cong. 1st Sess., May 9, 1955.

12. 96 CONG. REC. 13476, 81st Cong. 2d Sess.

structions to the managers on the part of the House to incorporate in the conference report the following provision: At the end of chapter XI, titled "General Provisions," add the following:

"None of the funds appropriated in this act shall be paid to any person, firm, partnership, or corporation which refuses equality in employment to any person because of race, color, or creed."

Mr. Clarence Cannon, of Missouri, raised a point of order against this motion.

MR. CANNON: Mr. Speaker . . . the provision which the gentleman from New York seeks to add to the conference report does not appear in either the House bill or the Senate bill. It is therefore not in conference. It is not in difference between the two Houses. . . . [T]he motion to recommit is not in order. . . .

THE SPEAKER:<sup>(13)</sup> The Chair is ready to rule. . . . The motion to recommit calls upon the committee of conference to do something which the House itself does not have the power to do, namely to amend its own bill after its passage. This matter, not being in either the House version or the Senate version of the bill, the Chair holds that the point of order is well taken and sustains the point of order.<sup>(14)</sup>

**§ 32.34 A motion to recommit a conference report may not**

13. Sam Rayburn (Tex.).

14. See also 101 CONG. REC. 5846, 5870, 5871, 84th Cong. 1st Sess., May 9, 1955.

**include instructions to report matter beyond the differences committed to conference.**

On Nov. 22, 1981,<sup>(15)</sup> during consideration of a conference report on a continuing appropriation bill, Mr. Silvio O. Conte, of Massachusetts, who was concerned about the expiration date contained in the report, asked the following inquiry about how that date could be changed.

MR. CONTE: Mr. Speaker, I want to ask my chairman a question.

I do not feel that there is a scope problem. We could offer a motion to recommit for a continuing resolution to a date certain, December 15. As I see it, under amendment 71, section 140, it says:

Notwithstanding any other provision of this joint resolution, this resolution, other than section 101, 142, 144, shall expire on March 30, 1982.

Therefore, that is standing there naked and it would be in order to amend that to make it December 15 or December 18, 1981. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: In the first place, the gentleman is asking me about the rules. I am not an expert on the rules, but I presume any motion to recommit with instructions could go to any part of the instrument we are dealing with. . . .

15. 127 CONG. REC. 28747, 97th Cong. 1st Sess.

MR. CONTE: Listen, I spoke on my feelings on this conference report and they have not changed a bit. But I think that we should know, and now I ask, in view of the fact that I did not get an answer, Mr. Speaker, I ask a parliamentary inquiry.

THE SPEAKER:<sup>(16)</sup> The gentleman from Massachusetts (Mr. Conte) will state his parliamentary inquiry.

MR. CONTE: Mr. Speaker, the parliamentary inquiry is that on a motion to recommit can the date for the continuing resolution, the expiration date of July 15, be changed to an earlier date before July 15?

THE SPEAKER: That motion could only be considered by unanimous request because it would not be within the scope of the differences between the two Houses which have been committed to conference regarding termination dates.

MR. CONTE: I thank the Chair. That is the answer I want.

**§ 32.35 A motion to recommit a conference report with instructions to the House managers to report back an agreement which would include the provisions of the bill as reported by the House committee, rather than as passed by the House with changes, was held not in order.**

On May 9, 1955, the House was considering the conference report

16. Thomas P. O'Neill, Jr. (Mass.).

on S. 1, the Postal Field Service Compensation Act of 1955.<sup>(17)</sup> After the previous question had been ordered on the conference report, Mr. Edward H. Rees, of Kansas, offered the following motion to recommit:

Mr. Rees of Kansas moves to recommit the bill S. 1 as amended to the committee of conference with instructions to report back an agreement which would include the provisions of H.R. 4644 as reported by the House Post Office and Civil Service Committee, with the additional provision that the 6-percent increase be retroactive to March 1, 1955.

MR. [THOMAS J.] MURRAY of Tennessee: Mr. Speaker, I make a point of order against the motion to recommit. As I understand, the motion instructs the conferees to do something less than the House voted. We are bound to follow the instructions of the House in the conference. That matter is not even in conference. . . .

