

# Appropriations

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7 Cannon §§ 1116–1720

7 Deschler Chs 25, 26

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### I. Introductory

#### § 1. In General; Constitutional Background

The source of the congressional power to appropriate is found in the Constitution. Article I (§7 clause 1) provides that no money “shall be drawn from the Treasury” but in consequence of appropriations made by law. U.S. Const. art. I § 9 clause 7. Appropriation bills are the device through which money is permitted to be “drawn from the Treasury” for expenditure. Deschler Ch 25 § 2.

This constitutional provision is construed as giving Congress broad powers to appropriate money in the Treasury and as a strict limitation on the authority of the executive branch to exercise this function. The Supreme Court has recognized that Congress has a wide discretion with regard to the details of expenditures for which it appropriates funds and has approved the frequent practice of making general appropriations of large amounts to be allotted and expended as directed by designated government agencies. *Cincinnati Soap Co. v United States*, 301 US 308, 322 (1937).

#### § 2. Power to Originate Appropriation Bills; House and Senate Roles

Under the Constitution, it is exclusively the prerogative of the House to originate “revenue” bills. Article I § 7 clause 1 provides:

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

The House has traditionally taken the view that this prerogative encompasses the sole power to originate all general appropriation bills. Deschler

Ch 25 § 13. (And on more than one occasion the House has returned to the Senate a Senate bill or joint resolution appropriating money on the ground that it invaded the prerogatives of the House. Deschler Ch 13 §§ 20.2, 20.3.) In 1962, when the Senate passed a joint resolution continuing funds for the Department of Agriculture, the House passed a resolution declaring that the Senate's action violated Article I § 7 of the Constitution and was an infringement of the privileges of the House. Deschler Ch 13 § 20.2. In support of the view that the House has the sole power to originate appropriation bills, it has been noted that at the time of the adoption of the Constitution the phrase "raising revenue" was equivalent to "raising money and appropriating the same." The Supply Bills. S. Doc. No. 872, 62d Cong. 1st Sess.

### **§ 3. Definitions; Kinds of Appropriation Measures**

#### **Generally**

An appropriation is a provision of law that provides budget authority for federal agencies to incur obligations. "Budget authority" means the authority provided by law to incur financial obligations as defined by the Congressional Budget Act of 1974, § 3(2)(A).

An appropriation act is the most common means of providing budget authority. Deschler Ch 25 § 2. It has been held that language which authorizes the Secretary of the Treasury to use the proceeds of public-debt issues for the purposes of making loans is not an appropriation. Deschler Ch 25 § 4.43.

#### **Types of Appropriation Acts**

The principal types of appropriation acts are general, supplemental, special, and continuing.

- General appropriation bills provide budget authority to agencies, usually for a specified fiscal year. Today, there are 13 regular appropriation acts for each fiscal year. See § 6, *infra*.
- A supplemental appropriation is an act appropriating funds in addition to those in the 13 regular annual appropriation acts. Supplemental appropriations provide additional budget authority beyond the original estimates for an agency or program. Such a bill may be used after the fiscal year has begun to provide additional funding. Supplemental bills may also be "general" bills within the meaning of Rules XI and XXI if covering more than one agency. See § 73, *infra*.

- A special appropriation provides funds for one government agency, program or project. See § 74, *infra*.
- Continuing appropriations—also known as continuing resolutions—provide temporary funding for agencies or programs that have not received a regular appropriation by the start of the fiscal year. They are used to permit agencies to continue to function and to operate their programs until their regular appropriations become law. Continuing resolutions are usually of short duration, but they have been used to fund agencies or departments for an entire fiscal year. See § 72, *infra*.

### **Privileged and Nonprivileged Appropriations Distinguished**

The term “general appropriation bill” is used to refer to those bills which may be reported at any time and are privileged for consideration. See § 6, *infra*. A joint resolution continuing appropriations may also be reported and called up as privileged if reported after September 15 preceding the beginning of the fiscal year for which it is applicable. § 72, *infra*. Other continuing appropriation measures, and special appropriation bills, are not privileged and are therefor considered under other procedures which give them privilege—such as a unanimous-consent agreement, a special order reported from the Committee on Rules, or under suspension. Deschler Ch 25 §§ 6, 7.

To file a report on a general appropriation bill, a member of the Committee on Appropriations seeks recognition and presents the report as follows:

THE MEMBER: Mr. Speaker, by direction of the Committee on Appropriations, I submit the report on the bill making appropriations for the Departments of \_\_\_\_\_ for printing under the rule.

THE SPEAKER: The report is referred to the Union Calendar and ordered printed.

## **§ 4. Committee and Administrative Expenses**

### **Generally**

Funding for House committees is provided by resolutions, which allocate resources made available to the House in certain accounts in annual Legislative Branch Appropriation Acts. Authorization for payment may be obtained pursuant to House Rule XI clause 5, which provides detailed provisions for the consideration of a primary expense resolution and for subsequent supplemental expense resolutions. With the exception of the Appropriations Committee, the rule applies to “any committee, commission or other entity.” *Manual* § 732a. Generally, see COMMITTEES.

The authority of all committees to incur expenses, including travel expenses, is made contingent upon adoption by the House of resolutions re-

ported pursuant to this rule. See clause 1(b), Rule XI. The rule was amended in 1977 to extend its applicability to committees and entities other than standing committees. H. Res. 988, 93d Cong.

Appropriations from accounts for salaries and other administrative expenses of the House are under the jurisdiction of the Committee on House Oversight. Rule X clause 1(h). *Manual* § 677a. A resolution reported by that committee providing for such an expenditure is called up as privileged. Rule XI clause 4(a). Such a resolution, if not formally reported by the committee, may be called up and agreed to by unanimous consent. 94-1, Jan. 23, 1975, pp 1160, 1161.

### **§ 5. Authorization, Appropriation, and Budget Processes Distinguished**

There are three phases in the complex process by which Congress allocates the fiscal resources of the federal government. There is an authorization process under which federal programs are created, amended and extended in response to national needs. There is an appropriations process which provides funding for these programs. The congressional budget process, which may place spending ceilings on budget authority and outlays for a fiscal year and otherwise provides a mechanism for allocating federal resources among competing government programs, interacts with and shapes both of the other phases. The budget process is treated separately in this work.

In the authorization phase, the legislative committees establish program objectives and may set dollar ceilings on the amounts that may be appropriated. Once this authorization stage is complete for a particular program or department, the Appropriations Committee recommends the actual level of “budget authority,” which allows federal agencies to enter into obligations. Occasionally, with the consent of the House, the appropriation process precedes the authorization phase. Special orders reported from the Committee on Rules are often utilized to expedite floor consideration of appropriation bills. The House may decline to appropriate funds for particular purposes, even though authorization has been enacted. Deschler Ch 25 § 2.1.

As a general rule, these two stages should be kept separate. With certain exceptions, authorization bills should not contain appropriations (§ 76, *infra*), and, again with certain exceptions, appropriation bills should not contain authorizations (§§ 27 *et seq.*, *infra*). This general rule is complicated by the fact that some budget authority becomes available as the result of previously enacted legislation and does not require current action by Congress. Examples include the various trust funds for which the obligational authority

is already provided in basic law. § 9, *infra*. In addition some spending, sometimes referred to as direct spending, is controlled outside of the annual appropriations process. It is composed of entitlement and other mandatory spending programs. Such programs are generally funded by provisions of the permanent laws that created them. See BUDGET PROCESS. Moreover, the authorization for a program may be derived not from a specific law providing authority for that particular program but from more general existing law—“organic” law—mandating or permitting such programs. Thus, a paragraph in a general appropriation bill purportedly containing funds not yet specifically authorized by separate legislation was upheld where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. 95-2, June 8, 1978, p 16778.

## **II. General Appropriation Bills**

### **A. Introductory**

#### **§ 6. Background; What Constitutes a General Appropriation Bill**

Today, much of the federal government is funded through the annual enactment of 13 regular appropriations bills. The subjects of these bills are determined by and coincide with the subcommittee jurisdictional structure of the Committee on Appropriations. Typically the 13 regular appropriations bills are identified as:

- Agriculture, Rural Development and related agencies
- Commerce, Justice, State, and Judiciary and related agencies
- Defense Department
- District of Columbia
- Energy and Water Development
- Foreign Operations, Export Financing, and related programs
- Interior Department and related agencies
- Labor-HHS-Education Departments and related agencies
- Legislative Branch
- Military Construction
- Transportation Department and related agencies
- Treasury, Postal Service, and general government
- Veterans' Affairs, Housing and Urban Development, Independent Agencies

The question as to just what constitutes a general appropriations bill is important because the rule against inclusion of substantive legislation in appropriation measures (see § 27, *infra*) applies only to “general” appropria-

tion bills. Deschler Ch 26 § 1.1; *Manual* § 835. And the requirement that unauthorized appropriations or “legislative” provisions not be in order in an appropriation bill applies only to “general” appropriation bills. Deschler Ch 25 § 2. In the House, the 13 regular appropriation bills and measures providing supplemental appropriations to two or more agencies are general appropriations bills. Deschler Ch 25 § 6; Deschler Ch 26 § 1.3.

Measures which have been held *not* to constitute a general appropriation bill include:

- A joint resolution continuing appropriations for government agencies pending enactment of the regular appropriation bills. Deschler Ch 26 § 1.2.
- A joint resolution making supplemental appropriations for one agency. Deschler Ch 25 § 7.4.
- A joint resolution making an appropriation to a department for a specific purpose. 92–1, Aug. 4, 1971, p 29384.
- Bills providing special appropriations for specific purposes. 8 Cannon § 2285.
- A joint resolution providing an appropriation for a single government agency and permitting transfer of a portion of those funds to another agency. 96–1, Oct. 25, 1979, pp 29627, 29628.
- A joint resolution reported from the Committee on Appropriations transferring appropriated funds from one agency to another. 96–2, Mar. 26, 1980, pp 6716, 6717.
- A joint resolution transferring unobligated balances to the President to be available for specified purposes but containing no new budget authority. 100–2, Mar. 3, 1988, pp 3235–39.
- A bill making supplemental appropriation for emergency construction of public works. 7 Cannon § 1122.

## § 7. The Restrictions of Rule XXI Clause 2

### Generally

Rule XXI clause 2 contains two restrictions relative to appropriations bills: it (1) prohibits the inclusion in general appropriation bills of “unauthorized” appropriations, except for works-in-progress, and (2) prohibits provisions “changing existing law”—usually referred to as “legislation on an appropriation bill”—except for provisions that retrench expenditures under certain conditions, and except for rescissions of amounts provided in appropriation acts reported by the Appropriations Committee. *Manual* § 834. The “retrenchment” provision is known as the Holman rule, and is discussed in § 46, *infra*.

In practice, the concepts “unauthorized appropriations” and “legislation on general appropriation bills” sometimes have been applied almost interchangeably as grounds for making points of order pursuant to Rule XXI

clause 2. This occurs because an appropriation made without prior authorization has, in a sense, the effect of legislation, particularly in view of rulings of long standing (§ 28, *infra*) that a “proposition changing existing law” may be construed to include the enactment of a law where none exists. Deschler Ch 26 § 1. The two concepts are treated separately in this article, however, because they derive from different paragraphs of clause 2, Rule XXI and constitute distinct restrictions on the authority of the Committee on Appropriations.

### **Enforcement of Rule**

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule. 4 Hinds § 3811; *Manual* § 835. Because portions of the bill thus stricken are not reported back to the House, clause 8, Rule XXI was added in the 104th Congress to empower the Committee of the Whole to strike offending provisions without Members needing to reserve points of order in the House. The enforcement of the rule also occurs in the House, since a motion to recommit a general appropriation bill may not propose an amendment in violation of the rule. Deschler Ch 26 § 1.4; 101–1, Aug. 1, 1989, p 17159; 101–1, Aug. 3, 1989, p 18546. It should be stressed, however, that the House may, through various procedural devices, waive one or both requirements of the rule, and thereby preclude the raising of such points of order against provisions in the bill. § 68, *infra*.

## **§ 8. Committee Jurisdiction and Functions**

### **Generally**

Today, under Rule X clause 1 the House Committee on Appropriations has jurisdiction over all appropriations, including general appropriation bills. *Manual* § 671b. And special Presidential messages on rescissions and deferrals of budget authority submitted pursuant to § 1012 and § 1013 of the Impoundment Control Act of 1974, as well as rescission bills as defined in § 1011, are referred to the Committee on Appropriations if the proposed rescissions or deferrals involve funds already appropriated or obligated. *Manual* § 671b. Impoundments generally, see BUDGET PROCESS.

Under the Congressional Budget Act of 1974, the committee was given jurisdiction over rescissions of appropriations, transfers of unexpended balances, and the amount of new spending authority to be effective for a fiscal year. See Rule X clause 1(b). *Manual* § 671b.

### **Committee Reports**

A report from the Appropriations Committee accompanying any general appropriation bill must contain a concise statement describing fully the effect of any provision of the accompanying bill which directly or indirectly changes the application of existing law. Rule XXI clause 3. *Manual* § 844b. Provisions in the bill which are described in the report as changing existing law are presumed to be legislation in violation of clause 2(c) of Rule XXI, absent rebuttal by the committee. 98–2, May 31, 1984, p 14591. The rules further require that such reports contain a list of appropriations in the bill for expenditures not previously authorized by law. Rule XXI clause 3, as amended in 1995.

## **§ 9. Duration of Appropriation**

### **Annual Appropriations**

The most common form of appropriation provides budget authority for a single fiscal year. All of the 13 regular appropriations bills, for example, are annual, although certain accounts may “remain available until expended.” Where a bill provides budget authority for a single fiscal year, the funds have to be obligated during the fiscal year for which they are provided; they lapse if not obligated by the end of that year. Indeed, unless an act provides that a particular fund shall be available beyond the fiscal year, appropriations are made for one year only and any unused funds automatically go back into the Treasury at the end of the current fiscal year. *Norcross v U.S.*, 1958, 142 Ct.Cl. 763.

An appropriation in a regular appropriation law may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law in which it appears, or unless the appropriation is for certain purposes such as public buildings. 31 USC § 1301.

The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

### **Multi-year Appropriations**

A multi-year appropriation is made when budget authority is provided in an appropriations act that is available for a specified period of time in excess of one fiscal year.

**Permanent Appropriations**

A permanent appropriation is budget authority that becomes available as the result of previously-enacted legislation and which does not require current action by Congress. Examples include the appropriations for compensation of Members of Congress (Pub. L. No. 97–51, § 130(c)), and the various trust funds for which the obligational authority is already provided in basic law. *Appropriations, Budget Estimates, Etc.*, S. Doc. No. 100–23, pp 2329, 2366.

**B. Authorization of Appropriation****§ 10. In General; Necessity of Authorization****Generally**

The current House rule prohibits the inclusion in general appropriation bills of “unauthorized” appropriations, except for “public works and objects” already under way. Rule XXI clause 2(a). *Manual* § 834. Thus, any Member may make a point of order on the House floor to prevent consideration of an unauthorized appropriation (§ 67, *infra*), although the House frequently waives the enforcement of the rule (§ 68, *infra*).

**Authorization to Precede Appropriation**

The enactment of authorizing legislation must occur prior to, and not following, the consideration of an appropriation for the proposed purpose. Thus, delaying the availability of an appropriation pending enactment of an authorization will not protect that appropriation against a point of order. Deschler Ch 26 § 7.3. A bill may not permit a portion of a lump sum—unauthorized at the time the bill is being considered—to subsequently become available; a further appropriation upon the enactment of authorizing legislation would be needed. Deschler Ch 25 § 2. Likewise an appropriation will not be permitted which is conditioned on a future authorization. Deschler Ch 26 §§ 7.2, 47.4. But where lump sums are involved, language which limits use of an appropriation to programs “authorized by law” or which permits expenditures “within the limits of the amount now or hereafter authorized to be appropriated,” has been held to insulate the bill against the point of order. Deschler Ch 26 § 7.10 (note).

The requirement that the authorization precede the appropriation is satisfied if the authorizing legislation has been enacted into law between the time the appropriation bill is reported and the time it is considered in the Committee of the Whole. Deschler Ch 25 § 2.21.

It should be emphasized that the rule applies to “general” appropriation bills. A joint resolution containing continuing appropriations is not considered a general appropriation bill within the purview of the rule, despite inclusion of diverse appropriations which are not “continuing” in nature. Deschler Ch 25 § 2.

### **§ 11. Duration of Authorization**

#### **Generally; Renewals**

Until recent years, many authorizations were permanent, being provided for by the organic statute that created the agency or program. Such statutes often include provisions to the effect that there are hereby authorized to be appropriated “hereafter” such sums “as may be necessary” or “as approved by Congress,” to implement the law, thereby requiring the appropriate budget authority to be enacted each year in accordance with this permanent authorization. See, for example, Deschler Ch 26 § 11.1.

Today, the House more commonly authorizes appropriations for only a certain number of years at a time. Authorizations may extend for two, five, or 10 years, and they may be renewed periodically. The trend toward periodic authorizations is reflected in the House rule adopted in 1970 which requires that each standing committee insure that appropriations for continuing programs and activities will be made annually “to the maximum extent feasible,” consistently with the nature of the programs involved. And programs for which appropriations are not made annually may have “sunset” provisions which require that they be reviewed periodically to determine whether they can be modified to permit annual appropriations. Rule X clause 4(f). *Manual* § 699a.

### **§ 12. Sufficiency of Authorization**

#### **Generally**

The term “authorized by law” in Rule XXI clause 2 (*Manual* § 834) is ordinarily construed to mean a “law enacted by the Congress;” statutory authority for the appropriation must exist. Deschler Ch 25 § 2.3. It has been held, for example, that a bill passed by both Houses but not signed by the President nor returned to the originating House is insufficient authorization to support an appropriation. 92-1, May 11, 1971, p 14471. Similarly, an executive order does not constitute sufficient authorization in the absence of proof of its derivation from a statute enacted by Congress. Deschler Ch 26 § 7.7. On the other hand, sufficient “authorization” for an appropriation may be found to exist in a treaty (Deschler Ch 26 § 17.9) that has been rati-

fied by both parties (4 Hinds § 3587), or in legislation contained in a previous appropriation act which has become permanent law (Deschler Ch 25 § 2.5).

### **Authorization From Specific Statutes or General Existing Law**

Authorization for a program may be derived from a specific law providing authority for that particular program or from a more general existing law—“organic law”—authorizing appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. 95–2, June 8, 1978, p 16778.

Similarly, a permanent law authorizing the President to appoint certain staff, together with legislative provisions authorizing additional employment contained in an appropriation bill enacted for that fiscal year, constituted sufficient authorization for a lump-sum supplemental appropriation for the White House for the same fiscal year. Deschler Ch 25 § 2.6. The legislative history of the law in question may be considered to determine whether sufficient authorization for the project exists. Deschler Ch 25 § 2.7. The omission to appropriate during a series of years for a program previously authorized by law does not repeal the law, and it may be cited as providing authorization for a subsequent appropriation. 4 Hinds § 3595.

Some statutes expressly provide, however, that there may be appropriated to carry out the functions of certain agencies only such sums as Congress may thereafter authorize by law, thus requiring specific subsequently enacted authorizations for the operations of such agencies and not permitting appropriations to be authorized by the “organic statute” creating the agency. (See, for example, 15 USC § 1024(e), establishing the Joint Economic Committee and authorizing the appropriation of “such sums as may be necessary during each fiscal year.” See Deschler Ch 26 § 49.2 (note)).

### **Effect of Prior Unauthorized Appropriations**

An appropriation for an object unauthorized by law, however frequently made in former years, does not warrant similar appropriations in succeeding years (7 Cannon § 1150), unless the program in question is such as to fall into the category of a continuation of work-in-progress (§ 25, *infra*), or unless authorizing legislation in a previous appropriation act has become permanent law. *Manual* § 836.

**Incidental Expenses; Implied Authorizations**

A general grant of authority to an agency or program may be found sufficiently broad to authorize items or projects that are incidental to carrying out the purposes of the basic law. Deschler Ch 25 § 2.10. An amendment proposing appropriations for incidental expenses which contribute to the main purpose of carrying out the functions of the department for which funds are being provided in the bill is generally held to be authorized by law. Deschler Ch 26 § 7.15. For example, appropriations for certain travel expenses for the Secretary of the Department of Agriculture were held authorized by law as necessary to carry out the basic law setting up that Department. Deschler Ch 25 § 2.10.

On the other hand, where the authorizing law authorizes a lump-sum appropriation and confers broad discretion on an executive in allotting funds, an appropriation for a specific purpose may be ruled out as inconsistent therewith. Deschler Ch 26 § 15.5 (note). The appropriation of a lump sum for a general purpose having been authorized, a specific appropriation for a particular item included in such general purpose may be a limitation on the discretion of the executive charged with allotment of the lump sum and not in order on the appropriation bill. 7 Cannon § 1452. Such a limitation may also be ruled out on the ground that it is “legislation” on an appropriation bill. § 43, *infra*. An appropriation to pay a judgment awarded by a court is in order if such judgment has been properly certified to Congress. Deschler Ch 25 § 2.2.

**§ 13. Proof of Authorization; Burden of Proof****Burden of Proof Generally**

Under House practice, those upholding an item of appropriation have the burden of showing the law authorizing it. 4 Hinds § 3597; 7 Cannon §§ 1179, 1276. Thus, a point of order having been raised, the burden of proving the authorization for language carried in an appropriation bill falls on the proponents and managers of the bill (Deschler Ch 26 § 9.4), who must shoulder this burden of proof by citing statutory authority for the appropriation. Deschler Ch 25 § 9.5. The Chair may overrule a point of order upon citation to an organic statute creating an agency, absent any showing that such law has been amended or repealed to require specific annual authorizations. Deschler Ch 26 § 9.6.

**Burden of Proof as to Amendment**

The burden of proof to show that an appropriation contained in an amendment is authorized by law is on the proponent of the amendment, a

point of order having been raised against the appropriation. Deschler Ch 26 §§ 9.1, 9.2; 102–1, Oct. 29, 1991, p \_\_\_\_\_. If the amendment is susceptible to more than one interpretation, it is incumbent upon the proponent to show that it is not in violation of the rule. *Manual* § 835.

#### **Evidence of Compliance With Condition**

An authorizing statute may provide that the authorization for a program is to be effective only upon compliance by executive officials with certain conditions or requirements. In such a case, a letter written by an executive officer charged with the duty of furthering a certain program may be sufficient documentary evidence of authorization in the manner prescribed. Deschler Ch 26 §§ 10.2, 10.3.

### **§ 14. Increasing Budget Authority**

#### **Increases Within Authorized Limits**

Authorizing legislation may place a ceiling on the amount of budget authority which can be appropriated for a program or may authorize the appropriation of “such sums as are necessary.” Absent restrictions imposed by the budget process, it is in order to increase the appropriation in an appropriation bill for a purpose authorized by law if such increase does not exceed the amount authorized for that purpose. Deschler Ch 25 §§ 2.13, 2.15. An amendment proposing simply to increase an appropriation for a specific purpose over the amount carried in the appropriation bill does not constitute a change in law unless such increase is in excess of that authorized. Deschler Ch 25 § 2.14. An amendment changing the figure in the bill to the full amount authorized is in order. Deschler Ch 25 § 2.16. Of course, if the authorization does not place a cap on the amount to be appropriated, an amendment increasing the amount of the appropriation for items included in the bill is in order. Deschler Ch 25 § 11.16.

#### **Increases in Excess of Amount Authorized**

An appropriation in excess of the specific amount authorized by law may be in violation of the rule prohibiting unauthorized appropriations (Rule XXI clause 2). Deschler Ch 26 § 21. Thus, where existing law limited annual authorizations of appropriations for incidental expenses of a program to \$7,500, an appropriation for \$10,000 was held to be unauthorized and was ruled out on a point of order. 94–1, Sept. 30, 1974, p 30981.

The rule that an appropriation bill may not provide budget authority in excess of the amount specified in the authorizing legislation has also been applied to:

- An amendment proposing an increase in the amount of an appropriation authorized by law for compensation of Members of the House. Deschler Ch 26 § 21.2.
- A provision in an appropriation bill increasing the loan authorization for the rural telephone program above the amount authorized for that purpose. Deschler Ch 26 § 33.3.
- Language in an appropriation bill providing funds for the Joint Committee on Defense Production in excess of the amount authorized by law. 88–2, Apr. 10, 1964, p 7640.
- A paragraph in a general appropriation bill containing funds in excess of amounts permitted to be committed by a federal agency for mortgage purchases. 97–2, July 29, 1982, p 18636.

#### **Waiver of Ceiling**

Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in an appropriation bill seeking to waive or change this limitation gives rise to a point of order that the language is legislation on an appropriation bill. Deschler Ch 26 § 33.2.

### **C. Authorization for Particular Purposes or Programs**

#### **§ 15. In General**

Absent an appropriate waiver, language in a general appropriation bill providing funding for a program that is not authorized by law is in violation of Rule XXI clause 2(a) and may also “change existing law” in violation of clauses 2(b) or 2(c). See 98–2, May 31, 1984, p 14590. Provisions that have been ruled out as unauthorized under Rule XXI clause 2 have included:

- Appropriations for fiscal 1979 for the Department of Justice and its related agencies. Deschler Ch 26 § 18.3.
- An appropriation for expenses incident to the special instruction and training of United States attorneys and United States marshals, their assistants and deputies, and United States commissioners. Deschler Ch 26 § 18.1.
- Paragraphs containing funds for a fiscal year for Coast Guard acquisitions, construction, research, development, and evaluation. 95–1, June 8, 1977, pp 17945, 17946.
- An appropriation for the U.S. Customs Service air interdiction program. 98–2, June 21, 1984, pp 17693, 17694.

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- An appropriation for liquidation of contract authority to pay costs of certain subsidies granted by the Maritime Administration. 92-1, June 24, 1971, p 21901.
- Language permitting the Secretary of Labor and the Secretary of Health, Education, and Welfare to use funds for official reception and representation expenses. Deschler Ch 26 § 20.19.
- Language making funds available for distribution of radiological instruments and detection devices to states by loan or grant for civil defense purposes. Deschler Ch 26 § 20.1.
- Language making funds available for reimbursements of Government employees for use by them of their privately owned automobiles on official business. Deschler Ch 26 § 20.6.
- An appropriation for the American Revolution Bicentennial Commission. 91-2, May 19, 1970, p 16165.

The rulings cited in this division are intended to illustrate the application of the rule requiring appropriations to be based on prior authorization. No attempt has been made to indicate whether measures similar to those ruled upon, if offered today, would in fact be authorized under present laws.

## § 16. Agricultural Programs

### Held Authorized by Existing Law

- An appropriation to be used to increase domestic consumption of farm commodities. Deschler Ch 26 § 11.1.
- Appropriations for cooperative range improvements (including construction, maintenance, control of rodents, and eradication of noxious plants in national forests). Deschler Ch 26 § 11.3.
- An appropriation to enable the Secretary of Agriculture to carry out the provisions of the National School Lunch Act of 1946. Deschler Ch 26 § 11.5.
- Appropriations for the acquisition and diffusion of information by the Agriculture Department. 4 Hinds § 3649; Deschler Ch 26 § 11.10.
- Appropriations for agricultural engineering research and for programs relating to the prevention and control of dust explosions and fires during the harvesting and storing of agricultural products. Deschler Ch 26 § 11.11.
- An appropriation for the purchase and installation of weather instruments and the construction or repair of buildings of the Weather Bureau. Deschler Ch 26 § 11.16.

### Ruled Out as Unauthorized

- Language providing funds for a celebration of the centennial of the establishment of the Department of Agriculture. Deschler Ch 26 § 11.2.
- The organization of a new bureau to conduct investigations relating to agriculture. 4 Hinds § 3651.
- Language providing for cooperation by and with state agriculture investigators. 4 Hinds § 3650; 7 Cannon §§ 1301, 1302.

- A section providing funds to collect, compile, and analyze data relating to consumer expenditures and savings. Deschler Ch 26 § 11.7.
- An appropriation to permit the Department of Agriculture to investigate and develop methods for the manufacture and utilization of starches from cull potatoes and surplus crops. Deschler Ch 26 § 11.9.
- A provision for the refund of certain penalties to wheat producers. Deschler Ch 26 § 11.6.
- An amendment appropriating funds for the immediate acquisition of domestic meat and poultry to be distributed consistently with provisions of law relating to distribution of other foods. 93-2, June 21, 1974, p 20620.
- An appropriation for the control of certain crop diseases or infestations. Deschler Ch 26 §§ 11.12, 11.13.

### **§ 17. Programs Relating to Business or Commerce**

#### **Held Authorized by Existing Law**

- An appropriation for the Director of the Bureau of the Census to publish monthly reports on coffee stocks on hand in the United States. Deschler Ch 26 § 12.1.
- An appropriation for the office of the Secretary of Commerce for expenses of attendance at meetings of organizations concerned with the work of his office. Deschler Ch 26 § 12.6.

#### **Ruled Out as Unauthorized**

- An appropriation for sample surveys by the Census Bureau to estimate the size and characteristics of the nation's labor force and population. Deschler Ch 26 § 12.2.
- Language providing appropriations for necessary expenses in the performance of activities and services relating to technological development as an aid to business in the development of foreign and domestic commerce. Deschler Ch 26 § 12.4.
- Language appropriating funds for travel in privately owned automobiles by employees engaged in the maintenance and operation of remotely controlled air-navigation facilities. Deschler Ch 26 § 12.5.
- Funds for necessary expenses of the National Bureau of Standards (including amounts for the standard reference data program) for fiscal 1979. Deschler Ch 26 § 12.9.

**§ 18. Defense Programs****Held Authorized by Existing Law**

- Funds for paving of streets and erection of warehouses incident to the establishment of a naval station. 7 Cannon § 1232.
- Appropriations to enable the President, through such departments or agencies of the government as he might designate, to carry out the provisions of the Act of Mar. 11, 1941, to promote the defense of the United States. Deschler Ch 26 § 13.3.

**Ruled Out as Unauthorized**

- Funds for transportation of successful candidates to the Naval Academy. 7 Cannon § 1234.
- Funds for establishment of shooting ranges and purchase of prizes and trophies. 7 Cannon § 1242.
- An appropriation for the construction and improvement of barracks for enlisted men and quarters for noncommissioned officers of the Army. Deschler Ch 26 § 13.5.
- An amendment striking out funds for a nuclear aircraft carrier program and inserting funds for a conventional-powered aircraft carrier program. Deschler Ch 26 § 13.6.
- A provision increasing the funds appropriated for a fiscal year for military assistance to South Vietnam and Laos. 93-2, Apr. 10, 1974, p 10594.
- Language including funds for Veterans' Administration expenses for the issuance of memorial certificates to families of deceased veterans. Deschler Ch 26 § 13.1.

**§ 19. Funding for the District of Columbia****Held Authorized Under Existing Law**

- An appropriation for opening, widening, or extending streets and highways in the District of Columbia. 7 Cannon § 1189.
- An appropriation for street lights or for improving streets out of a special fund created by the District of Columbia Gasoline Tax Act. Deschler Ch 26 §§ 11.15, 14.7.
- An appropriation for expenses of keeping school playgrounds open during the summer months. Deschler Ch 26 § 14.5.
- An appropriation for the preparation of plans and specifications for a branch library building in the District of Columbia. Deschler Ch 26 § 14.13.

**Ruled Out as Unauthorized**

- Appropriations for certain federal office buildings in the District of Columbia that were not approved by the Public Works Committees of the House and Senate as required by the Public Buildings Act of 1959. 86-2, Apr. 19, 1960, p 8230.
- A paragraph permitting the use of funds by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner. Deschler Ch 26 § 14.1.
- An appropriation for the preparation of plans and specifications for a new main library building in the District of Columbia. Deschler Ch 26 § 14.12.
- An appropriation for the salary and expenses of the office of Director of Vehicles and Traffic out of the District Gasoline Tax Fund. Deschler Ch 26 § 14.14.
- Language permitting the Commissioners of the District of Columbia to purchase a municipal asphalt plant. Deschler Ch 26 § 14.19.
- An amendment making funds available for expenditure by the American Legion in connection with its national convention. Deschler Ch 26 § 14.3.
- An appropriation to reimburse certain District of Columbia officials for services and expenses. 7 Cannon § 1184.

**§ 20. Interior or Environmental Programs****Held Authorized Under Existing Law**

- An appropriation for suppression of liquor or peyote traffic among Indians. 7 Cannon §§ 1210, 1212.
- An appropriation for the examination of mineral resources of the national domain. 7 Cannon § 1222.
- An appropriation for the development of an educational program of the National Park Service. Deschler Ch 26 § 15.17.
- Language providing an appropriation for the purpose of encouraging industry and self-support among Indians and outlining areas of discretionary authority to be exercised by the Secretary of the Interior. Deschler Ch 26 § 15.26.
- Appropriations for irrigation projects which had been recommended by the Secretary of the Interior and approved by the President. Deschler Ch 26 § 15.30.

**Ruled Out as Unauthorized**

- A paragraph containing funds to enable the EPA to obtain reports as to the probable adverse effect on the economy of certain federal environmental actions. Deschler Ch 26 § 15.1.
- A paragraph making funds available to the EPA to establish an independent review board to review the priorities of the agency. Deschler Ch 26 § 15.2.

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- Language authorizing the Secretary of the Interior, in administering the Bureau of Reclamation, to contract for medical services for employees and to make certain payroll deductions. Deschler Ch 26 § 15.9.
- An appropriation for the Division of Investigations in the Department of the Interior, to be expended under the direction of the Secretary, to meet unforeseen emergencies of a confidential character. Deschler Ch 26 § 15.12.
- Language appropriating funds “out of the general funds of the Treasury” (and not the reclamation fund) for investigations of proposed federal reclamation projects. Deschler Ch 26 § 15.28.
- Language requiring that part of an appropriation for general wildlife conservation be earmarked expressly for the leasing and management of land for the protection of the Florida Key deer. Deschler Ch 26 § 15.5.
- Appropriations for the National Power Policy Committee to be used by the committee in the performance of functions prescribed by the President. Deschler Ch 26 § 15.7.

## § 21. Programs Relating to Foreign Affairs

### Held Authorized by Existing Law

- An appropriation for transportation and subsistence of diplomatic and consular officers en route to and from their posts. 7 Cannon § 1251.
- A provision earmarking an amount for a contribution to the International Secretariat on Middle Level Manpower. Deschler Ch 26 § 17.2.
- An appropriation for the obligation assumed by the United States in accepting membership in the International Labor Organization. Deschler Ch 26 § 17.3.
- An amendment providing funds for a health exhibit at the Universal and International Exhibition of Brussels. Deschler Ch 26 § 17.6.
- An appropriation for commercial attachés to be appointed by the Secretary of Commerce. 7 Cannon § 1257.
- An appropriation to compensate the owners of certain vessels seized by Ecuador. Deschler Ch 26 § 17.1.

### Ruled Out as Unauthorized

- An amendment to earmark part of the appropriation for the USIA to provide facilities for the translation and publication of books and other printed matter in various foreign languages. Deschler Ch 26 § 17.7.
- Appropriations for incidental and contingent expenses in the consular and diplomatic service. 4 Hinds § 3609.
- An appropriation for the Foreign Service Auxiliary. Deschler Ch 26 § 17.14.

- An appropriation for the salary of a particular U.S. minister to a foreign country where the Senate had not confirmed the appointee. Deschler Ch 26 § 17.17.
- An amendment providing funds for acquisition of sites and buildings for embassies in foreign countries. 4 Hinds § 3606.