THE SPEAKER:<sup>(18)</sup> The Chair is ready to rule. The Chair thinks that this question has been passed upon many times in the past. An exactly similar question was raised on September 15, 1922, when a very distinguished gentleman by the name of John N. Garner made a similar motion to recommit with instructions to the conferees to lower the rates contained in either the bill or in the amendment. Mr. Edward Taylor, of the State of Colorado, made the point of order. Speaker Gillette

sustained the point of order, and that decision may be found in Cannon's Precedents, volume VIII, section 3244. It is exactly on all fours with this. Therefore, the Chair sustains the point of order.

### *Instructions Concerning Legislative Amendments to Appropriation Bill*

**§ 32.36 While a motion to recommit a conference report generally may not include instructions which would be inadmissible if offered as an amendment in the House, instructions to agree to a Senate amendment containing an appropriation not authorized by law is in order since the vote on the motion satisfies the separate vote requirement of Rule XX clause 2.<sup>(19)</sup>**

On Dec. 19, 1973,<sup>(20)</sup> after the previous question had been ordered on the conference report on H.R. 11576 (supplemental appropriations, fiscal 1974), Mr. Silvio O. Conte, of Massachusetts, offered a motion to recommit.

The Clerk read as follows:

**19.** *House Rules and Manual* § 829 (1997).

**20.** 119 CONG. REC. 42565, 93d Cong. 1st Sess.

**17.** See 101 CONG. REC. 5846, 5870, 5871, 84th Cong. 1st Sess.

**18.** Sam Rayburn (Tex.).

Mr. Conte moves to recommit the conference report on the bill (H.R. 11576) to the committee on conference with the following instructions to the managers on the part of the House: To agree to Senate amendment No. 5.

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I make a point of order against the motion to recommit on the ground that it is legislative, it is not authorized in law. Under the precedents of the House a motion to instruct conferees or to recommit a bill to conference under instructions may not include instructions directing the House conferees to do that which would be inadmissible if offered as an amendment in the House, Cannon's Precedents, volume 8, section 3235.

THE SPEAKER:<sup>(1)</sup> The point of order is not in order at this time.

Under clause 2 of rule XX, a motion to recommit a conference report with instructions to House conferees to agree to a Senate amendment which violates clause 2, rule XXI is in order. The motion to recommit offered by the gentleman from Massachusetts does not instruct the conferees to add additional legislation or an additional unauthorized item, but merely to concur in Senate amendment 5.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

THE SPEAKER: The question is on the motion to recommit. . . .

The vote was taken by electronic device, and there were—yeas 216, nays 180, not voting 36. . . .

1. Carl Albert (Okla.).

So the motion to recommit was agreed to.

**§ 32.37 A motion to recommit a conference report on a general appropriation bill may not, under Rule XX clause 2,<sup>(2)</sup> include instructions which would add legislation to that contained in a Senate amendment.<sup>(3)</sup>**

On Nov. 13, 1973,<sup>(4)</sup> the House had just ordered the previous question on the conference report on H.R. 8877, appropriations for the Departments of Labor and Health, Education, and Welfare, when Mr. Albert H. Quie, of Minnesota, offered the following motion to recommit:

Mr. Quie moves to recommit the Conference Report on H.R. 8877 to the Committee of Conference with the following instructions to the Managers on the part of the House:

That the House recede from its disagreement to the amendment of the Senate numbered 32 and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: "That the aggregate amounts made available to each State under title I-A of the Elementary and Secondary Education Act for

2. *House Rules and Manual* § 829 (1997).

3. Contrast § 29.24, *supra*.

4. 119 CONG. REC. 36847, 93d Cong. 1st Sess.

grants to local education agencies within that State shall not be more than 120 per centum of such amounts as were made available for that purpose for fiscal year 1973, and the amount made available to each local educational agency under said title I-A shall not be less than 90 per centum of the amount made available for that purpose for fiscal year 1973”.

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Speaker, I make a point of order against the motion to recommit.

THE SPEAKER:<sup>(5)</sup> The gentleman will state his point of order.

MR. FLOOD: Mr. Speaker, I make the point of order against the motion to recommit on the ground that it instructs the conferees to include matter in the conference report which is not otherwise in order. This provision described in the instructions we just heard is clearly legislation on an appropriation act. Therefore, it is not eligible for inclusion in a conference report under provisions of clause 2, rule 20 and clause 2, rule 21.<sup>(6)</sup> . . .

THE SPEAKER: The Chair is prepared to rule. . . .