## § 22. Legislative Branch Funding

It is not in order to provide in an appropriation bill for payments to employees of the House unless the House by prior action has authorized such payments. 4 Hinds § 3654. Such authorization is generally provided for by resolution from the Committee on House Oversight (formerly House Administration). The House in appropriating for an employee may not go beyond the terms of the resolution creating the office. 4 Hinds § 3659.

A resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (4 Hinds §§ 3656–3658) even though on one occasion the resolution may have been agreed to only by a preceding House (4 Hinds § 3660). A resolution intended to justify appropriations beyond the term of a Congress is “made permanent law” by a legislative provision in a Legislative Branch Appropriation Act.

### Held Authorized

- Funds for employment of counsel to represent Members and to appear in court officially. 7 Cannon § 1311.
- Funds for expenses incurred in contested election cases when properly certified. 7 Cannon § 1231.
- Salaries for certain House employees. 91–1, Aug. 5, 1969, p 22197.
- An increase in the salary of an officer of the House. 89–2, Sept. 8, 1966, p 22020.
- The salary of the Chief of Staff of the Joint Committee on Internal Revenue Taxation. 92–2, Oct. 4, 1972, p 33744.
- Salary adjustments for certain House employees. 92–2, Jan. 27, 1972, p 1531.
- Overtime compensation for employees of the Publications Distribution Service (Folding Room). 92–2, Mar. 2, 1972, p 6627.
- Costs of stenographic services and transcripts in connection with a meeting or hearing of a committee. *Manual* § 703c. H. Res. 988, 93d Cong.
- Certain costs associated with the organizational meeting of the Democratic Caucus or Republican Conference. *Manual* § 997. 2 USC § 29a.
- The transfer of surplus prior-year funds to liquidate certain current obligations of the House. Deschler Ch 25 § 5.3.

**Ruled Out as Unauthorized**

- An amendment proposing to increase the total amount for salaries of Members beyond that authorized. Deschler Ch 26 § 21.2.
- Language providing an allowance payable to the attending physician of the Capitol. 86–2, May 17, 1960, p 10447.
- An amendment providing funds for a parking lot for the use of Members and employees of Congress. Deschler Ch 26 § 20.3.
- An appropriation for employment by the Committee on Appropriations of 50 qualified persons to investigate and report on the progress of certain contracts let by the United States. Deschler Ch 26 § 20.2.

**§ 23. Salaries and Related Benefits**

Language in a general appropriation bill providing funding for salaries that are not authorized by law is in violation of Rule XXI clause 2(a). 98–2, May 31, 1984, p 14589. Such propositions, whether to appropriate for salaries not established by law or to increase salaries fixed by law, are out of order. 4 Hinds §§ 3664–3667, 3676–3679. The mere appropriation for a salary for one year does not create an office so as to justify appropriations in succeeding years. 4 Hinds §§ 3590, 3697. However, it has been held that a point of order does not lie against a lump-sum appropriation for increased pay costs as being unauthorized where language in the bill limits use of the appropriation to pay costs “authorized by or pursuant to law.” Deschler Ch 25 § 2.20.

**Ruled Out as Unauthorized**

- Language providing for positions of employment in certain grades, in addition to the number authorized in existing law. 86–1, May 11, 1959, p 7904.
- Language providing funds for the hire of one other person in excess of the number authorized by law. 87–2, Apr. 2, 1962, p 5932.
- A paragraph containing funds for personal services for the President “without regard to provisions of law” regulating government employment and for entertainment expenses to be accounted for solely on the certificate of the President. 93–1, Aug. 1, 1973, pp 27286, 27287.
- A paragraph permitting the use of funds by the D.C. Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner. 93–1, June 18, 1973, p 20068.
- A paragraph authorizing an executive official to establish salary levels of certain other officials. 97–2, Sept. 30, 1982, pp 26290, 26291.
- A provision appropriating necessary expenses for a designated number of officers on the active list of an agency. 98–2, May 31, 1984, p 14590.
- An appropriation for salaries and expenses of the Commission on Civil Rights above the amount authorized by existing law for that purpose. 92–1, June 24, 1971, p 21902.

- An amendment appropriating funds for salaries and expenses of additional inspectors in the U.S. Customs Service. 98–2, Aug. 1, 1984, pp 21904, 21905.
- An amendment providing for a salary of \$10,000 per year for the wife of the President for maintaining the White House. Deschler Ch 26 § 20.13.

### **D. Authorization for Public Works**

#### **§ 24. In General**

Language in a general appropriation bill providing funding for a public work that is not authorized by law is in violation of Rule XXI clause 2(a) (Deschler Ch 26 § 19.13), unless the project can be deemed “work in progress” within the meaning of that rule (§ 25, *infra*). An appropriation for a public work in excess of the amount fixed by law (4 Hinds §§ 3583, 3584; 7 Cannon § 1133), or for extending a public service beyond the limits assigned by an executive officer exercising a lawful discretion (4 Hinds § 3598), is out of order.

#### **Held Authorized by Existing Law**

- An appropriation for necessary advisory services to public and private agencies with regard to construction and operation of airports and landing areas. Deschler Ch 26 § 19.4.
- An amendment proposing to increase a lump-sum appropriation for river and harbor projects. Deschler Ch 26 § 19.6.
- An appropriation for the Tennessee-Tombigbee inland waterway. Deschler Ch 26 § 19.9.
- An appropriation for construction of transmission lines from Grand Coulee Dam to Spokane. Deschler Ch 25 § 19.11.

#### **Ruled Out as Unauthorized**

- Language providing an additional amount for construction of certain public buildings. Deschler Ch 26 § 19.1.
- Appropriations for certain federal office buildings in the District of Columbia where not approved by the Public Works Committees of the House and Senate as required by the Public Buildings Act of 1959. Deschler Ch 26 § 19.2.
- An appropriation for construction of a connecting highway between the United States and Alaska. Deschler Ch 26 § 19.5.
- An amendment making part of an appropriation to the Army Corps of Engineers for flood control available for studying specified work of the Bureau of Reclamation. Deschler Ch 26 § 19.8.
- Language appropriating certain trust funds for expenses relating to forest roads and trails. Deschler Ch 26 § 28.2.

**§ 25. Works in Progress**

The House rule which bars appropriations not previously authorized by law provides for an exception for appropriations for “public works and objects” which are already in progress. Rule XXI clause 2(a). *Manual* § 834. Thus, when the construction of a public building has commenced and there is no limit of cost, further appropriations may be made under the exception for works in progress. Deschler Ch 26 § 8.1. The exception for works in progress under Rule XXI may apply even though the original appropriation for the project was unauthorized. 7 Cannon § 1340; Deschler Ch 26 § 8.2.

Historically, the “works in progress” exception has been applied only to projects funded from the general fund of the Treasury for which no authorization has been enacted; it does not apply to language changing existing law by extending the authorized availability of funds or in contravention of law restricting use of a special fund. 103–1, Sept. 22, 1993, p \_\_\_\_\_. An appropriation for construction which is in violation of existing law or which exceeds the limit fixed by law is not permitted under the work-in-progress exception of Rule XXI. 4 Hinds §§ 3587, 3702; 7 Cannon § 1332; *Manual* § 839.

The tendency of later decisions is to narrow the application of the exception under Rule XXI clause 2(a) making in order appropriations for “works in progress.” 7 Cannon § 1333. The work in question, to qualify under the rule, must have moved beyond the planning stage. 7 Cannon § 1336. To come within the terms of the rule, it must be actually “in progress,” according to the usual significance of those words (4 Hinds § 3706), with actual work having been initiated (Deschler Ch 26 § 8.5); merely selecting or purchasing a site for the construction of a building is not sufficient (4 Hinds §§ 3762, 3785). But the fact that the work has been interrupted—even for several years—does not prevent it from qualifying under the work-in-progress exception of clause 2(a). 4 Hinds §§ 3707, 3708.

To establish that actual work has begun on the project, the Chair may require some documentary evidence that work has been initiated. Deschler Ch 26 § 8.5. To this end, the Chair may consider a letter from an executive officer charged with the duty of constructing the project. Deschler Ch 26 § 8.2. News articles merely suggesting that work may have begun have been regarded as insufficient evidence that work is in progress within the meaning of the rule. Deschler Ch 26 § 8.7.

**§ 26. — What Constitutes a Work in Progress**

The “works and objects” referred to in the exception to the rule prohibiting unauthorized appropriations is construed to mean something tan-

gible, such as a building or road; the term does not contemplate work that is indefinite or intangible, such as an investigation. 4 Hinds §§ 3714, 3715, 3719. See also Deschler Ch 26 § 8. The term does not extend to projects that are indefinite as to completion and intangible in nature, such as the gauging of streams. 4 Hinds §§ 3714, 3715. Nor does the term extend to the ordinary duties of an executive or administrative office. 4 Hinds §§ 3709, 3713.

Appropriations for extension or repair of an existing road (4 Hinds §§ 3793, 3798), bridge (4 Hinds § 3803), or public building have been admitted as in continuation of a work (4 Hinds §§ 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (4 Hinds § 3606). The purchase of adjoining land for a work already established has been admitted under this principle (4 Hinds §§ 3766–3773), as well as additions to or extensions of existing public buildings (4 Hinds §§ 3774, 3775). But the purchase of a separate and detached lot of land is not admitted (4 Hinds § 3776).

Appropriations for new buildings as additional structures at Government institutions have sometimes been admitted (4 Hinds §§ 3741–3750), but propositions to appropriate for new buildings that were not necessary adjuncts to the institution have been ruled out (4 Hinds §§ 3755–3759).

Projects that have qualified as a “work or object . . . in progress” under Rule XXI clause 2(a) have included:

- A topographical survey. 7 Cannon § 1382.
- The continuation of construction at the Kennedy Library, a project owned by the United States and funded by a prior year’s appropriation. 100–2, June 14, 1988, p 14335.
- A continuation of aircraft experimentation and development. Jan. 22, 1926, p 2623.

Projects that have been ruled out as a “work or object . . . in progress” under Rule XXI clause 2(a) have included:

- New Army hospitals. 4 Hinds § 3740.
- A new lighthouse. 4 Hinds § 3728.
- An extension of an existing road. 103–1, Sept. 22, 1993, p \_\_\_\_.

### III. Legislation in General Appropriation Bills; Provisions Changing Existing Law

#### A. Generally

#### § 27. The Restrictions of Rule XXI Clause 2

##### In General; Historical Background

The House rules have contained language forbidding the inclusion in general appropriation bills of language “changing existing law” almost continuously since the 44th Congress. In 1835, when it became apparent that appropriation bills were being delayed because of the intrusion of legislative matters, John Quincy Adams suggested the desirability of a plan that such bills “be stripped of everything but the appropriations.” 4 Hinds § 3578.

Today, House Rule XXI provides that, with two exceptions, “[n]o provision changing existing law shall be reported in any general appropriation bill . . .” (clause 2(b)), and that “[n]o amendment to a general appropriation bill shall be in order if changing existing law.” Clause 2(c). The exceptions set forth in clause 2(b) are for germane provisions which change existing law in a way that would “retrench” expenditures (see § 46, *infra*), and for rescissions of previously enacted appropriations. *Manual* § 834.

Language changing existing law in violation of Rule XXI is often referred to as “legislation on an appropriation bill.” Deschler Ch 26 § 1. What “legislation” means in this context is a change in an existing law that governs how appropriations may be used.

Like the rule generally prohibiting unauthorized appropriations, the restriction against legislating on general appropriations bills is only enforced if a Member takes the initiative to enforce it by raising a point of order. § 67, *infra*. And such a point of order may be waived pursuant to various procedural devices. See § 68, *infra*.

The rule against legislation in appropriation bills is limited to general appropriation bills; thus, a joint resolution merely continuing appropriations for government agencies pending enactment of the regular appropriation bills is not subject to the clause 2 Rule XXI prohibitions against legislative language. 90–1, Sept. 21, 1967, p 26370.

##### Construction of Rule

The rule that forbids language in a general appropriation bill which changes existing law is strictly construed. Deschler Ch 26 § 64.23. The restriction is construed to apply not only to changes in an existing statute, but also to the enactment of law where none exists, to language repealing exist-

ing law (§ 28, *infra*), to a provision making changes in court interpretations of statutory law (96–2, Aug. 19, 1980, p 21978) and to a proposition to change a rule of the House (4 Hinds § 3819). The fact that legislative language may have been included in appropriation acts in prior years and made applicable to funds in those laws does not permit the inclusion in a general appropriation bill of similar language. 98–1, Sept. 22, 1983, pp 25403, 25406, 25407.

The Rule XXI restrictions as to changing existing law apply specifically to amendments to general appropriation bills. See clause 2(a). *Manual* § 834. It follows that if a motion to recommit with instructions constitutes legislation on an appropriation bill, the motion is subject to a point of order. Deschler Ch 26 § 1.4.

### **Burden of Proof**

Where a point of order is raised against a provision in a general appropriation bill as constituting legislation in violation of Rule XXI clause 2, the burden of proof is on the Committee on Appropriations to show that the language is valid under the precedents and does not change existing law. Deschler Ch 26 § 22.30. Provisions in the bill, described in the accompanying report as directly or indirectly changing the application of existing law, are presumably legislation in violation of Rule XXI clause 2, in the absence of rebuttal by the committee. Deschler Ch 26 § 22.27. Similarly, the proponent of an amendment against which a point of order has been raised and documented as constituting legislation on an appropriation bill has the burden of proving that the amendment does not change existing law. Deschler Ch 26 § 22.29.

### **§ 28. Changing Existing Law by Amendment, Enactment, or Repeal; Waivers**

The provision of the rule (Rule XXI clause 2) forbidding in any general appropriation bill a “provision changing existing law” is construed to mean:

- A change in the text of existing law. Deschler Ch 26 §§ 23.11, 24.6.  
*Note:* Existing law may be repeated verbatim in an appropriation bill (4 Hinds § 3414) but the slightest change of the text causes it to be ruled out (4 Hinds § 3817; 7 Canon §§ 1391, 1394).
- The enactment of law where none exists.  
*Note:* The provision of the rule forbidding legislation in any general appropriation bill is construed to mean the enactment of law where none exists (4 Hinds §§ 3812, 3813), such as permitting funds to remain available until expended or beyond the fiscal year covered by the bill

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(93–1, Aug. 1, 1973, pp 27288, 27289), or immediately upon enactment (100–2, June 28, 1988, p 16254), where existing law permits no such availability.

- The repeal of existing law. 7 Cannon § 1403; Deschler Ch 26 §§ 24.1, 24.7.
- A waiver of a provision of existing law. Deschler Ch 26 §§ 24.5, 34.14, 34.15.

*Note:* A waiver may be regarded as legislation on an appropriation bill where it uses such language as “notwithstanding the provisions of any other law” (Deschler Ch 26 § 26.6) or “without regard to [sections of] the Revised Statutes” (Deschler Ch 26 § 24.8).

## § 29. Imposing Contingencies and Conditions

### Generally; Conditions Precedent

Provisions making an appropriation contingent on a future event are often presented in appropriation bills. Such contingencies may be phrased as conditions to be complied with, as in “funds shall be available when the Secretary has reported,” or as restrictions on funding, as in “No funds until the Secretary has reported.” Similar tests are applied in both formulations in determining whether the language constitutes legislation on an appropriation bill: Is the contingency germane or does it change existing law? Deschler Ch 26 § 49.2. Does it impose new duties (e.g. to report) where none exist under law? See § 31, *infra*.

Precedents in this discussion (§§ 29–31, *infra*) could in many instances be cited under the discussion on “Limitations” (§§ 50–59, *infra*). Language imposing a “negative restriction” is not a proper limitation and is indeed “legislation,” if it creates new law and requires positive determinations and actions where none exist in law. § 56, *infra*.

The proscription against changing existing law is applicable to those instances in which the whole appropriation is made contingent upon an event or circumstance as well as those in which the disbursement to a particular participant is conditioned on the occurrence of an event. Deschler Ch 26 §§ 47, 48. The terms “unless,” “until,” or “provided,” in an amendment or proviso are clues that the language may contain a condition that is subject

under Rule XXI clause 2(b) or (c) to a point of order. Language that has been ruled out pursuant to this rule has included:

- An amendment providing that funds shall not be available for any broadcast of information about the U.S. until the radio script for such broadcast has been approved by the Daughters of the American Revolution. Deschler Ch 26 § 47.1.
- An amendment to require, as a condition to the availability of funds, the imposition of standards of quality or performance. Deschler Ch 26 § 59.1.
- Language providing that none of the funds should be used unless certain procurement contracts were awarded on a formally advertised basis to the lowest responsible bidder. Deschler Ch 26 § 23.14.
- An amendment making the money available on certain contingencies which would change the lawful mode of payment. Deschler Ch 26 § 48.1.
- An amendment denying the obligation or expenditure of certain funds unless such funds were subject to audit by the Comptroller General. Deschler Ch 26 § 47.8. (A subsequent amendment which denied the use of funds not subject to audit “as provided by law” was offered and adopted.)
- Language making certain funds for an airport available for an access road (a federal project) provided Virginia makes available the balance of funds necessary for the construction of the road. Deschler Ch 26 § 48.7.
- Language providing that no part of the appropriation for certain range improvements shall be expended in any national forest until contributions at least equal to such expenditures are made available by local public or private sources. Deschler Ch 26 § 48.6.
- Language stating that no part of the funds shall be used “unless and until” approved by the Director of the Bureau of the Budget. Deschler Ch 26 § 48.3.
- A proviso that no funds shall be available for certain expenditures unless made in accordance with a budget approved by the Public Housing Commissioner. Deschler Ch 26 § 48.4.
- An amendment specifying that no funds made available may be expended until total governmental tax receipts exceed total expenditures. Deschler Ch 26 § 48.11.
- An amendment containing certification requirements and mandating certain contractual provisions as a condition to the receipt of funds. 100–2, May 18, 1988, p 11388.

**§ 30. — Conditions Requiring Reports to, or Action by, Congress Reporting to Congress as a Condition**

It is legislation on a general appropriation bill in violation of clause 2, Rule XXI to require the submission of reports to a committee of Congress where existing law does not require that submission. 99–2, Aug. 1, 1986, p 18647. Thus, an amendment to a general appropriation bill precluding the

availability of funds therein unless agencies submit reports to the Committee on Appropriations—reports not required to be made by existing law—constitutes legislation in violation of that rule. 98–1, Nov. 2, 1983, p 30496; 99–1, July 25, 1985, pp 20806, 20807.

### **Congressional Action as Condition**

Under the more recent precedents, it is not in order by way of amendment to make the availability of funds in a general appropriation bill contingent upon subsequent congressional action. *Manual* § 842b. Compare 90–2, June 11, 1968, p 16692; 96–1, Sept. 6, 1979, pp 23360, 23361. Such a condition changes existing law if its effect is to require a subsequent authorization which, when enacted, will automatically make funds available for expenditure without further appropriations. Such a result is contrary to the process contemplated in Rule XXI whereby appropriations are dependent on prior authorization. Deschler Ch 26 § 49.2 (note). Language making the availability of funds contingent upon the enactment of authorizing legislation raises a presumption that the appropriation is then unauthorized. 98–1, Sept. 19, 1983, pp 24640, 24641. Indeed, a conditional appropriation based on enactment of authorization is a concession on the face of the language that no prior authorization exists. Deschler Ch 26 § 47.3 (note).

It is not in order on a general appropriation bill to direct the activities of a committee (102–2, June 24, 1992, p \_\_\_\_), such as to require it to promulgate regulations to limit the use of an appropriation (96–1, June 13, 1979, pp 14670, 14671). And an amendment to a general appropriation bill including language to direct the budget scorekeeping for amounts appropriated was held to constitute legislation and was ruled out of order under clause 2 of Rule XXI. 103–1, May 26, 1993, p \_\_\_\_.

Other conditions relative to congressional action that have been ruled out as legislation include:

- An amendment providing that no part of the funds in the bill shall be used for the enforcement of any order restricting sale of any article or commodity unless such order shall have been approved by a concurrent resolution of the Congress. Deschler Ch 26 § 49.2.
- Language requiring that certain contracts be authorized by the appropriate legislative committees and in amounts specified by the Committees on Appropriations of the Senate and House. Deschler Ch 26 § 49.5.
- An amendment making the availability of funds in the bill contingent upon subsequent enactment of legislation containing specified findings. 98–1, Nov. 2, 1983, p 30503.
- An amendment changing a permanent appropriation in existing law to restrict its availability until all general appropriation bills are presented to the President. 100–1, June 29, 1987, p 18082.

### § 31. — Conditions Imposing Additional Duties

Where a condition in an appropriation bill or amendment thereto seeks to impose on a federal official substantial duties that are different from or in addition to those already contemplated in law, the provision may be ruled out as legislative in nature. Thus, while it is in order on a general appropriation bill to prohibit the availability of funds therein for a certain activity, that prohibition may not be made contingent upon the performance of a new affirmative duty on the part of a federal official. Deschler Ch 26 § 50. Other provisions that have been ruled out under this rule have included:

- An amendment providing that no part of the money appropriated shall be paid to any state unless and until the Secretary of Agriculture is satisfied that such state has complied with certain conditions. Deschler Ch 26 § 50.2.
- Language providing that no part of a certain appropriation shall be available until it is determined by the Secretary of the Interior that authorization therefor has been approved by the Congress. Deschler Ch 26 § 50.3.
- An amendment providing that none of the money appropriated shall be paid to persons in a certain category unless hereafter appointed or reappointed by the President and confirmed by the Senate. Deschler Ch 26 § 50.4.
- A paragraph prohibiting the use of funds to pay for services performed abroad under contract “unless the President shall have promulgated” certain security regulations. Deschler Ch 26 § 50.5.
- An amendment providing that no part of the appropriation shall be used for land acquisition for airport access roads until the FAA shall have held public hearings. Deschler Ch 26 § 50.6.
- An amendment rendering an appropriation for energy conservation services contingent upon recommendations by federal officials. Deschler Ch 26 § 50.7.
- Language making the availability of certain funds contingent on legal determinations to be made by a federal court and an executive department. 100–2, June 28, 1988, p 16261.

### § 32. Language Describing, Construing, or Referring to Existing Law

#### Generally

It is in order in a general appropriation bill to include language descriptive of authority provided in law so long as the description is precise and does not change that authority in any respect. Deschler Ch 26 § 23.1. But language in an appropriation bill construing or interpreting existing law, although cast in the form of a limitation, is legislation and not in order. Deschler Ch 26 § 24. Likewise, an amendment which does not limit or restrict the use or expenditure of funds in the bill, but which directs the way

in which provisions in the bill must be interpreted or construed, is legislation. Deschler Ch 26 § 25.15; 100–2, May 17, 1988, p 11305. The rationale underlying this rule is that a provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order. 4 Hinds §§ 3936–3938; *Manual* § 842c. Language in a general appropriation bill which has been ruled out pursuant to this rule has included:

- Language broadening beyond existing law the definition of services to be funded by an appropriation. Deschler Ch 26 § 25.8.
- A provision defining certain expenses as “nonadministrative,” for purposes of making a computation. Deschler Ch 26 §§ 22.13, 25.4.
- A provision making appropriations available for purchase of station wagons “without such vehicles being considered as passenger motor vehicles.” Deschler Ch 26 § 22.12.
- An amendment construing certain language so as to permit the withholding of funds for specific military construction projects upon a determination that elimination of such projects would not adversely affect national defense. Deschler Ch 26 § 25.9.
- An amendment providing that nothing in the Act shall restrict the authority of the Secretary of Education to carry out the provisions of title VI of the Civil Rights Act of 1964. 96–2, Aug. 27, 1980, p 23535.
- A statement in the bill that a limitation on funds therein is to be considered a prohibition against payments to certain parties in administrative proceedings. 100–2, May 17, 1988, p 11305.
- A provision directing the Selective Service Administration to issue regulations to bring its classifications into conformance with a Supreme Court decision. 101–1, July 20, 1989, p 15405.
- An amendment which expresses the sense of Congress that reductions in appropriations in other bills should reflect the proportionate reductions made in the pending bill. 101–2, Oct. 21, 1990, p \_\_\_\_.

#### **Incorporation by Reference to Existing Law**

An amendment to a general appropriation bill which incorporates by reference the provisions of an existing law may be subject to a point of order. 88–1, Oct. 10, 1963, pp 19258–60. Thus, in 1976, a paragraph in a bill containing funds for the Corporation for Public Broadcasting to be available “in accordance with the provisions of titles VI and VII of the Civil Rights Act of 1964” was ruled out as legislation in violation of Rule XXI clause 2, where it could not be shown that the corporation was already sub-

ject to the provisions of that law. 94–2, June 24, 1976, pp 20414, 20415. Other provisions ruled out for the same reason have included:

- Language referring to conditions imposed on certain programs in other appropriation acts and making those conditions applicable to the funds being appropriated in the bill under consideration. Deschler Ch 26 § 22.6.
- Language in a general appropriation bill prescribing that the provisions of a House-passed resolution “shall be the permanent law with respect thereto.” Deschler Ch 26 § 22.7.

### § 33. Particular Propositions as Legislation

The rule (Rule XXI clause 2) that a proposition in a general appropriation bill may not change existing law has been applied to a wide variety of proposals. A sampling of these provisions, classified by subject matter, are set out below.

#### Provisions Relating to Agriculture

- An amendment curtailing the use of funds for price support payments to certain persons and defining the term “person” to mean an individual, partnership, firm, joint stock company, or the like. Deschler Ch 26 § 39.10.
- An amendment providing that certain loans be exclusively for the construction and operation of generating facilities for furnishing electric energy to persons in certain rural areas. Deschler Ch 26 § 39.5.
- A proviso that certain land banks shall be examined once a year instead of at least twice as provided by law, and changing the law with reference to salaries of employees engaged in such examinations. Deschler Ch 26 § 39.9.

#### Provisions Relating to Commerce

- A paragraph carrying an appropriation for all expenses of the Bureau of the Census necessary to collect, compile, analyze, and publish a sample census of business. Deschler Ch 26 § 40.5.
- Language providing that functions necessary to the compilation of foreign trade statistics be performed in New York instead of Washington, D.C. Deschler Ch 26 § 40.4.

**Provisions Relating to Foreign Affairs**

- A paragraph expressing the sense of the Congress concerning the representation of the Chinese government in the United Nations. Deschler Ch 26 § 41.4.
- An amendment providing that “a reasonable amount” of the funds provided to the Organization of American States may be available for distribution in certain underdeveloped areas in the United States. Deschler Ch 26 § 41.9.
- An amendment stating the sense of Congress that any new Panama Canal treaty must not abrogate or vitiate the “traditional interpretation” of past Panama Canal treaties, with special reference to territorial sovereignty. Deschler Ch 26 § 41.10.

**Provisions Relating to Federal Employment**

- A provision changing the compensation received by government employees under the law. 4 Hinds §§ 3871, 3881.
- A proposition to increase the number of employees fixed by law. 7 Cannon § 1456; Deschler Ch 26 § 43.13.
- Language authorizing a change in the manner of appointment of clerks. 4 Hinds § 3880.
- A provision permitting an executive official to delegate to an administrative officer the authority to make appointments of certain personnel. Deschler Ch 26 § 45.5.
- Language authorizing the Secretary of Defense to adjust the wages of certain civilian employees. 100–2, June 21, 1988, p 15450.
- A provision making it a felony for a member of an organization of government employees that asserts the right to strike against the government to accept salary or wages paid from funds contained in the pending bill. Deschler Ch 26 § 43.2.
- Language providing that the Secretary of State may, in his discretion, terminate the employment of an employee whenever he shall deem such termination necessary or advisable in the interests of the United States. Deschler Ch 26 § 43.4.
- Language exempting persons appointed to part-time employment as members of a civil service loyalty board from application of certain statutes. Deschler Ch 26 § 43.15.

**Provisions Relating to Congressional Employment and Compensation**

- Provisions increasing or providing additional salary to Members of Congress. Deschler Ch 26 § 44.1, 44.2.
- Language increasing the Members’ telegraph, stationery, and telephone allowances. Deschler Ch 26 § 44.7.
- An amendment requiring a committee to promulgate rules to limit the amount of official mail sent by Members. Deschler Ch 26 § 44.10.
- An amendment providing that the clerk-hire roll of each Member be increased by one employee. Deschler Ch 26 § 44.3.

- An amendment proposing that each Member may pay to a clerk-hire employee \$8,000 in lieu of \$6,000 as basic compensation. Deschler Ch 26 § 44.5.
- An amendment changing the procedure for the employment of committee staff personnel. Deschler Ch 26 § 44.9.

#### **Provisions Relating to Housing and Public Works Programs**

- A provision restricting the contract authority of the Housing and Home Finance Administrator to an amount “within the limits of appropriations made available therefor.” Deschler Ch 26 § 45.3.
- Language prohibiting occupancy of certain housing by persons belonging to organizations designated as subversive and requiring such prohibition to be enforced by local housing authorities. Deschler Ch 26 § 45.1.
- An appropriation for the construction of buildings for storage of certain equipment and including a stated limit of cost for construction of any such building. Deschler Ch 26 § 45.7.
- A proposition to create “necessary and special facilities” for transporting the mails on railroads. 4 Hinds § 3804.

### **B. Changing Prescribed Funding**

#### **§ 34. In General**

##### **Generally; Mandating Expenditures**

Language in a general appropriation bill is permitted where it is drafted simply as a negative restriction or limitation on the use of funds. § 50, *infra*. Such limitations may negatively affect the allocation of funds as contemplated in existing law, but may not explicitly change statutory directions for distribution. Deschler Ch 26 § 77.2. It is in violation of clause 2 of Rule XXI to include language in a general appropriation bill directing that funds therein be obligated or distributed in a manner that is contrary to existing law. 97–2, July 29, 1982, p 18637; 98–1, Oct. 5, 1983, p 27335. Language directing that funds in the bill shall be distributed “without regard to the provisions” of the authorizing legislation is subject to a point of order. Deschler Ch 26 § 36.1.

While the Appropriations Committee may report a limitation on the availability of funds within the reported bill, a limitation on the obligation of funds, or a removal of an existing statutory limitation on the obligation of funds contained in existing law, is legislation and in violation of clause 2 of Rule XXI. 103–1, Sept. 23, 1993, p \_\_\_\_.

If existing law places a limit or cap on the total amount that may be spent on a program, language in a general appropriation bill may not direct an increase in that amount. 4 Hinds §§ 3865–3867. Similarly, a provision

making available indefinite sums for a particular program may be ruled out as legislation in violation of Rule XXI clause 2 where existing law provides that a definite amount must be specified for that purpose in annual appropriation bills. Deschler Ch 26 § 33.1. Where mandatory funding levels have been earmarked for certain programs by existing law, a provision in a general appropriation bill rendering them ineffective may be ruled out as in violation of clause 2 of Rule XXI. Deschler Ch 26 § 36.5. In 1982, a paragraph in a general appropriation bill directing that “not less” than a specified sum be available for a certain purpose was ruled out as legislation constituting a direction to spend a minimum amount and not a negative limitation. 97–2, July 29, 1982, p 18623. An amendment to a general appropriation bill denying funds therein for a program at *less* than a certain amount constitutes legislation where existing law confers upon a federal official discretionary authority to determine minimum levels of expenditures. 95–2, July 20, 1978, p 21856. Language mandating a certain allotment of funds at “the maximum amounts authorized” has also been ruled out as legislation on an appropriation bill. Deschler Ch 26 § 36.2.

Language in a general appropriation bill may not authorize the adjustment of wages of government employees (101–1, Apr. 26, 1989, p 7525) or permit an increase in Members’ office allowances only “if requested in writing” (101–2, Oct. 21, 1990, p \_\_\_\_). Nor may it mandate reductions in various appropriations by a variable percentage calculated in relation to “overhead.” 102–2, June 24, 1992, p \_\_\_\_.

#### **Change in Source or Method of Funding**

Where existing law authorizes appropriations out of a special fund for a particular purpose, it is not in order in an appropriation bill to direct that the money be taken from the general funds of the Treasury for that purpose. Deschler Ch 26 §§ 35.1, 35.2. Thus, language in a bill providing funds for an agricultural project, for which funding had been authorized from the receipts of timber sales and not from appropriated funds, was ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 35.3. The language in an appropriation bill appropriating funds in the Federal Aid Highway Trust Fund for expenses of forest roads and trails was held to be legislation and not in order where no authorization existed for the expenditure from the Highway Trust Fund for those proposed purposes. 86–2, Feb. 9, 1960, p 2348.

Language in a general appropriation bill that substitutes borrowing authority in lieu of a direct appropriation is subject to a point of order if contrary to existing law. Deschler Ch 26 § 35.4.

**Changing Allotment Formulas; Setting Priorities**

A provision in a general appropriation bill which changes the legislative formula governing the allotment of funds to recipients is legislation on an appropriation bill in violation of Rule XXI clause 2. Deschler Ch 26 § 36.10; 101–1, Aug. 2, 1989, p 18123; *Manual* § 842e. It is not in order in a general appropriation bill to establish priorities to be followed in the obligation or expenditure of the funds where such priorities are not found in existing law. Thus, a proviso specifying that an appropriation for veterans' job training be obligated on the basis of those veterans unemployed the longest time was conceded to be legislation where existing law did not require that allocation of funds, and was ruled out as in violation of Rule XXI clause 2. Deschler Ch 26 § 36.17.

Where existing law establishes priorities to be followed by an executive official in the distribution of funds, an amendment to an appropriation bill requiring that those funds be distributed in accordance with such priorities may under some circumstances be regarded as constituting a stronger mandate as to the use of those funds and ruled out as a modification of the authorizing law, and therefore out of order. Deschler Ch 26 § 23.8.

**§ 35. Affecting Funds in Other Acts****Generally**

Language in a general appropriation bill which is applicable to funds appropriated in another act may constitute legislation under Rule XXI clause 2. 86–1, June 29, 1959, p 12132. Thus, an amendment to an appropriation bill seeking to change a limitation on a previous appropriation bill may be held to be legislation and not in order. Deschler Ch 26 § 27.26.

**Rescissions**

Although under clause 2(b) of Rule XXI the Committee on Appropriations may report in a general appropriation bill “rescissions of appropriations contained in appropriation Acts,” under clause 2(c) of Rule XXI an amendment to a general appropriation bill may not change existing law, as by rescinding an appropriation contained in another Act.

**§ 36. Transfer of Funds— Within Same Bill**

Transfers of appropriations within the confines of the same bill are normally considered in order on a general appropriation bill if not containing legislative language. Deschler Ch 26 § 29; 86–1, Mar. 24, 1959, p 5102. Thus, a general provision in an appropriation bill permitting transfers of sums appropriated therein from one subhead to another in that enactment

was held not to constitute legislation. Deschler Ch 26 § 29.5. Likewise, a provision in an appropriation bill may permit certain funds to be available “interchangeably” for expenditure for various authorized purposes. Deschler Ch 26 § 29.8. And an amendment providing that a particular authorized project should be financed out of “any available unallocated funds contained in this act” was held to be in order. Deschler Ch 26 § 29.10. Such a provision may not include legislative language, however; in one instance, for example, language in a general appropriation bill authorizing the Secretary of Labor to allot or transfer, with the approval of the Director of the Budget, funds in the bill to an office within the Labor Department, was held to be legislation because it imposed additional duties on the Director of the Budget. Deschler Ch 26 § 29.1.

Language in a bill containing funds for an agency for certain activities and permitting transfers of those funds to other departments to carry out those activities (where existing law authorized appropriations only to the agency) has been ruled out in violation of Rule XXI clause 2. Deschler Ch 26 § 30.22. And a paragraph in a bill providing for transfers from the appropriation therein to “any department or agency” was ruled out in violation of Rule XXI clause 2 as constituting legislation on an appropriation bill. Deschler Ch 26 § 30.23.