The motion to recommit directs the House conferees to recommend that the House recede from its disagreement to Senate amendment No. 32 and concur therein with an amendment. Senate amendment No. 32 was reported from conference in disagreement because, under clause 2 of rule XX, the House conferees had no authority to agree to that amendment, since it contained legislation on an appropriation bill and

would have been subject to a point of order. The Chair notes that on June 26, 1973,<sup>(7)</sup> Chairman Holifield sustained a point of order against an amendment offered by the gentleman from Minnesota (Mr. Quie), on the grounds that the amendment added additional legislation to legislative language which had been permitted to remain in the bill by a resolution waiving points of order.

Under the precedents of the House, a motion to instruct conferees, or to recommit a bill to conference with instructions, may not include instructions directing House conferees to do that which would be inadmissible if offered as an amendment in the House—Cannon’s Precedents, volume VIII, section 3235.

The Chair would like to point out two of the syllabi in section 3235:

Instructions to managers of a conference may not direct them to do that which they might not do otherwise.

A motion to instruct conferees may not include directions which would be inadmissible if offered as a motion in the House.

In the instant situation the Chair is of the opinion that the instructions included in the motion to recommit would, if offered in the House as an amendment to the language of the Senate amendment, add legislation thereto. As was the case in Chairman Holifield’s ruling of June 26, 1973, the language would constitute a change in the allotment formula contained in the language of the Senate amendment.

5. Carl Albert (Okla.).

6. See *House Rules and Manual* § 834 (1997).

7. 119 CONG. REC. 21388, 21389, 93d Cong. 1st Sess.

The Chair therefore holds that the motion to recommit is not a permissible motion within the meaning of clause 2, rule XX, and sustains the point of order.

### ***Recommittal of Appropriation Bill***

**§ 32.38** Following remarks made by the Chairman of the Committee on Appropriations, a conference report on an appropriation bill was recommitted with instructions to the managers on the part of the House to insist on disagreement to certain Senate amendments.

On Oct. 4, 1967,<sup>(8)</sup> Mr. Daniel J. Flood, of Pennsylvania, called up the conference report on H.R. 10196, appropriations for the Departments of Labor and Health, Education, and Welfare, fiscal 1968. During the debate on the report, George H. Mahon, of Texas, Chairman of the full Committee on Appropriations, took the floor to criticize spending increases contained therein. However, Mr. Mahon added,

I do not condemn the report. I am going to vote for the conference report, because I think it is the best job that

8. 113 CONG. REC. 27727-30, 27734-38, 90th Cong. 1st Sess.

can be done at the moment. I am, however, telling the House that we are escalating spending and it is going to make it more and more difficult to lead the fight to rescind.

After the previous question had been ordered, the following occurred:

MR. [FRANK T.] BOW [of Ohio]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE:<sup>(9)</sup> Is the gentleman opposed to the conference report?

MR. BOW: Mr. Speaker, I am opposed to the conference report.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Bow moves to recommit the conference report on H.R. 10196 to the committee on conference with instructions to the managers on the part of the House to insist upon its disagreement to Senate amendments which exceed the budget request therefore.

MR. FLOOD: Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

THE SPEAKER PRO TEMPORE: The question is on the motion to recommit. . . .

The question was taken; and there were—yeas 226, nays 174, not voting 32. . . .

So the motion to recommit was agreed to.

9. Hale Boggs (La.).

***Recommittal Motion Instructing Conferees Not To Meet*****§ 32.39 Example of a motion to recommit a conference report with instructions to the conferees not to meet again until subsequently directed to do so by the House.**

H.R. 1854, the legislative branch appropriations bill for fiscal year 1996, was the first to be considered in the budget cycle. The motion to recommit (which was rejected) was intended to delay final action on this appropriation bill until others had progressed through the process.<sup>(10)</sup>

MOTION TO RECOMMIT OFFERED BY  
MR. OBEY

MR. [DAVID R.] OBEY [of Wisconsin]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the conference report?

MR. OBEY: At the present time, Mr. Speaker, yes.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Obey moves to recommit the conference report on H.R. 1854 (H. Rept. 104-212) to the Committee on Conference with instruction that the

10. See 141 CONG. REC. 23747, 104th Cong. 1st Sess., Sept. 6, 1995.

conferees not meet until subsequently instructed to do so by the House pursuant to clause 1(c) of rule XXVIII.

THE SPEAKER PRO TEMPORE: Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

***Recommittal by Unanimous Consent*****§ 32.40 A conference report may by unanimous consent be recommitted to the committee of conference.**

On June 30, 1965,<sup>(11)</sup> Speaker John W. McCormack, of Massachusetts, recognized Mr. Emanuel Celler, of New York.