### **§ 37. — Transfer of Previously Appropriated Funds**

Language in an appropriation bill which is applicable to funds appropriated in another act constitutes legislation in violation of Rule XXI clause 2(b) (Deschler Ch 26 § 30.10), and may also constitute a reappropriation of unexpended balances in violation of clause 6 (Deschler Ch 26 § 30.20). Reappropriations generally, see § 60, *infra*. Thus, an amendment to an appropriation bill proposing the transfer of funds previously appropriated in another appropriation bill is legislation. Deschler Ch 26 § 30.1. A point of order will lie against language that attempts to transfer such funds from one department to another. Deschler Ch 26 §§ 30.16, 30.25.

### **§ 38. Making Funds Available Prior to, or Beyond, Authorized Period**

#### **Generally; Availability of Balances**

It is provided by statute that the balance of an appropriation limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. 31 USC § 1502. And it is not in order in a general appropriation bill to provide that funds therein are

to be available beyond the fiscal year covered by the bill unless the authorizing law permits that availability. Deschler Ch 26 §§ 32.1, 32.10. Such language is held to “change existing law” in violation of Rule XXI clause 2 because it extends the use of the funds beyond the period permitted by law. Deschler Ch 26 § 32.11.

By statute, an appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law, or unless the appropriation is for certain purposes, such as public buildings. 31 USC § 1301. Amounts appropriated to construct public buildings remain available until completion of the work. When a building is completed and outstanding liabilities for the construction are paid, balances remaining revert immediately to the Treasury. 31 USC § 1307.

Provisions in appropriation bills that have been ruled out under Rule XXI clause 2 on a point of order have included:

- Language providing funds to collect and publish certain statistics on voting, to be available until the end of the next fiscal year. Deschler Ch 26 § 32.6.
- Language making fees and royalties collected pursuant to law available beyond the current fiscal year. Deschler Ch 26 § 32.9.
- Language making an appropriation for a census available beyond the time for which it was originally authorized. Deschler Ch 26 § 22.2.
- Language making appropriations for the Migratory Bird Conservation Fund for the current year “and each fiscal year thereafter” from the sale of stamps. Deschler Ch 26 § 32.8.
- Language providing for funds for the Tennessee Valley Authority to be available for the payment of obligations chargeable against prior appropriations. Deschler Ch 26 § 32.16.

#### **Funds “To Be Immediately Available”**

Language in an appropriation bill that the funds shall be immediately available—that is, prior to the start of the fiscal year covered by the bill—is subject to a point of order. A prior ruling permitting immediate availability, that is, prior to the start of the fiscal year covered by the bill (7 Cannon §§ 1119, 1120) has been superseded by more recent rulings proscribing such immediate availability. 99–2, July 29, 1986, p \_\_\_\_; 100–2, June 28, 1988, p \_\_\_\_\_. Making funds available in an earlier fiscal period may also have Budget Act implications. Under the Budget Act, a measure containing a new entitlement is subject to a point of order (see § 401(b)(1)) unless the entitlement (as defined by the Act) is to take effect after the start of the appropriate fiscal year. See, for example, 99–2, June 26, 1986, p 15729. See BUDGET PROCESS.

**§ 39. Funds “To Remain Available Until Expended”****Generally**

Authorization bills sometimes provide that appropriated funds are “to remain available until expended.” Such language is permitted where existing law authorizes the inclusion of language extending the availability of funds for the purpose stated in that law. 99–1, June 11, 1985, p 15174. Conversely, where the authorizing statute does not permit funds to remain available until expended or without regard to fiscal year limitation, the inclusion of such availability in a general appropriation bill has been held to constitute legislation in violation of clause 2 Rule XXI. Deschler Ch 26 §§ 32.1, 32.2, 32.10. 99–1, June 6, 1985, p 14610. However, language that certain funds be “available until expended” may be included where other existing law can be interpreted to permit that availability. Thus, a provision in a general appropriation bill that funds therein for the construction of the west front of the U.S. Capitol shall “remain available until expended” was held not to constitute legislation in violation of Rule XXI clause 2 where an existing law (31 USC § 1307) provided that funds for public building construction shall remain available until the completion of the work. Deschler Ch 26 § 32.1.

**Authority of Appropriations Committee to Confine Expenditure to Current Fiscal Year**

While authorizing legislation sometimes provides that funds authorized therein shall “remain available until expended,” the Committee on Appropriations has never been required, when appropriating for those purposes, to specify that such funds *must* remain available until expended. Indeed, the Appropriations Committee often confines the availability of funds to the current fiscal year, regardless of the limit of availability contained in the authorization, and it may do so absent a clear showing that the language in question was intended to require appropriations to be made available until expended. Deschler Ch 26 § 32.21.

**§ 40. Reimbursements of Appropriated Funds**

If not authorized by existing law, language in a general appropriation bill providing for the use of funds generated from reimbursement, repayment, or refund, rather than from a direct appropriation, may be ruled out as legislation under Rule XXI clause 2. Deschler Ch 26 §§ 38.1 *et seq.* Pro-

visions in appropriation bills ruled out under this rule have included requirements:

- That “all refunds, repayments, or other credits on account of funds disbursed under this head shall be credited to the appropriation.” Deschler Ch 26 § 38.1.
- That appropriations contained in the Act may be reimbursed from the proceeds of sales of certain material and supplies. Deschler Ch 26 § 38.2.
- That any part of the appropriation for salaries and expenses be reimbursed from commissary earnings. Deschler Ch 26 § 38.4.
- That repayment of federal appropriations for a certain airport be made from income derived from operations. Deschler Ch 26 § 38.10.
- That money received by the United States in connection with any irrigation project constructed by the federal government shall be covered into the general fund until such fund has been reimbursed. Deschler Ch 26 § 38.11.
- That receipts from nonfederal agencies representing reimbursement for travel expenses of certain employees performing advisory functions to such agencies be deposited in the Treasury to the credit of the appropriation. Deschler Ch 26 § 38.13.
- That certain advances be reimbursable during a fixed period under rules and regulations prescribed by an executive officer. Deschler Ch 26 § 38.14.

### **C. Changing Executive Duties or Authority**

#### **§ 41. In General; Requiring Duties or Determinations**

##### **Generally**

Where an amendment to or language in a general appropriation bill explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation under Rule XXI clause 2 and is subject to a point of order. 4 Hinds §§ 3854–3859; Deschler Ch 26 § 52; 91–1, July 31, 1969, pp 21653, 21675; *Manual* § 842d. The extra duties which may invalidate an amendment as being “legislation” are duties not now required by law. The fact that they may be presently in effect on a voluntary basis does not protect an amendment from a point of order under clause 2 Rule XXI. Deschler Ch 26 § 63.7 (note). The point of order will lie against language requiring new determinations by federal officials whether or not state officials administering the federal funds in question routinely make such determinations. Deschler Ch 26 § 52.33. Thus, in a general appropriation bill, if

not already mandated by existing law, an executive official may not be required:

- To make substantial findings in determining the extent of availability of funds. 97–2, Dec. 9, 1982, pp 29690, 29691.
- To make evaluations of propriety and effectiveness. 97–1, Oct. 6, 1981, p 23361; 100–2, May 25, 1988, pp 12270–72.
- To include information in the annual budget on transfers of appropriations. Deschler Ch 26 § 52.10.
- To make determinations, in implementing a personnel reduction program, as to which individual employees shall be retained. Deschler Ch 26 § 22.17.
- To implement certain conditions and formulas in determining amounts to be charged as rent for public housing units. Deschler Ch 26 § 52.20.

#### **Approval or Certification Duties**

Where existing law authorizes the availability of funds for certain expenses when certified by an executive official, language in a general appropriation bill containing funds for that purpose to be accounted for solely upon his certificate may be held in order as not constituting a change in existing law. 93–2, June 18, 1974, pp 19715, 19716. And appropriations for traveling expenses at meetings “considered necessary” in the exercise of the agency’s discretion for the efficient discharge of its responsibilities were held authorized by a law permitting inclusion of such language in the bill. Deschler Ch 26 § 52.28. But language in a general appropriation bill authorizing the expenditure of funds on the approval of an executive official and on his “certificate of necessity for confidential military purposes” was held to change existing law and was ruled out in violation of Rule XXI clause 2 when the Committee on Appropriations failed to cite statutory authority for that method of payment. Deschler Ch 26 § 22.19. Even a proviso that certain vouchers “shall be sufficient” for expenditure from the appropriation has been ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 22.20.

#### **Duty to Submit Reports**

It is not in order on a general appropriation bill to require an executive official to submit reports not required by existing law. 7 Cannon § 1442; 93–2, Apr. 30, 1974, p 12419. In 1986, a provision requiring the Customs Service to submit a monthly report to a House committee detailing the number of district positions authorized and the number of positions vacant was conceded to require new determinations not required by law and ruled out as legislation. 99–2, Aug. 1, 1986, p 18647. And in one instance, where existing law required submission of certain agency reports on a quarterly basis,

language making the availability of funds therein contingent upon the prior submission of that report was held to change the reporting requirement established pursuant to law and to constitute legislation in violation of clause 2 of Rule XXI. 96–2, July 23, 1980, pp 19303, 19304.

## § 42. Burden of Proof

### Generally

The burden of proof is on the proponent of an amendment to a general appropriation bill to show that a proposed executive duty or determination is required by existing law, and the mere recitation that it is imposed pursuant to existing law and regulations, absent a citation to the law imposing that responsibility, is not sufficient to overcome a point of order that the amendment constitutes legislation. Deschler Ch 26 § 22.25.

### Determinations Incidental to Other Executive Duties

If a proposed executive determination is not specifically required by existing law, but is related to other executive duties, then the proponent has the burden of proving that it is merely incidental thereto. Thus, language in a general appropriation bill in the form of a conditional limitation requiring determinations by federal officials may be held to change existing law in violation of clause 2 Rule XXI, unless the Committee on Appropriations can show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99–1, July 26, 1985, p 20808.

## § 43. Altering Executive Authority or Discretion

### Generally

A proposition in a general appropriation bill that interferes with authority that has been conferred by law on an executive official “changes existing law” under Rule XXI clause 2. 4 Hinds § 3846; Deschler Ch 26 § 51.3. A proposition that significantly alters the discretion conferred on the official also “changes existing law” within the meaning of that rule. 4 Hinds §§ 3848–3852; 7 Cannon § 1437; *Manual* § 842d. Thus, where existing law authorized the expenditure of funds for a program under broad supervisory powers given to an executive official, provisions in an appropriation bill which impose conditions affecting both the exercise of those powers and the use of funds may be ruled out as legislation. Deschler Ch 26 § 51.4.

A provision in a general appropriation bill requiring the performance of a duty by a federal official which, under existing law he may at his discretion perform, constitutes legislation in violation of Rule XXI clause 2. 95–

2, Aug. 8, 1978, p 24960. And while it is in order on a general appropriation bill to limit the availability of funds therein for part of an authorized purpose (§ 52, *infra*), language which restricts not the funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation. 93–2, June 21, 1974, p 20600.

Language in a general appropriation bill conferring discretionary authority on an executive official where none exists under existing law is subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 55.1. A proposition having the purpose of enlarging, rather than restricting, an official's discretion, may also be viewed as changing existing law. Deschler Ch 26 § 51. In 1951, language granting discretionary authority to the Secretary of the Army to use funds for purposes “desirable” in expediting military production was held to be legislation and not in order. Deschler Ch 26 § 59.7.

#### **Earmarking Funds as Affecting Executive Discretion**

The earmarking of funds for a particular item from a lump-sum appropriation may constitute a limitation on the discretion of the executive charged with allotment of the lump sum and thus be subject to a point of order under Rule XXI clause 2. 7 Cannon § 1452. Deschler Ch 26 § 51.5. See also 101–1, July 12, 1989, p 14432. In 1955, language earmarking some of the appropriations for the Veterans' Administration for a special study of its compensation and pension programs was conceded to be legislation and held not in order. Deschler Ch 26 § 55.12.

#### **§ 44. Mandating Studies or Investigations**

Language in a general appropriation bill describing an investigation which may be undertaken with funds in the bill at the discretion of an official upon whom existing law imposes a general investigative responsibility does not constitute legislation and is not in violation of Rule XXI clause 2. 93–2, Apr. 9, 1974, pp 10208, 10209. But where existing law gives an agency discretion to undertake an investigation, language in a general appropriation bill that requires the agency to make the investigation is legislation and subject to a point of order. Deschler Ch 26 § 51.7. And although an executive official may have broad investigative responsibilities under existing law, it may not be in order in a general appropriation bill to impose a duty on him to undertake a specific additional study. 93–2, Apr. 9, 1974, pp 10205, 10206.

The mere requirement in a general appropriation bill that an executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. 90–2, June 11, 1968, p 16712. Language has been upheld where it conditioned the availability of funds on

certain information being “made known” to an executive official. 7 Cannon § 1695. But language imposing new responsibilities on federal officials beyond merely being the recipients of information may constitute legislation in violation of Rule XXI clause 2. 95–1, June 17, 1977, pp 19699, 19700. Thus, in 1974, language in a general appropriation bill was ruled out as legislation when the Committee on Appropriations conceded that agencies funded by the bill would be required to examine extraneous documentary evidence—including hearing transcripts—in addition to the language of the law itself, to determine the purposes for which the funds had been appropriated. 93–2, June 21, 1974, pp 20612, 20613.

## **§ 45. Granting or Changing Contract Authority**

### **Granting Authority**

Language in a general appropriation bill authorizing a governmental agency to enter into contracts is legislation in violation of Rule XXI clause 2 if such authority is not provided for in existing law. 4 Hinds §§ 3868–3870; Deschler Ch 26 § 37.4. Although under existing law it may be in order to appropriate money for a certain purpose, it may not be in order in a general appropriation bill to grant authority to incur obligations and enter into contracts in furtherance of that purpose. Deschler Ch 26 §§ 37.3, 37.4. Thus, language authorizing the Secretary of the Interior to enter into contracts for the acquisition of land and making future appropriations available to liquidate those obligations was held legislation on an appropriation bill and not in order. Deschler Ch 26 § 37.8.

### **Waiving Contract Law**

Language in a general appropriation bill which waives the requirements of existing law as to when certain contracts may be entered into may be ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 37.14. Thus, language providing that contracts for supplies or services may be made by an agency without regard to laws relating to advertising or competitive bidding was conceded to be legislation on an appropriation bill and held not in order. Deschler Ch 26 § 34.1.

### **Restricting Contract Authority**

A provision in a general appropriation bill changing existing law by restricting the contract authority of an executive official may be ruled out on a point of order as legislation under Rule XXI clause 2. Deschler Ch 26 § 45.3. In one instance, an amendment requiring the Civil Aeronautics Authority to award contracts to the highest bidder only after previously adver-

tising for sealed bids was ruled out as legislation. Deschler Ch 26 § 46.3. In 1950, language authorizing an agency to enter into contracts for certain purposes in an amount not to exceed \$7 million was conceded to be legislation on an appropriation bill and was ruled out absent citation to an existing law authorizing inclusion of such limitation. Deschler Ch 26 § 37.12. Language in an appropriation bill seeking to reduce or rescind contract authority contained in a previous appropriation bill has also been ruled out as legislation changing existing law. Deschler Ch 26 §§ 22.14, 24.4. This is so notwithstanding the adoption in 1974 of a rules change which gave the Appropriations Committee jurisdiction over rescissions of appropriations (as distinguished from rescission of contract authority). Deschler Ch 26 § 24.4 (note).

The rulings in this section should be considered in the light of § 401(a) of the Congressional Budget Act of 1974, which precludes consideration of measures reported by legislative committees providing new spending authority unless the measure also provides that such authority is to be effective “only to such extent and in such amounts as are provided in appropriation Acts.” Since the adoption of this law, language properly limiting the contractual authority of an agency, if specifically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 37.

## D. The Holman Rule; Retrenchments

### § 46. In General; Retrenchment of Expenditures

#### Generally

The House rule that precludes the use of language changing existing law in a general appropriation bill makes an exception for “germane provisions which retrench expenditures by the reduction of amounts of money covered by the bill” as reported. Rule XXI clause 2(b). This exception is referred to as the Holman rule, having been named for the Member who first suggested it in 1876, William Holman of Indiana. *Manual* § 834.

Decisions under the Holman rule have been rare in the modern practice of the House. *Manual* § 844a. The rule applies to general appropriation bills only (7 Cannon § 1482), and is not applicable to funds other than those appropriated in the pending bill (7 Cannon § 1525). And in 1983, the House narrowed the Holman rule exception to apply only to retrenchments reducing the dollar amounts of money covered by the bill. *Manual* § 844a.

### **Retrenchments and Limitations Distinguished**

A distinction should be noted between retrenchments offered under the criteria of the Holman rule and “limitations” on appropriation bills, discussed elsewhere in this article (§§ 50–59, *infra*). Under the Holman rule, a provision that is admittedly “legislative” in nature is nevertheless held to fall outside the general prohibition against such provisions, because it reduces the funds in the bill. The limitations discussed in later sections are not “legislation” and are permitted on the theory that Congress is not bound to appropriate funds for every authorized purpose. Deschler Ch 26 § 4.

Under the modern practice, the “Holman Rule” does not apply to limiting language that does not involve a reduction of dollar amounts in the bill. See *Manual* § 844a. An amendment which does not show a reduction on its face and which is merely speculative is not in order under the rule. 102–2, June 24, 1992, p \_\_\_\_.

The words “amounts of money covered by the bill” in the rule refer to the amounts specifically appropriated by the bill, but as long as a provision calls for an obvious reduction at some point in time during the fiscal year, it is in order under the Holman rule even if the reduction takes place in the future in an amount actually determined when the reduction takes place (for example, by formula). *Manual* § 844a. Language held in order as effectuating a retrenchment has included a proposition—legislative in form—providing that total appropriations in the bill be reduced by a specified amount. Deschler Ch 26 § 4.5.