MR. CELLER: Mr. Speaker, I ask unanimous consent that the conference report on Senate Joint Resolution 1, concerning the amendment involving Presidential inability, be referred to the committee on conference because of a technical error in copying. . . .

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

There was no objection.<sup>(12)</sup>

11. 111 CONG. REC. 15212, 89th Cong. 1st Sess.

12. For other illustrations involving recommitment by unanimous consent, see 113 CONG. REC. 17738, 90th Cong. 1st Sess., June 28, 1967; 104 CONG. REC. 12113, 85th Cong. 2d Sess., June 24, 1958; and 81 CONG.

§ 32.41 A conference report was recommitted by unanimous consent to permit the conferees to make certain changes and to file a new report.

On Nov. 7, 1973,<sup>(13)</sup> Mr. John Melcher, of Montana, submitted the following request in relation to the conference report on S. 1081, the Alaska pipeline authorization:

Mr. Speaker, I ask unanimous consent that the conference report on S. 1081, to authorize the Secretary of the Interior to grant rights-of-way across Federal lands where the use of such rights-of-way is in the public interest and the applicant for the right-of-way demonstrates the financial and technical capability to use the right-of-way in a manner which will protect the environment, be recommitted to the committee of conference for the purpose of directing the committee to make technical corrections.

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from Montana?

There was no objection.

§ 32.42 On one occasion, a Member was granted unanimous consent to recommit a conference report on a bill

REC. 5462, 75th Cong. 1st Sess., June 8, 1937.

13. 119 CONG. REC. 36222, 93d Cong. 1st Sess.

14. Carl Albert (Okla.).

and immediately submitted another on the same bill.

On Oct. 10, 1949,<sup>(15)</sup> Speaker Sam Rayburn, of Texas, recognized Mr. John E. Rankin, of Mississippi, and the following occurred:

MR. RANKIN: Mr. Speaker, I ask unanimous consent to recommit the conference report on the bill (S. 2115) to authorize payment by the Administrator of Veterans' Affairs on the purchase of automobiles and other conveyances by certain disabled veterans, and for other purposes.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.

Mr. Rankin submitted the following conference report and statement on the bill (S. 2115) to authorize payment by the Administrator of Veterans' Affairs on the purchase of automobiles and other conveyances by certain disabled veterans, and for other purposes, for printing in the Record: . . .

§ 32.43 *Parliamentarian's Note: Where conferees had exceeded their authority in reporting new subject matter not in disagreement between them and had been advised that a point of order would be made against the report, the chairman of the House*

15. 95 CONG. REC. 14163, 81st Cong. 1st Sess.



**conferees obtained unanimous consent for its recommitment.**

On June 28, 1967,<sup>(16)</sup> Emanuel Celler, of New York, the Chairman of the Committee on the Judiciary, made the following request:

Mr. Speaker, I ask unanimous consent that the conference report on the bill (H.R. 2508) to require the establishment, on the basis of the 18th and subsequent decennial censuses, of congressional districts composed of contiguous and compact territory for the election of Representatives, and for other purposes, be recommitted to the committee of conference.

Mr. Speaker, this has been cleared by the minority leader, the gentleman from Michigan [Mr. Gerald R. Ford], and by the ranking Member on the minority side, the gentleman from Ohio [Mr. McCulloch].

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from New York?

There was no objection.

### ***Conference Action Where Report Is Recommitted***

**§ 32.44 Where the House had rejected a special order waiving points of order against a conference report, the House later, by unanimous consent,**

16. 113 CONG. REC. 17738, 90th Cong. 1st Sess.

17. John W. McCormack (Mass.).

**recommitted the report, thus requiring the conferees to meet and file a new conference report, complete with new signatures by the conferees.**

On Aug. 11, 1994, the House rejected a special order waiving all points of order against the conference report on the Violent Crime Control and Law Enforcement Act of 1993.<sup>(18)</sup> On Aug. 19, 1994, the House, by unanimous consent, recommitted the bill to the existing conference. The Speaker did not have to reappoint the conferees, but did supplement his original appointment by adding three general conferees (raising the number of general conferees to 13, in a ratio of eight majority to five minority).<sup>(19)</sup> On Aug. 21, 1994, a new conference report was filed, and on the same day the Committee on Rules reported, and the House passed, another resolution protecting the new conference

18. H. Res. 517 waived all points of order against the conference report and against its consideration, as well as the reading of the voluminous report. See 140 CONG. REC. 21541-69, 103d Cong. 2d Sess.