It has been said that the Holman rule should be strictly construed in order to avoid the admission of ineligible legislative riders under guise of a retrenchment. 7 Cannon § 1510.

### **§ 47. Germaneness Requirements; Application to Funds in Other Bills**

The Holman rule (Rule XXI clause 2), while permitting certain retrenchment provisions as an exception to the prohibition against legislation in appropriation bills, requires that such provisions be germane. *Manual* § 834. An amendment providing that appropriations “herein and heretofore made” be reduced by a reduction of certain employees was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the Holman rule exception. 89–2, Oct. 18, 1966, p 27425. An amendment proposing to change existing law by repealing part of a retirement act was held not germane and not in order under the Holman rule. Deschler Ch 26 § 5.15.

**§ 48. Reporting Retrenchment Provisions**

At one time, retrenching provisions in general appropriation bills were reported by the legislative committees of the House. 7 Cannon § 1561. In 1983, the Holman rule was amended to eliminate the separate authority of legislative committees to report amendments retrenching expenditures; the new rule permits legislative committees to merely recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. *Manual* §§ 834, 844a.

**§ 49. Floor Consideration; Who May Offer**

A Member may offer in his individual capacity any germane amendment providing legislation on an appropriation bill if it retrenches expenditures under the conditions specified by Rule XXI clause 2(b). 7 Cannon § 1566. If an objection is made in the Committee of the Whole that the particular provision constitutes legislation, the proponent may cite the Holman rule in response to the point of order:

MEMBER: Mr. Chairman, I make the point of order that the provision constitutes a legislative proposition in an appropriation bill in violation of Rule XXI clause 2(b).

PROPONENT: Mr. Chairman, it is true that this is new legislation, but it retrenches expenditure, and is therefore in order under the Holman rule.

Under the earlier practice, retrenching amendments to general appropriation bills could be offered during the reading of the bill for amendment in the Committee of the Whole. In 1983, Rule XXI was narrowed to permit the consideration of retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House. *Manual* § 834. Generally, see § 64, *infra*.

**IV. Limitations on General Appropriation Bills****§ 50. In General; When in Order****Generally**

While general appropriation bills may not contain legislation, limitations may validly be imposed under certain circumstances, where the effect is not to directly change existing law. Deschler Ch 26 § 1. The doctrine of limitations on a general appropriation bill has emerged over the years primarily from rulings of Chairmen of the Committee of the Whole. Deschler Ch 26 § 22.26. The basic theory of limitations is that, just as the House may de-

cline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The limitation cannot change existing law, but may negatively restrict the use of funds for an authorized purpose or project. Deschler Ch 26 § 64.

Set out below are the tests to be applied in determining whether language in an appropriation bill or amendment thereto constitutes a permissible limitation (from 7 Cannon § 1706 and Deschler Ch 26 § 64).

- Does the limitation apply solely to the appropriation under consideration?  
*Note:* A limitation may be attached only to the appropriation under consideration and may not be made applicable to moneys appropriated in other acts. § 59, *infra*.
- Does it operate beyond the fiscal year for which the appropriation is made?  
*Note:* A limitation must apply solely to the fiscal year(s) covered by the bill and may not be made a permanent provision of law. 4 Hinds § 3929.
- Is the limitation coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?  
*Note:* A proposition to establish affirmative directions for an executive officer constitutes legislation and is not in order on a general appropriation bill. 4 Hinds § 3854.
- Is it accompanied by a phrase which might be construed to impose additional duties? Does it curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones?  
*Note:* Limitations which change the duties imposed by law on an executive officer in the expenditure of appropriated funds is not in order. § 54, *infra*.
- Is the limitation authorized in existing law for the period of the limitation?  
*Note:* An amendment proposing a limitation not authorized in existing law for the period of the limitation is not in order during the reading of the bill by paragraph. Rule XXI clause 2(c); *Manual* § 834.

A restriction on authority to incur obligations contained in a general appropriation bill is legislative in nature and is not a limitation on use of funds in the bill. 100–1, July 13, 1987, pp 19505, 19506.

Certain amendments proposing limitations are in order only after the reading of the bill for amendment has been completed and, if a privileged motion to rise and report is offered (by the Majority Leader or his designee), is rejected. The House rules permit consideration at this time of amendments proposing limitations not contained or authorized in existing law or proposing germane amendments which retrench expenditures. Rule XXI clause 2(d). Retrenchment of expenditures, see § 46, *supra*.

**Construction of Rule; Burden of Proof**

The doctrine permitting limitations on a general appropriation bill is strictly construed. Deschler Ch 26 § 80.5. The language of the limitation must not be such as, when fairly construed, would change existing law (4 Hinds §§ 3976–3983) or justify an executive officer in assuming an intent to change existing law (4 Hinds § 3984; 7 Cannon § 1707). The language of Rule XXI clause 2(c), which permits limitation amendments during the reading of a bill by paragraphs only if authorized by existing law, is likewise strictly construed; it applies only where existing law requires or permits the inclusion of limiting language in an appropriation act, and not merely where the limitation is alleged to be “consistent with existing law.” 100–2, June 28, 1988, p 16267.

To be in order the limitation must apply to a specific purpose, or object, or amount of appropriation. If a proposed limitation goes beyond the traditionally permissible objectives of a limitation, as for example by restricting discretion in the timing of the expenditure of funds rather than restricting their use for a specific object or purpose, the Chair may rule that the amendment constitutes legislation in the absence of a convincing argument by the proponent that the amendment does not change existing law. Deschler Ch 26 § 80.5.

As a general proposition, whenever a limitation is accompanied by the words “unless,” “except,” “until,” “if,” or the like, there is ground to view the provision with the suspicion that it may be legislation; and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. Deschler Ch 26 § 52.2. The limitation may not be accompanied by language stating a motive or purpose in carrying it out. Deschler Ch 26 § 66.4. Where terms used in a purported limitation are challenged because of their ambiguity or indefiniteness, the burden is on its proponent to show that no new duties would arise in the course of applying its terms. Deschler Ch 26 § 57.17 (note).

**Effecting Policy Changes**

While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may, by a simple denial of the use of funds, change administrative policy and be in order. Deschler Ch 26 § 51.15. For example, in one instance during consideration of an army appropriation bill in 1931, an amendment was allowed which provided that the funds appropriated could not be used for compulsory military training in certain schools. The Chair noted that the amendment “simply refuses to appropriate for purposes which are authorized by law and for which Congress may or may not appropriate as it sees

fit,” and that while the amendment did in fact change a policy of the War Department, “a change of policy can be made by the failure of Congress to appropriate for an authorized object.” 7 Cannon § 1694.

### **Limitations Relating to Tax and Tariff Measures**

Revenue measures fall within the jurisdiction of the Committee on Ways and Means. Rule X clause 1(s). *Manual* § 688. Tax measures may not be reported by any committee not having jurisdiction thereof. Rule XXI clause 5(b). *Manual* § 846b. In determining whether a limitation in a general appropriation bill constitutes a tax measure proscribed by this clause, the Chair will consider argument as to the certainty of impact on revenue collections and tax status or liability. 99–2, Aug. 1, 1986, p 18649. A limitation on the use of funds contained in such a bill may be held to violate this clause where the limitation has the effect of requiring the collection of revenues not otherwise provided for by law (98–1, Oct. 27, 1983, pp 29611, 29612), or where it is shown that the imposition of the restriction on IRS funding for the fiscal year would preclude the IRS from collecting revenues otherwise due and owing by law (99–1, July 26, 1985, p 20806; 99–2, Aug. 1, 1986, p 18649). See also 101–2, July 13, 1990, p \_\_\_\_.

## **§ 51. Limitations on Amount Appropriated**

### **Generally**

A negative restriction on the use of funds above a certain amount in an appropriation bill is in order as a limitation. 91–1, July 30, 1969, p 21471. As long as a limitation on the use of funds restricts the expenditure of federal funds carried in the bill without changing existing law, the limitation is in order, even if the federal funds in question are commingled with non-federal funds which would have to be accounted for separately in carrying out the limitation. 96–2, Aug. 20, 1980, pp 22171, 22172.

### **“Not To Exceed” Limitations**

Language that an expenditure “is not to exceed” a certain amount is permissible. Deschler Ch 26 § 67.36. But the fact that funds in a general appropriation bill are included in the form of a “not to exceed” limitation does not preclude a point of order under clause 2(a), Rule XXI that the funds are not authorized by law. 100–2, June 21, 1988, pp 15438–40.

### **Ceilings on Total Expenditures**

Many limitations on funding that are offered to general appropriation bills apply to only one of the agencies covered by the bill. But a limitation may be drafted in such a way as to place a ceiling on the total amount to

be expended by all agencies covered by the bill. Deschler Ch 26 §§ 80.1, 80.2.

### Spending “Floors”

Precedents holding in order negative restrictions on the use of funds must be distinguished from cases where an amendment, though cast in the form of a limitation, can be interpreted to require the spending of *more* money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. A “floor” on employment levels is tantamount to an affirmative direction to hire no fewer than a specified number of employees, and would be subject to a point of order as legislation. Deschler Ch 26 § 51.15 (note). That point of order will also lie against an amendment requiring not less than a certain sum to be used for a particular purpose where existing law does not mandate such expenditure. 97–2, July 29, 1982, p 18623.

## § 52. Limitations on Particular Uses

### Generally

An amendment prohibiting the use of funds in a general appropriation bill for a certain purpose is in order, although the availability of funds for that purpose is authorized by law. Deschler Ch 26 § 64.1. Such limitations are in order even though contracts may be left unsatisfied thereby. Deschler Ch 26 § 64.25. An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds. Deschler Ch 26 § 67.19. Thus, it has been held in order in a general appropriation bill to deny the use of funds:

- For federal officials to formulate or carry out tobacco programs. 95–1, June 20, 1977, p 19882.
- To pay certain rewards. 96–1, July 13, 1979, p 18451.
- For implementation of any plan to invade North Vietnam. Deschler Ch 26 § 70.1.
- For the operation and maintenance of facilities where intoxicating beverages are sold or dispensed. Deschler Ch 26 § 70.4.
- To pay government employees a larger wage than that paid for the same work in private industry. 7 Cannon § 1591.
- For work on which naval prisoners were employed in preference to registered laborers and mechanics. 7 Cannon § 1646.
- For salaries or compensation for legal services in connection with any suit to enjoin labor unions from striking. 7 Cannon § 1638.

- For agriculture commodity programs under which payments to any single farmer would exceed a certain dollar amount. Deschler Ch 26 § 67.33.
- For expansion of court facilities at Flint, Mich. Deschler Ch 26 § 69.6.
- For dissemination of market information over government-owned or leased wires serving privately owned newspapers, radio, or television. Deschler Ch 26 § 67.9.

### **Partial Restrictions**

An amendment to a general appropriation bill which restricts the use of money in the bill to a part of an authorized project is in order though the bill would otherwise permit full funding of the authorization. 91–1, July 22, 1969, p 20329. While it is not in order as an amendment to a general appropriation bill to directly restrict the discretionary authority of a federal agency (§ 53, *infra*), it is permissible to limit the availability of funds in the bill for part of an authorized purpose while appropriating for the remainder. 93–2, June 21, 1974, pp 20601, 20602. In the 95th Congress, the Chair indicated that an amendment to a general appropriation bill negatively restricting funding therein for part of a discretionary activity authorized by law would be in order if no new affirmative duties or determinations were thereby required. 95–2, June 9, 1978, p 16996.

### **Restrictions Relating to Agency Regulations**

It is in order on a general appropriation bill to deny the use of funds to carry out an existing agency regulation. Deschler Ch 26 § 64.28. Thus, an amendment providing that no part of a lump sum shall be used to promulgate or enforce certain rules or regulations precisely described in the amendment was held to be a proper limitation restricting the availability of funds and in order. Deschler Ch 26 § 79.7. The fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature. Deschler Ch 26 § 64.28.

### **§ 53. Interference With Executive Discretion**

Assuming that it does not change existing law, a negative restriction on the availability of funds for a specified purpose in a general appropriation bill may be a proper limitation even though it indirectly interferes with an executive official's discretionary authority by denying the use of funds. Deschler Ch 26 § 64.26. The limitation may in fact amount to a change in policy, but if the limitation is merely a negative restriction on use of funds, it will normally be allowed. 7 Cannon § 1694; Deschler Ch 26 § 51. Thus,

it is in order on a general appropriation bill to provide that no part, or not more than a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted. 4 Hinds § 3968; Deschler Ch 26 § 51.9.

On the other hand, it is not in order, under the guise of a limitation, to affirmatively interfere with executive discretion by coupling a restriction on the payment of funds with a positive direction to perform certain duties contrary to existing law. Deschler Ch 26 § 51.12. For example, an amendment prohibiting funds from being used to handle parcel post at less than attributable cost was ruled out on the point of order that its effect would directly interfere with the Postal Rate Commission's quasi-discretionary authority to establish postal rates under guidelines in law. Deschler Ch 26 § 51.22.

The point of order lies against language enlarging or granting new discretionary authority as well as to language curtailing executive discretion. An amendment in the form of a limitation providing that no part of the appropriated funds shall be paid to any state unless the Secretary of Agriculture is satisfied that the state has complied with certain conditions was held to be legislation imposing new discretionary authority on a federal official. Deschler Ch 26 § 52.25.

## **§ 54. Imposing Duties or Requiring Determinations**

### **Generally; Imposing Executive Duties**

While it is in order in a general appropriation bill to limit the use of funds for an activity authorized by law, the House may not, under the guise of a limitation in the bill, impose additional new burdens and duties on an executive officer. 91-1, July 31, 1969, pp 21631-33. Such a provision may be ruled out as legislation on a general appropriation bill in violation of clause 2 Rule XXI. 89-2, Oct. 4, 1966, p 24975. Of course, the application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds is prohibited by the limitation; but when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or inevitably requires them to make investigations, compile evidence, discern the motives or intent of individuals, or make judgments not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order. Deschler Ch 26 § 52.4.

**Requiring Executive Determinations**

A restriction on the use of funds in a general appropriation bill which requires a federal official to make a substantive determination not required by any law applicable to his authority, thereby requiring new investigations not required by law, is legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 52.38. Thus, it is not in order to require federal officials, in determining the extent of availability of funds, to make substantial findings not required by existing law (97–2, Dec. 9, 1982, pp 29690, 29691), or to make evaluations of propriety and effectiveness not required to be made by existing law (97–1, Oct. 6, 1981, p 23361). Language requiring new determinations by federal officials is subject to a point of order regardless of whether or not state officials administering the federal funds in question routinely make such determinations. Deschler Ch 26 § 61.12.

On the other hand, if the determinations required by the language are already required by law, no point of order lies. For example, an amendment denying funds to rehire certain federal employees engaged in a strike in violation of federal law was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law and a court order enjoining the strike already imposed an obligation on the administering officials to enforce the law. Deschler Ch 26 § 74.6.

**Impermissible Duties or Determinations**

Set out below are provisions offered to general appropriation bills that have been ruled out under Rule XXI clause 2 as imposing new duties or requiring new determinations not found in existing law:

- An amendment proposing a reduction of expenditures through an apportionment procedure authorized by law, but requiring such reduction to be made “without impairing national defense.” Deschler Ch 26 § 52.6.
- Language prohibiting use of funds for the furnishing of sophisticated weapons systems to certain countries “unless the President determines” it to be important to the national security, such determination to be reported within 30 days to the Congress. 91–2, June 4, 1970, p 18400.
- An amendment providing that no part of the appropriation could be used to make grants or loans to any country which the Secretary of State believed to be dominated by the foreign government controlling the world Communist movement. Deschler Ch 26 § 59.17.
- An amendment prohibiting payment of funds in the bill for the support of any action resulting in the destruction of a structure of historic or cultural significance. Deschler Ch 26 § 52.17.
- Language providing funds for grants to states for unemployment compensation “only to the extent that the Secretary finds necessary.” Deschler Ch 26 § 52.14.

- A paragraph requiring that appropriations in the bill be available for expenses of attendance of officers and employees at meetings or conventions “under regulations prescribed by the Secretary.” Deschler Ch 26 § 52.13.
- An amendment restricting the availability of funds for certain countries until the President reports to Congress his determination that such country does not deny or impose more than nominal restrictions on the right of its citizens to emigrate. Deschler Ch 26 § 55.5.
- An amendment denying the use of funds for foreign firms which receive certain government subsidies but permitting the President to waive such restriction in the national interest with prior notice to Congress. Deschler Ch 26 § 56.7.
- An amendment denying the use of funds for a certain publication until there had been a review of all conclusions reached therein and a determination that they were factual. 96–2, July 30, 1980, pp 20504–506.
- A provision limiting the availability of funds for grants-in-aid to any airport that failed to provide designated and enforced smoking and nonsmoking areas for passengers in airport terminal areas. 99–2, July 30, 1986, p 18188.
- A section restricting funds for special pay of physicians or dentists whose “primary” duties were administrative. 98–1, Nov. 2, 1983, p 30494.
- A provision restricting funds to carry out any requirement that small business meet certain prequalifications of “acceptable” product marketability to be eligible to bid on certain defense contracts. 98–1, Nov. 2, 1983, p 30495.