19. See 140 CONG. REC. 23316, 103d Cong. 2d Sess., Aug. 19, 1994.

report. This new rule<sup>(20)</sup> contained the same waivers that were in the rejected special order but did increase the debate time and permitted one motion to recommit, which could contain instructions only if offered by the Minority Leader. The new rule and the conference report were adopted on this date.

The recommittal, the appointment of conferees, and the form of the rule finally adopted are carried below.

RECOMMITTAL OF CONFERENCE REPORT  
ON H.R. 3355, VIOLENT CRIME  
CONTROL AND LAW ENFORCEMENT  
ACT OF 1993

MR. [RICHARD A.] GEPHARDT [of Missouri]: Mr. Speaker, I ask unanimous consent that the conference report on the bill, H.R. 3355, to amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety, be considered and re-committed to conference.

THE SPEAKER:<sup>(1)</sup> The gentleman from Missouri [Mr. Gephardt] asks unanimous consent that the bill, H.R. 3355, be recommitted to conference.

Is there objection to the request of the gentleman from Missouri?

There was no objection. . . .

APPOINTMENT OF ADDITIONAL CON-  
FEREES ON H.R. 3355, VIOLENT CRIME  
CONTROL AND LAW ENFORCEMENT  
ACT OF 1993

THE SPEAKER: Pursuant to rule X, the Chair appoints as additional conferees to the bill (H.R. 3355) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety, the following Members: Mrs. Schroeder, Mr. Frank of Massachusetts, and Mr. Castle.

The Clerk will notify the Senate of the change in conferees.

On Aug. 21, 1994,<sup>(2)</sup> the new conference report on H.R. 3355 was filed and a rule was then adopted waiving points of order.

FURTHER CONFERENCE REPORT ON H.R.  
3355, VIOLENT CRIME CONTROL AND  
LAW ENFORCEMENT ACT OF 1993

Mr. Derrick, from the Committee on Rules, reported the following privileged resolution (H. Res. 526, Rept. No. 103-713), which was referred to the House Calendar and ordered to be printed.

20. H. Res. 526. See 140 CONG. REC. 23567, 103d Cong. 2d Sess.

1. Thomas S. Foley (Wash.).

2. 140 CONG. REC. 23567, 23568, 103d Cong. 2d Sess.

## H. RES. 526

*Resolved*, That upon adoption of this resolution it shall be in order to consider a further conference report to accompany the bill (H.R. 3355) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for 80 minutes, with 20 minutes controlled by the chairman of the Committee on the Judiciary, 40 minutes controlled by the ranking minority member of the Committee on the Judiciary, and 20 minutes controlled by Representative Castle of Delaware. The previous question shall be considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit, which may contain instructions only if offered by Representative Michel of Illinois or his designee.

MR. [BUTLER] DERRICK [of South Carolina]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 526 and ask for its immediate consideration. . . .

Mr. Speaker, House Resolution 526 waives all points of order against the conference report on H.R. 3355, the Violent Crime Control and Law Enforcement Act, and against its consideration. The rule further provides that the conference report shall be considered as read.

This rule will allow the House to consider the conference report for H.R.

3355, the omnibus crime control bill. The rule also allows for one motion to recommit. The motion to recommit may contain instructions, but only if offered by Representative Michel or his designee. The motion to recommit may not contain instructions under any circumstances unless offered by Representative Michel or his designee.

### *Recommittal Under Suspension of the Rules*

#### § 32.45 A conference report was recommitted to a conference committee under a motion to suspend the rules.

On Apr. 1, 1935,<sup>(3)</sup> Speaker Joseph W. Byrns, of Tennessee, recognized Mr. James P. Buchanan, of Texas, and the following occurred:

MR. BUCHANAN: Mr. Speaker, I ask unanimous consent that the conference report on House Joint Resolution 117, making appropriations for relief purposes, be recommitted to the Committee of Conference.

MR. [JOHN] TABER [of New York]: Mr. Speaker, reserving the right to object, will the gentleman from Texas [Mr. Buchanan], explain why he wants to have the joint resolution recommitted?

MR. BUCHANAN: Mr. Speaker, there are several reasons.

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Speaker, I demand the regular order.

3. 79 CONG. REC. 4761, 4765, 74th Cong. 1st Sess.

MR. TABER: Then I shall object, Mr. Speaker. . . .

MR. BUCHANAN: Mr. Speaker, I move to suspend the rules and recommit the conference report on House Joint Resolution 117, making appropriations for relief purposes, to the committee of conference.

THE SPEAKER: Is a second demanded?

MR. TABER: Mr. Speaker, I demand a second.

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

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

There was no objection. . . .

THE SPEAKER: The question is on the motion of the gentleman from Texas [Mr. Buchanan] to suspend the rules and recommit the conference report to the committee of conference. . . .

The question was taken; and there were—yeas 257, nays 110, not voting 64. . . .

So the motion was agreed to.

### ***Recommitting Bill in Enrollment Stage to Conference***

**§ 32.46 The House, by a motion to suspend the rules, agreed to a concurrent resolution (1) rescinding the signatures of the Speaker and the President Pro Tempore of the Senate on an enrolled bill, (2) vacating the adoption of the conference report in the two Houses, and (3) then recom-**

**mitting the matter to a conference committee.**

Where congressional action had been completed on a major railroad bill, the delivery of the enrolled Senate bill was delayed pending consultations with the White House regarding changes in the bill which might prevent a Presidential veto. The concurrent resolution considered under suspension of the rules on Jan. 20, 1976,<sup>(4)</sup> was the mechanism used in the House to re-create the conference committee so the modifications could be made.<sup>(5)</sup>

4. H. Con. Res. 527, vacating certain actions of the Senate and the House on S. 2718, the Rail Services Act of 1975. See 122 CONG. REC. 281, 282, 94th Cong. 2d Sess.

5. The bill had been enrolled by the Senate before the *sine die* adjournment of the two Houses on Dec. 19, 1975 (121 CONG. REC. 42014, 94th Cong. 1st Sess.). Hearing of an anticipated veto, the Senate held the bill until the second session convened on Jan. 20, 1976, when action could be taken to send the bill back to conference to make necessary modifications. The concurrent resolution considered in the House vacated the conference proceedings in both Houses in the reverse order to the actual actions in adopting the report in the two Houses, thereby returning to the stage of the bill prior to consideration of the conference report, thereby re-

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 527) vacating certain actions of the Senate and the House of Representatives with respect to the bill S. 2718, relating to railroad revitalization and regulatory reform, and for other purposes.

The Clerk read as follows:

H. CON. RES. 527

*Resolved by the House of Representatives (the Senate concurring), That the action of the Speaker of the House of Representatives and the acting President pro tempore of the Senate in signing the enrolled bill (S. 2718) to improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes, is hereby rescinded; the proceedings by which the House adopted the conference report on such bill and laid on the table a motion to reconsider the vote thereon on December 19, 1975, are hereby vacated; the proceedings by which the Senate adopted the conference report on such bill and laid on the table a motion to reconsider the vote thereon on December 19, 1975, are hereby vacated; and the conference report on such bill is hereby re-committed to the committee of conference.*

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constituting the original conference to which the bill was then re-committed by action of H. Con. Res. 527. New conferees were therefor not named and no motion to instruct was available.

THE SPEAKER PRO TEMPORE:<sup>(6)</sup> Is a second demanded?

MR. [JOE] SKUBITZ [of Kansas]: Mr. Speaker, I demand a second.

THE SPEAKER PRO TEMPORE: Without objection, a second will be considered as ordered.

There was no objection.

MR. STAGGERS: Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution is necessary to resolve a situation which has arisen because of the rejection by the administration of some of the provisions contained in the bill, S. 2718, relating to railroad revitalization and regulatory reform, agreed to by both Houses on December 19, 1975.

The administration indicated that the bill would be vetoed because of the amount of money involved and because of the lack of administration control over the funding of ConRail, the corporation created to operate the bankrupt northeast railroads.

Because of this certain veto, the Senate did not send the bill to the White House in the usual manner. During the recess period over Christmas, the leadership of the two committees involved, the Committee on Interstate and Foreign Commerce and the Senate Commerce Committee, authorized representatives of both committees to sit down with representatives of the administration and discuss the possibility of developing a recommendation for modification of this legislation which might be acceptable to both the House and the Senate, as well as the administration.

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6. John J. McFall (Calif.).

The negotiations have been completed and this resolution is necessary to vacate the actions of both Houses in agreeing to the bill and to recommit the legislation to the conference committee where the conferees can examine the recommended proposal and file a new conference report with both Houses.