#### **Determinations as to Intent or Motive**

An amendment curtailing the use of the funds for certain purposes if the use is with a certain intent or motive requires new determinations by the officials administering the funds and is subject to a point of order as legislation. 91–1, July 31, 1969, pp 21653, 21675. Thus an amendment prohibiting the use of funds in the bill to pay rewards for information leading to the detection of any person violating certain laws, or “conniving” to do so, was ruled out as legislation since requiring the executive branch to determine what constitutes “conniving” at violating the law. 96–1, July 13, 1979, p 18451. Similarly, an amendment denying use of funds in the bill to grant business licenses to persons selling drug paraphernalia “intended for use” in drug preparation or use was ruled out as legislation requiring new duties and judgments of government officials. Deschler Ch 26 § 23.18. In the 93d Congress, an amendment prohibiting the use of funds in the bill for abortions or abortion-related services, and defining abortion as the “intentional” destruction of unborn human life, was conceded to impose new affirmative duties on officials administering the funds and was ruled out as legislation. Deschler Ch 26 § 25.14. And in 1984, a paragraph denying use

of funds in the bill to sell certain loans except with the consent of the borrower was conceded to be legislation requiring new determinations of “consent” and was ruled out in violation of clause 2(c) of Rule XXI. 98–2, May 31, 1984, p 14590.

### **Negative Prohibition and Affirmative Direction Distinguished**

To be permitted in a general appropriation bill, a limitation must be in effect a negative prohibition on the use of the money, not an affirmative direction to an executive officer. 4 Hinds § 3975. When it assumes affirmative form by direction to an executive in the discharge of his duties under existing law, it ceases to be a limitation and becomes legislation. 7 Cannon § 1606. The limitation must be in effect a negative prohibition which proposes an easily discernible standard for determining the application of the use of funds. Deschler Ch 26 § 52.23.

### **Imposing “Incidental” Duties**

The fact that a limitation on the use of funds may impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken by existing law. Deschler Ch 26 § 71.2; *Manual* § 843c. Thus, an amendment reducing the availability of funds for trade adjustment assistance by amounts of unemployment insurance entitlements was held in order where the law establishing trade adjustment assistance already required the disbursing agency to take into consideration levels of unemployment insurance in determining payment levels. 96–2, June 18, 1980, p 15355.

The proponent should show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99–1, July 26, 1985, p 20808.

### **Effect of Information “Made Known”**

As noted above (§ 44, *supra*), the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. Deschler Ch 26 § 52.5. Where the language on its face merely recites a passive situation as a condition precedent for receipt of funds, as opposed to imposing an ongoing responsibility on a federal official to ascertain information, the language may be a proper limitation. Deschler Ch 26 § 59.19 (note). Thus, a provision denying funds to an executive when certain information “shall be made known” to the executive has been upheld as a limitation. 7 Cannon § 1695. For a similar “made known” provision, see 103–1, June 30, 1993, p \_\_\_\_\_. See

also 101–1, Aug. 1, 1981, pp 17156–60, and 104–1, June 22, 1995, p \_\_\_\_, where motions to recommit general appropriation bills with “made known” limitations were ruled out as limitations which had not been considered in the Committee of the Whole and were thus not in order on the motion to recommit. See Rule XXI clause 2(d). (They were not challenged as “legislation” in violation of Rule XXI clause 2(c).)

### **Imposing Duties on Nonfederal Official**

Under the modern practice, it is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law. 81–1, Mar. 30, 1949, p 3531; 99–1, July 25, 1985, p 20569. See Deschler Ch 26 § 53 (note).

## **§ 55. — Duties Relating to Construction or Implementation of Law**

### **Duty of Statutory Construction**

While all limitations on funds on appropriation acts require federal officials to construe the language of that law in administering those funds, that duty of statutory construction, absent a further imposition of an affirmative direction not required by law, does not destroy the validity of the limitation. Deschler Ch 26 § 64.30. Thus, an amendment restricting the use of funds for abortion or abortion-related services and activities was upheld as a negative limitation imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds. Deschler Ch 26 § 73.8. And it is in order on a general appropriation bill to deny funds for the payment of salary to a federal employee who is not in compliance with a federal law, if the limitation places no new duties on the federal official who is already charged with enforcing that law. Deschler Ch 26 § 52.34.

On the other hand, it is not in order in a general appropriation bill to limit the use of an appropriation and to provide how existing laws, rules, and regulations should be construed in carrying out the limitation. 96–1, July 16, 1979, p 18806. Nor is it in order to condition the availability of funds or contract authority upon an interpretation of local law where that determination is not required by existing law. 97–1, July 17, 1981, pp 16326, 16327.

### **Implementation of Existing Rules or Policies**

It is in order on a general appropriation bill to make the availability of funds therein contingent upon the implementation of a policy already enacted into law, providing the description of that policy is precise and does not impose additional duties on the officials responsible for its implementa-

tion. 92-1, Nov. 17, 1971, p 41838. And an amendment prohibiting the use of funds in the bill to an agency to implement a ruling of the agency may be held in order as a limitation, where the amendment is merely descriptive of an existing ruling already promulgated by that agency and does not require new executive determinations. Deschler Ch 26 § 64.27.

## § 56. Conditional Limitations

### Generally

The House may by limitation on a general appropriation bill provide that an appropriation shall be available contingent on a future event. 7 Canon § 1579. However, it is not in order:

- To make the availability of funds in the bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make. 92-1, June 23, 1971, p 21647.
- To impose additional duties on an executive officer and to make the appropriation contingent upon the performance of such duties. 95-2, June 7, 1978, p 16677.
- To condition the use of such funds on the performance of a new duty not expressly required by law. 95-1, June 23, 1977, p 20597. 93-1, Apr. 17, 1973, p 12781.

To a bill making appropriations for the U.S. contribution to various international organizations, an amendment providing that none of the funds might be expended until all other members had met their financial obligations was ruled out as legislation which imposed a duty on a federal official to determine the extent of such obligations. Deschler Ch 26 § 59.16.

In one recent instance, an amendment limiting funds for foreign aid until the President submitted a report analyzing the effectiveness of U.S. economic assistance for each recipient country was held to change existing law and was ruled out of order as a violation of clause 2 of Rule XXI. 100-2, May 25, 1988, p 12270. But the imposition of certain incidental burdens on executive officials will not destroy the character of the limitation so long as those duties—such as statistical comparisons and findings of residence and employment status—are already mandated by law. 94-2, Aug. 25, 1976, p 27739.

Language in a general appropriation bill in the form of a conditional limitation requiring determinations by federal officials will be held to change existing law in violation of clause 2, Rule XXI unless the Committee on Appropriations can show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99-1, July 26, 1985, p 20808.

A conditional limitation in a general appropriation bill is also subject to a point of order where the condition is not related to the expenditures specified in the bill. Where a bill contained funds not only for certain allowances for former President Nixon, and also for other departments and agencies, an amendment delaying the availability of all funds in the bill until Nixon had made restitution of a designated amount to the U.S. government was ruled out as not germane and as legislation, where that contingency was not related to the availability of other funds in the bill. 93–2, Oct. 2, 1974, pp 33620, 33621. Conditions as legislation on appropriation bills generally, see § 29, *supra*.

#### **Condition Subsequent**

Where the expenditure of funds made available in an appropriation bill is subject to a condition subsequent—so that spending is to cease upon the occurrence of a specified condition—the language may be upheld as a proper limitation on an appropriation bill, provided that it does not change existing law. This is so even though the contingency specified may never occur. Deschler Ch 26 § 67.2. Thus, a provision that an appropriation for the pay of volunteer soldiers should not be available longer than a certain period after the ratification of a treaty of peace was upheld as a limitation. 4 Hinds § 4004. Other conditions subsequent that have been upheld as limitations have included:

- An amendment stating that if the appropriations act were to be declared unconstitutional by the Supreme Court, none of the money provided could thereafter be spent. Deschler Ch 26 § 76.6.
- An amendment terminating the use of the appropriated funds after the passage of certain legislation pending before the Congress. Deschler Ch 26 § 64.10.

On the other hand, it is not in order in a general appropriation bill to restrict the discretionary authority of an executive official by a condition subsequent which changes existing law. 99–1, July 31, 1985, p 21909. For example, where existing law confers discretionary authority on an executive agency as to the submission of health and safety information by applicants for licenses, an amendment to a general appropriation bill restricting that discretion by requiring the submission of such information as a condition of receiving funds constitutes legislation. 96–1, June 18, 1979, pp 15286, 15287.

#### **Conditions Relating to the Application or Interpretation of State Law**

A limitation in a general appropriation bill may be upheld where it denies funds for a certain activity where that activity would be in violation of state law. But such a limitation may be subject to a point of order if

it imposes on federal officials a duty to become conversant with a variety of state laws and regulations. Whether such duty would constitute a new or additional duty not contemplated in existing law would then be at issue. Deschler Ch 26 § 67.8. 97-1, July 17, 1981, pp 16326, 16327.

Language in an appropriation bill which specifies that funds therein shall not be used for any project which “does not have local official approval” has been upheld as not imposing additional duties, and in order. 89-1, Oct. 14, 1965, p 26994.

### **§ 57. Exceptions to Limitations**

An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add legislative language in violation of Rule XXI clause 2. Deschler Ch 26 §§ 64.14, 64.15, 66.7. An exception from a limitation on the use of funds stating that the limitation does not prohibit their use for certain designated federal activities may be held in order as not containing new legislation if those activities are already mandated by law. Deschler Ch 26 § 66.6. Set out below are other exceptions to limitations in general appropriation bills that have been held in order:

- An amendment inserting “Except as required by the Constitution” in provisions prohibiting the use of funds to force a school district to take action involving the busing of students. Deschler Ch 26 § 64.14.
- A paragraph denying use of funds for antitrust actions against units of local government, but providing that the limitation did not apply to private antitrust actions. Deschler Ch 26 § 66.10.
- In an amendment prohibiting the use of funds for food stamp assistance for certain households, language stating that such limitation did not apply to a household eligible for general assistance from a local government. Deschler Ch 26 § 64.15.

Exceptions to limitation amendments which fail to comply with the principle that limiting language must not contain legislation are subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 63.7. That point of order will lie, for example, against an exception from a limitation if it contains legislation requiring new executive determinations. 94-2, June 16, 1976, pp 18681, 18682. However, an exception from a limitation may include language precisely descriptive of authority provided in law so long as the exception only requires determinations already required by law and does not impose new duties on federal officials. Deschler Ch 26 § 66.3.

### **§ 58. Limitations as to Recipients of Funds**

While it is not in order in a general appropriation bill to legislate as to qualifications of the recipients of an appropriation, the House may specify

that no part of the appropriation shall go to recipients lacking certain qualifications. 7 Cannon § 1655; *Manual* § 843a. See also Deschler Ch 26 § 53. It is in order to describe the qualifications of the recipients of the funds and to deny the availability of those funds to recipients not meeting those criteria, the restriction being confined to the fiscal year covered by the bill. 92–2, June 29, 1972, p 23364. It is likewise in order to deny the availability of funds in the bill to an office that fails to satisfy certain factual criteria, so long as no new substantive determinations are required. 95–2, June 14, 1978, p 17668.

Amendments requiring the recipients of funds carried in the bill to be in compliance with an existing law have been permitted where the concerned federal officials are already under an obligation to oversee the enforcement of existing law and are thus burdened by no additional duties by the amendment. 91–1, July 31, 1969, p 21633.

Set out below are limitations relating to the qualifications of recipients which have been held in order in a general appropriation bill:

- A limitation on payments from appropriated funds to persons receiving pay from another source in excess of a certain amount. 7 Cannon § 1669.
- An amendment providing that none of the funds for a program shall be paid to any person having a certain net income in the previous calendar year. Deschler Ch 26 § 67.3.
- An amendment proposing that no part of an appropriation for an agency shall be used for salaries of persons in certain positions who are not qualified engineers with at least 10 years' experience. Deschler Ch 26 § 76.2.
- An amendment denying funds to pay the compensation of persons who allocate positions in the classified civil service subject to a maximum age requirement. Deschler Ch 26 § 74.1.

An amendment to a general appropriation bill which denies the availability of funds in the bill for the benefit of a certain category of recipients but which requires federal officials to make additional determinations not required by law as to the qualifications of those recipients is legislation. 95–1, June 16, 1977, pp 19362–64. Such an amendment is legislation if it requires a federal official to subjectively evaluate the propriety or nature of

individual conduct. 96–2, Sept. 16, 1980, p 25604. Provisions ruled out of order as requiring additional determinations have included:

- An amendment denying funds for financial assistance to college students who had engaged in certain types of disruptive conduct, and requiring that the college initiate certain hearing procedures. Deschler Ch 26 § 61.4.
- An amendment prohibiting the use of “impacted school assistance” funds for children whose parents were employed on Federal property outside the school district. Deschler Ch 26 § 52.18.
- An amendment prohibiting the expenditure of funds in any workplace that was not free of illegal substances by requiring contract recipients to so certify and requiring contracts to contain provisions withholding payment upon violation. 100–2, May 18, 1988, p 11388.

### § 59. Limitations on Funds in Other Acts

A limitation must apply solely to the money of the appropriation under consideration and may not be applied to money appropriated in other acts. A limitation that is not confined to funds in the pending bill is legislation on an appropriation bill under Rule XXI clause 2 and not in order. 4 Hinds § 3927; 7 Cannon § 1495; Deschler Ch 26 §§ 27.2, 27.7, 27.8, 27.12, 27.16. And an amendment to an appropriation bill seeking to change a limitation on expenditures carried in a previous appropriation bill has been held to be legislation and not in order. Deschler Ch 26 §§ 22.9, 22.10. Language requiring future fiscal year funding to be subject to limitations to be subsequently specified is legislation and not in order. 99–2, May 8, 1986, p 10156.

Set out below are provisions in general appropriation bills that have been held out of order because they imposed a limitation that was not confined to the funds in the bill:

- An amendment providing that funds appropriated “or otherwise made available” for a public works project be limited to a certain use. 95–2, June 15, 1978, p 12831.
- Language in the form of a limitation providing no part of the appropriation contained “in this or any other act” be used for a certain purpose. Deschler Ch 26 § 27.20.
- Language in an appropriation bill providing that no part of “any appropriation” shall be used for a specified purpose. Deschler Ch 26 § 27.18.
- An amendment in the guise of a limitation providing that “no appropriation heretofore made” be used for a certain purpose. Deschler Ch 26 § 27.21.
- An amendment in the form of a limitation declaring that “hereafter no part of any appropriation” shall be available for certain purposes. Deschler Ch 26 §§ 27.16, 27.25.

- An amendment providing that none of the funds in the bill “or elsewhere made available” be used for a certain purpose. Deschler Ch 26 § 27.12.
- An amendment providing that “total payments to any person” under a soil conservation program shall not exceed a certain amount. Deschler Ch 26 § 27.5.

## V. Reappropriations

### § 60. In General

#### Generally; Transfers Distinguished

A restriction against the inclusion of reappropriations in general appropriation bills is set forth in House Rule XXI clause 6. *Manual* § 847. Reappropriations are to be distinguished from transfers of funds, which are permitted under some circumstances. See §§ 36, 37, *supra*.

Prior to enactment of the Legislative Reorganization Act of 1946, provisions which reappropriated in a direct manner unexpended balances and continued their availability for the same purpose for an extended period of time were not prohibited by Rule XXI because they were not deemed to change existing law by conferring new authority. 4 Hinds § 3592; 7 Cannon § 1152; Deschler Ch 26 § 30. Today however, with two exceptions, a provision reappropriating unexpended balances may not be considered in a general appropriation bill or amendment thereto. Rule XXI clause 6. *Manual* § 847. Specifically excluded from the operation of this rule are (1) appropriations in continuation of appropriations for public works on which work has commenced, and (2) transfers of unexpended balances within the department or agency for which they were originally appropriated. *Manual* § 847. As to what constitutes a public work-in-progress under Rule XXI clause 1, see § 26, *supra*.

Rule XXI clause 6 is limited by its terms to general appropriation bills and amendments thereto, and the exceptions specified by it apply only to propositions reported by the Committee on Appropriations. *Manual* § 847. An unreported joint resolution carrying a transfer of unobligated balances of previously appropriated funds—and not containing an appropriation of any new budget authority—is not a “general appropriation bill” within the meaning of that rule. 100–2, Mar. 3, 1988, p 32335.

#### Provisions Subject to a Point of Order

Language in a general appropriation bill making available unobligated balances of funds appropriated in prior appropriation acts may constitute a reappropriation in violation of Rule XXI clause 6. Deschler Ch 25 § 3.2; 97–

2, July 29, 1982, p 18625; 100–2, June 28, 1988, p 16254. A provision transferring previously appropriated funds to extend their availability and to merge them with current-year funds is likewise in violation of clause 6. 98–1, Oct. 26, 1983, pp 29416, 29417. Unless permitted under one of the exceptions specified in the rule, the reappropriation is subject to a point of order even though the funds are sought for the same purpose as the original appropriation (Deschler Ch 25 § 3.3), and even though the original appropriation was authorized in law (102–2, July 28, 1992, p \_\_\_\_).

#### **Authorization Bills and Reappropriations**

Language in an appropriation bill continuing the availability of unobligated balances of prior appropriations is in order where provisions of the original authorizing legislation permit such a reappropriation and are still in effect. Deschler Ch 25 § 3.8. Rule XXI clause 6 is not applicable to appropriation bills when the reappropriation language is identical to legislative authorization language enacted subsequent to the adoption of the rule, since the authorizing law is a more recent expression of the will of the House. Deschler Ch 25 § 3.7.

## **VI. Reporting; Consideration and Debate**

### **A. Generally**

#### **§ 61. Privileged Status; Voting**

##### **Generally**

General appropriation bills have long enjoyed a privileged status under the rules of the House. Subject to a three-day layover requirement (§ 62, *infra*) such bills may be reported “at any time” under Rule XI clause 4(a). *Manual* § 726. Generally, see COMMITTEES. In 1981, this privilege was extended to joint resolutions continuing appropriations for a fiscal year if reported after September 15 preceding the beginning of such fiscal year. *Manual* § 726. The privilege does not extend to special appropriations to address a specific purpose. 8 Cannon § 2285. Similarly, a joint resolution providing an appropriation for a single government agency is not a general appropriation bill and is not reported as privileged. Deschler Ch 25 § 7.4.

Nonprivileged appropriation bills may be made in order by unanimous consent or pursuant to a special rule reported by the Committee on Rules. Deschler Ch 25 § 6. Generally, see § 75, *infra*.