The Senate on the following day<sup>(7)</sup> adopted House Concurrent Resolution 527 and under the terms thereof the matter was recommitted to conference. When the House received a message from the Senate informing it of the Senate's concurrence, the Speaker appointed one conferee to fill a vacancy on the conference committee which had been caused by the resignation of a Member from the House.

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 527. Concurrent resolution vacating certain actions of the Senate and the House of Representatives with respect to the bill S. 2718, relating to railroad revitalization and regulatory reform, and for other purposes. . . .

The message also announced that the Senate vacates its adoption of the conference report on S. 2718 and re-commits the same to the committee of conference, pursuant to the provi-

sions of House Concurrent Resolution 527.

APPOINTMENT OF MEMBER OF THE COMMITTEE OF CONFERENCE ON S. 2718

THE SPEAKER PRO TEMPORE:<sup>(8)</sup> The Chair announces, without objection, the appointment of the gentleman from North Carolina (Mr. Broyhill) as a conferee on the Senate bill (S. 2718) to fill the existing vacancy on the committee of conference on that bill.

There was no objection.

*Effect of Recommittal*

§ 32.47 **When a conference report is recommitted to the committee of conference the entire matter is again before that committee for consideration.**

On Sept. 11, 1940,<sup>(9)</sup> the House was considering the conference report on S. 3550, prohibiting the transportation of convict-made goods in interstate commerce. Mr. Earl C. Michener, of Michigan, offered a motion to recommit.

The Clerk read as follows:

Mr. Michener moves to recommit the conference report to the conference committee.

MR. MICHENER: Mr. Speaker, a parliamentary inquiry.

7. 122 CONG. REC. 526, 94th Cong. 2d Sess., Jan. 21, 1976.

8. John J. McFall (Calif.).

9. 86 CONG. REC. 11938, 76th Cong. 3d Sess.

THE SPEAKER PRO TEMPORE:<sup>(10)</sup> The gentleman will state it.

MR. MICHENER: If this motion should carry, the conferees would then be permitted to go back and cut out all the exemptions which they have included here if they wanted.

THE SPEAKER PRO TEMPORE: The whole matter would be before the conferees.

The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. Michener) there were—ayes 28, noes 94.

### *Filing and Numbering of Second Conference Report*

**§ 32.48 Where a conference report is recommitted to the committee of conference, and a second report is then filed by the conferees, this second report is numbered and otherwise treated as a new and separate report.**

On June 28, 1962,<sup>(11)</sup> the following entry appeared in the portion of the Record regarding reports of committees in the House:

MR. PATMAN: Committee of conference. S. 3161. An Act to provide for continuation of authority for regulation of exports, and for other purposes (Rept. No. 1949). Ordered to be printed.

10. Sam Rayburn (Tex.).

11. 108 CONG. REC. 12135, 87th Cong. 2d Sess.

However that same day<sup>(12)</sup> this conference report was filed in and then recommitted by the Senate. On June 29, 1962,<sup>(13)</sup> Mr. Wright Patman, of Texas, made the following request:

MR. PATMAN: Mr. Speaker, I ask unanimous consent that the managers on the part of the House of the Banking and Currency Committee have until 12 o'clock tonight to file a report on S. 3161.

THE SPEAKER:<sup>(14)</sup> Is there objection to the request of the gentleman from Texas?

There was no objection.

The Record for June 29, 1962,<sup>(15)</sup> carried this entry regarding reports of committees:

MR. PATMAN: Committee of conference. S. 3161. An Act to provide for continuation of authority for regulation of exports, and for other purposes (Rept. No. 1955). Ordered to be printed.

On June 30, 1962, Mr. Patman called up the new conference report on S. 3161, House Report No. 1955.

MR. PATMAN: Mr. Speaker, I call up the conference report on the bill (S. 3161) to provide for continuation of authority for regulation of exports, and

12. *Id.* at pp. 12192, 12196, 12197.

13. *Id.* at p. 12297.

14. John W. McCormack (Mass.).

15. 108 CONG. REC. 12343, 87th Cong. 2d Sess.

for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

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

There was no objection.

The Clerk read the statement.

The conference report and statement are as follows:

CONFERENCE REPORT (H. REPT. NO.  
1955)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3161) to provide for continuation of authority for regulation of exports, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: . . .

**§ 32.49 Where a conference report is recommitted with instructions relating to certain items in such report, the managers at the conference are not discharged and it is necessary for them to arrive at a new agreement and file a new report.**

On June 8, 1942,<sup>(16)</sup> the Senate was discussing the conference report on S. 2025 relating to pay allowances for certain service

<sup>16.</sup> 88 CONG. REC. 4995, 4996, 77th Cong. 2d Sess.

personnel. Senator Warren R. Austin, of Vermont, made the following statement:

In view of the statement by the distinguished Senator from Wisconsin [Mr. La Follette] that he raised a question only as to one point in the conference report, and did not raise any question as to the remainder of it, but wished the remainder to be left undisturbed as reported, I should like to have the Record show the parliamentary status of the report of the conferees on Senate bill 2025.

THE PRESIDING OFFICER:<sup>(17)</sup> The Chair understands that the conferees have not been discharged by the action of either House on the conference report. Therefore the motion recently agreed to by the Senate recommits the conference report and the bill to the same conferees, with instructions to the Senate conferees. As the Chair understands the instructions, they deal with specific items. The Senate conferees are instructed only with respect to the items dealing with the seventh and sixth grades.

MR. AUSTIN: Mr. President, another parliamentary inquiry.

THE PRESIDING OFFICER: The Senator will state it.

MR. AUSTIN: Is it true that the present parliamentary status makes it necessary to have a new agreement and a new conference report?

THE PRESIDING OFFICER: The Chair so holds.

<sup>17.</sup> Joel Bennett Clark (Mo.).



***Effect of Instructions on Specified Item(s)***

**§ 32.50 If a conference report is recommitted with instructions on one item, the managers are not confined, in their new conference, to the subject matter of the instructions but may negotiate and report on all matters that have been in disagreement.**

On Dec. 20, 1969,<sup>(18)</sup> as the House concluded its consideration of the conference report on H.R. 15149, foreign assistance appropriations fiscal 1970, Mr. Gerald R. Ford, of Michigan, posed a parliamentary inquiry concerning a motion to recommit.

Mr. Speaker, a parliamentary inquiry. If the motion to recommit reads as follows, will it limit the conference to the consideration of this particular issue, or will the conference as a whole be open for the consideration of all issues in the conference? Let me read the motion to recommit, Mr. Speaker, that will be as follows:

I move to recommit the conference report on the bill H.R. 15149 with instructions to the managers on the part of the House to agree with the amendment of the Senate No. 25.

Mr. Speaker, if that is offered and does prevail, is the conference as a

18. 115 CONG. REC. 40454, 91st Cong. 1st Sess.

whole free to discuss and decide issues involving the whole bill or all issues within both the House and Senate versions?

THE SPEAKER:<sup>(19)</sup> In response to the parliamentary inquiry, if the motion to recommit with instructions on one item should prevail, then all items in disagreement are open for further consideration by the conference committee.

***Notification to Senate***

**§ 32.51 Where a conference report is recommitted to conference, the Senate is not notified and the House managers carry the original papers back to conference.**

On Dec. 1, 1971,<sup>(20)</sup> the following occurred concerning the conference report on Senate Concurrent Resolution 6 (closing Public Health Service hospitals and clinics) which had been reported in total disagreement:<sup>(1)</sup>

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I ask unanimous consent that the conference report on the Senate concurrent resolution, Senate Concurrent Resolution 6, be recommitted to the committee of conference.

19. John W. McCormack (Mass.).

20. 117 CONG. REC. 43835, 92d Cong. 1st Sess.

1. 117 CONG. REC. 36867, 92d Cong. 1st Sess., Oct. 19, 1971.

THE SPEAKER:<sup>(2)</sup> Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Immediately after this request was granted the House proceeded to consider other business.

### *Rejection of Motion*

**§ 32.52 If a motion to recommit a conference report is voted down, the question before the House is on the adoption of the conference reports.**

On Sept. 20, 1962,<sup>(3)</sup> after the House had ordered the previous question on the conference report on H.R. 12391 (the Food and Agricultural Act of 1962) Mr. Charles B. Hoeven, of Iowa, offered a motion to recommit the report. Mr. Thomas G. Abernethy, of Mississippi, posed a parliamentary inquiry.

Mr. Speaker, if the motion of the gentleman from Iowa is voted down, would it then be in order for the House conferees to return to conference upon the making of a proper motion?

THE SPEAKER:<sup>(4)</sup> If the motion to recommit is defeated, then the question comes on adoption of the conference report.

- 
2. Carl Albert (Okla.).
  3. 108 CONG. REC. 20099, 20105, 87th Cong. 2d Sess.
  4. John W. McCormack (Mass.).

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