The yeas and nays are automatically ordered when the Speaker puts the question on final passage or adoption of any bill, joint resolution, or con-

ference report making general appropriations. Rule XV clause 7; *Manual* § 774e.

### **Prior Consideration in the Committee of the Whole**

All bills that make appropriations—indeed all proceedings “touching appropriations”—require consideration first in Committee of the Whole, and a point of order made pursuant to this rule is good at any time before the consideration of a bill has commenced. Rule XXIII clause 3. *Manual* § 865. Filing an appropriation bill “as privileged” permits a later privileged motion that the House resolve itself into the Committee of the Whole for the purpose of considering the bill. Rule XVI clause 9. *Manual* § 802.

To require consideration in Committee of the Whole under Rule XXIII clause 3, a bill must show on its face that it falls within the requirements of the rule. 4 Hinds §§ 4811–4817; 8 Cannon § 2391. Where the expenditure is a mere matter of speculation (4 Hinds §§ 4818–4821), or where the bill might involve a charge on the Treasury but does not necessarily do so (4 Hinds §§ 4809, 4810), the rule does not apply. In passing on the question as to whether a proposition involves a charge upon the Treasury, the Speaker is confined to the provisions of the text and may not take into consideration personal knowledge not directly deducible therefrom. 8 Cannon §§ 2386, 2391. But where a bill sets in motion a train of circumstances destined ultimately to involve Treasury expenditures, it must be considered in Committee of the Whole. 4 Hinds § 4827; 8 Cannon § 2399. The requirements of the rule apply to amendments as well as to bills. 4 Hinds §§ 4793, 4794. Indeed, the rule applies to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill’s main purpose. 4 Hinds § 4825. Senate amendments, see § 70, *infra*.

### **Consideration in the House as in the Committee of the Whole**

Pursuant to a special order previously agreed to, an appropriation bill may be called up as if privileged and considered in the House as in the Committee of the Whole (meaning that the bill is considered as read and open to amendment at any point under the five-minute rule, without general debate). 89–1, Oct. 13, 1965, p 26881; 89–1, Sept. 28, 1965, p 25342; 91–1, June 24, 1969, pp 17015–17; 91–2, June 24, 1970, p 21239. And on numerous occasions the House has by unanimous consent provided for the consideration of an appropriation bill in the House as in the Committee of the Whole. 87–2, June 14, 1962, p 10481; 89–1, July 28, 1965, pp 18578, 18580; 89–1, Oct. 13, 1965, p 26881.

## § 62. When Bills May Be Considered

The privilege given to general appropriation bills under the House rules is subject to the requirement that such bills may not be considered in the House until printed committee hearings and a committee report thereon have been available to the Members for at least three calendar days (excluding Saturdays, Sundays, and legal holidays if not in session). Rule XXI clause 7. *Manual* § 848. Other reports of the committee are governed by a similar three-day layover requirement under Rule XI. *Manual* § 715. In counting the “three calendar days,” the date the bill is filed or the date on which it is to be called up for consideration are counted, but not both. *Manual* § 848.

The three-day layover requirement may be waived by unanimous consent (87–2, Sept. 12, 1962, p 19237) or pursuant to the adoption of a special rule from the Committee on Rules (95–1, Mar. 15, 1977, p 7613).

## § 63. Debate; Consideration of Amendments

### Generally; Perfecting Amendments

Amendments perfecting a general appropriation bill are considered in the Committee of the Whole during the reading of the bill for amendment under the five-minute rule. See Rule XXIII clause 5(a). *Manual* §§ 870, 872. General appropriation bills are read for amendment by paragraph—unless a special rule provides otherwise—whereas bills appropriating for a specific purpose are read by sections. 4 Hinds §§ 4739, 4740; Deschler Ch 25 § 11.8.

An amendment to a paragraph in a general appropriation bill must be offered immediately after that paragraph is read by the Clerk. 91–2, Apr. 14, 1970, p 11648. Amendments are in order only to the paragraph just read, not to the entire subject matter under a heading in the bill. Deschler Ch 25 § 11.9. An amendment to a paragraph which has been passed during the reading of the bill may be offered only by unanimous consent. 92–2, June 15, 1972, pp 21118–22; Deschler Ch 25 § 11.13. And where the Clerk has read a paragraph in title II, an amendment to insert a new section at the end of title I may be offered only by unanimous consent. 93–2, June 18, 1974, pp 19709, 19710.

Where an initial (sub)paragraph in a general appropriation bill appropriates an aggregate amount from a special fund for specific projects which are delineated and separately funded in subsequent (sub)paragraphs, each project will be treated as part of the entire paragraph so as to permit the offering as one amendment of proposals to change a particular project and to adjust the aggregate amount accordingly. 102–2, July 1, 1992, p \_\_\_\_\_, (reversing a ruling at 98–2, Nov. 30, 1982, p 28066).

**En Bloc Amendments**

En bloc amendments proposing only to transfer appropriations among objects in the bill and without increasing the levels of budget authority or outlays in the bill, are in order during the reading of the bill for amendment in the Committee of the Whole. Such amendments may amend portions of the bill not yet read for amendment and are not subject to a demand for division of the question. Rule XXI clause 2(f) (adopted in 1995).

**Consideration in the House**

Amendments adopted in the Committee of the Whole are reported to the House for action. During consideration of the bill in the House, it is in order to demand that those amendments be voted on separately. Deschler Ch 25 § 11.21.

**§ 64. — Limitation Amendments; Retrenchments****Amendments Authorized in Existing Law**

Limitation amendments “specifically contained or authorized in existing law for the period of the limitation” may, pursuant to clause 2(c), Rule XXI, be offered in the Committee of the Whole during the reading of a general appropriation bill for amendment. See *Manual* § 834 (note). However, that rule is strictly construed to apply only where existing law requires or permits the inclusion of limiting language in an appropriation act, and not merely where the limitation is alleged to be “consistent with existing law.” 100–2, June 28, 1988, p 16267.

**Limitation Amendments Not Authorized in Existing Law; Retrenchment Amendments**

In 1983 and in 1995, the House adopted and then modified procedures for the consideration of retrenchment and limitation amendments: such amendments are in order (1) only when reading of the bill has been completed and (2) only if the Committee of the Whole does not adopt a motion, if offered by the Majority Leader or his designee, to rise and report the bill back to the House. *Manual* § 834f (note). Pursuant to Rule XXI clause 2(d), a general appropriation bill must be read for amendment *in its entirety* (including the short title of the bill if part of the text) before retrenchments or amendments proposing limitations are in order; and the motion that the Committee of the Whole rise and report the bill to the House with any other amendments already adopted then takes precedence over an amendment proposing the limitation or retrenchment. 98–1, June 2, 1983, pp 14317, 14318. Deschler Ch 26 § 1.6. Under that rule, an amendment proposing a limitation

not specifically contained or authorized in existing law for the period of the limitation is not in order during the reading of the bill (99–2, July 30, 1986, p 18214), and if offered at the completion of the reading, can be entertained only if a preferential motion to rise and report, if offered, is rejected (99–2, July 23, 1986, p 17431). See also 100–2, June 15, 1988, p 16267. However, the amendment with the limitation if offered first may be considered as pending upon rejection by the Committee of the preferential motion to rise and report. 99–1, July 30, 1985, pp 21534–36.

Unlike an amendment proposing a limitation or a retrenchment, an amendment simply reducing an amount provided in a general appropriation bill is not subject to the requirements of clause 2(d) of Rule XXI and need not await the completion of the reading and the disposition of other amendments or to yield to a preferential motion to rise and report. 102–2, June 30, 1992, p \_\_\_\_.

### **§ 65. Points of Order—Reserving Points of Order**

#### **Generally**

Points of order may be raised in the Committee of the Whole to enforce the requirements imposed on general appropriation bills by the House rules, such as the prohibition against unauthorized appropriations (§§ 10–14, *supra*), the restriction against legislation in general appropriation bills (§ 27, *supra*) and the proscription against the inclusion of reappropriations of unexpended balances (§ 60, *supra*).

Under the former practice, points of order ordinarily had to be reserved against a general appropriation bill at the time the bill was reported to the House and referred to the Union Calendar, and could be reserved after the bill had been referred to the Committee of the Whole only by unanimous consent. Deschler Ch 25 § 12.1. Under new Rule XXI clause 8, adopted in 1995, it is no longer necessary to reserve points of order at the time the bill is referred to the Union Calendar; Members' rights to later raise them are automatically protected. 104–1, Jan. 4, 1995, p \_\_\_\_.

#### **Against Amendments**

In the Committee of the Whole, the reservation of a point of order against an amendment to an appropriation bill is within the discretion of the Chair, but if permitted must be reserved before debate begins on the amendment. Deschler Ch 26 § 2.2. See also POINTS OF ORDER.

**§ 66. — Timeliness****Generally; Points of Order Against Paragraphs**

A point of order against a provision in a general appropriation bill may not be entertained during general debate but must await the reading of that portion of the bill for amendment. 103–1, June 18, 1993, p \_\_\_\_\_. The time for making points of order against items in an appropriation bill is after the House has resolved itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment. Deschler Ch 25 § 12.8. A point of order against the paragraph on the ground that it is legislation will not lie before the paragraph is read. Deschler Ch 26 § 2.10; 99–1, June 6, 1985, pp 14605, 14609. A point of order against two consecutive paragraphs comprising a section in the bill can be made only by unanimous consent. Deschler Ch 25 § 12.5. The proper time to raise a point of order against language in the paragraph is after the paragraph has been read but before debate starts thereon. 86–2, May 24, 1960, p 10979; 95–2, June 14, 1978, pp 17624, 17626.

Points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount. Deschler Ch 26 § 2; *Manual* § 835. A point of order against a paragraph which has been passed in the reading for amendment may be made only by unanimous consent. 97–2, Nov. 30, 1982, p 28066.

A point of order must be made against a paragraph after it is read and before an amendment is offered thereto even if the amendment is ruled out of order. Deschler Ch 26 § 2.21. However, the point of order is not precluded by the fact that, by unanimous consent, an amendment had been offered to the paragraph before it was read. 91–1, July 31, 1969, p 21677.

**Timeliness Where Bill is Considered as Having Been Read**

Where a general appropriation bill or a portion thereof (a title, e.g.) is considered as having been read and open to amendment by unanimous consent, points of order against provisions therein must be made before amendments are offered, and cannot be reserved pending subsequent action on amendments. Deschler Ch 26 § 2; *Manual* § 835. 97–1, July 13, 1981, p 15548; 98–1, Oct. 26, 1983, pp 29409, 29410. In this situation, the Chair first inquires whether any Member desires to raise a point of order against any portion of the pending text, and then recognizes Members to offer amendments to that text. Deschler Ch 26 § 2.15. A point of order comes too late if it is made after the Chairman has asked for amendments after having asked for points of order. Deschler Ch 26 § 2.16.

Where an appropriation bill partially read for amendment is then opened for amendment “at any point” (rather than for “the remainder of the bill”), points of order to paragraphs already read may yet be entertained. Deschler Ch 26 § 2.14.

### **Points of Order Against Amendments**

Points of order against proposed amendments to a general appropriation bill must be made or reserved immediately after the amendment is read. After a Member has been granted time to address the Committee of the Whole on his amendment, it is too late to make a point of order against it. Deschler Ch 26 § 12.13.

## **§ 67. — Points of Order Against Particular Provisions**

### **Generally; Against Paragraphs of Bill**

Points of order against unauthorized appropriations or legislation on general appropriation bills may be raised against an entire paragraph or a portion only of a paragraph (4 Hinds § 3652; 5 Cannon § 6881); and the fact that a point is made against a portion of a paragraph does not prevent another point against the whole paragraph (5 Cannon § 6882; 99–1, July 31, 1985, p 21895).

Where a point of order is made against an entire paragraph in an appropriation bill on the ground that a portion thereof is in conflict with the rules of the House and the point of order is sustained, the entire paragraph is eliminated. 95–1, June 29, 1977, p 21402; Deschler Ch 26 § 2.4. Similarly, where a point of order is made against an entire proviso on the ground that a portion of it is subject to the point of order, and the point of order is sustained, the entire proviso is eliminated. Deschler Ch 26 § 2.6. A point of order, if made and sustained against a portion of a paragraph containing legislation, is sufficient to cause the entire paragraph to be stricken even if the remainder of the paragraph is authorized. 95–1, June 8, 1977, pp 17922, 17923. 99–1, July 31, 1985, p 21895.

### **Against Amendments**

If any portion of an amendment to an appropriation bill constitutes legislation, the entire amendment is subject to a point of order. 95–2, Aug. 7, 1978, p 24708.

A point of order against an amendment as legislation on a general appropriation bill must be determined in relation to the bill in its modified form (as affected by disposition of prior points of order). Deschler Ch 26 § 2.24.

## § 68. — Waiving Points of Order

### Generally; Alternative Procedures

Points of order against a general appropriation bill may be waived in various ways:

- By unanimous consent. Deschler Ch 26 § 31.
- By special rule (a resolution) from the Rules Committee. 4 Hinds §§ 3260–3263; Deschler Ch 26 § 3; *Manual* § 842f.
- By motion to suspend the rules. 4 Hinds § 3845.
- By failure to make a timely point of order. Deschler Ch 26 § 3.17.

*Note:* Although legislation in an appropriation bill may be subject to a point of order under Rule XXI clause 2, if not challenged it becomes permanent law where it is permanent in its language and nature. Deschler Ch 26 § 3.17.

### Waiver of Points of Order By Special Rule

A waiver of points of order pursuant to a special rule from the Rules Committee may be couched in broad terms, as where it seeks to protect the entire bill against points of order. Deschler Ch 26 § 3.14. Or the waiver may be confined to points of order directed at a particular title (Deschler Ch 26 § 3.7) or a specified chapter (Deschler Ch 26 § 3.8) of the bill. A waiver may be very limited in scope, as where it permits points of order against portions of certain paragraphs but not against entire paragraphs. 97–1, July 10, 1981, p 15331; 97–1, July 30, 1981, p 18803.

### Waiver of Particular Points of Order

The House, by adoption of a special rule from the Committee on Rules, may waive points of order:

- Against certain paragraphs in an appropriation bill not authorized by law or containing legislative language. Deschler Ch 26 §§ 3.2, 3.6; 98–2, June 27, 1984, p 19129; 98–2, July 25, 1984, pp 20979, 20981, 20989.
- Against reappropriations in violation of clause 6 Rule XXI. 97–1, July 10, 1981, p 15331; 97–1, July 30, 1981, p 18803.
- Against consideration of a bill containing new budget authority in excess of allocations to subcommittees and for failure of the committee report to contain a comparison of spending in the bill with subcommittee allocations. 99–2, Apr. 22, 1986, pp 8343, 8344, 8348.
- Against consideration of the bill until printed committee hearings and the committee report have been available for three days (Deschler Ch 25 § 10.3) as is required by the two layover rules of the House. 99–2, July 17, 1986, p 16680; 99–2, Aug. 1, 1986, p 18625.

*Note:* Both of the three-day rules apply and may need to be waived, as the specific rule, clause 7, Rule XXI, does

not supersede the more general rule in clause 2(l)(6), Rule XI, which covers all reports.

### **Application of Waiver to Points of Order Against Amendments**

Although points of order against the particular provisions of a bill may be waived by unanimous consent or special rule, such waiver will not preclude points of order against amendments offered from the floor unless the waiver is made specifically applicable to such amendments. Deschler Ch 26 § 3. Thus, where a general appropriation bill is considered under terms of a special rule waiving points of order “against said bill,” the waiver applies only to the provisions of the bill and not to amendments thereto. Deschler Ch 26 § 3.14. But a special rule waiving points of order may be drafted in such a way as to protect a specific amendment (Deschler Ch 26 § 3.10) or to protect “any amendment offered by direction of the Committee on Appropriations.” Deschler Ch 26 § 3.11.

## **§ 69. Amending Language Permitted to Remain**

### **When In Order**

Language that has been permitted to remain in a general appropriation bill or amendment by virtue of a waiver may be modified by a further amendment if it is germane and does not contain additional legislation or additional unauthorized items. 4 Hinds § 3862; 7 Cannon § 1420; Deschler Ch 26 § 3. 90–1, Nov. 16, 1967, p 32886; 91–1, May 21, 1969, p 13271. And where an unauthorized appropriation is permitted to remain in the bill by failure to raise, or by waiver of, a point of order, an amendment merely changing the amount and not adding legislative language or earmarking separate funds for another unauthorized purpose is in order. Deschler Ch 26 § 3.38; 99–1, July 17, 1985, p 19435. However, an increase in the amount may be vulnerable as a Budget Act violation under §§ 302 or 311 of the Budget Act.

### **When Not In Order**

Although legislative language in a general appropriation bill which is permitted to remain therein because of a waiver of points of order may be perfected by germane amendment, such an amendment may not, under Rule XXI clause 2, add additional legislation. 4 Hinds §§ 3836, 3837; 7 Cannon §§ 1425–1434; 101–1, Aug. 2, 1989, p \_\_\_\_\_. Nor may such an amendment earmark funds for an unauthorized purpose (Deschler Ch 26 § 3.30) or direct a new use of funds not required by law (*Manual* § 842f). The figures in an unauthorized item permitted to remain may be perfected but the provision may not be changed by an amendment substituting funds for a different un-

authorized purpose. Deschler Ch 26 § 3.45. Nor may an increase in such figure be accompanied by legislative language directing certain expenditures. 94–2, June 18, 1976, p 19297. Amendments to language permitted to remain in an appropriation bill which have been ruled out under Rule XXI clause 2 have included:

- An amendment adding additional legislation prohibiting the availability of funds in other acts for certain other purposes. 93–1, Aug. 1, 1973, pp 27291, 27292.
- An amendment adding an additional class of recipients to those covered by a legislative provision permitted to remain. 98–1, June 22, 1983, pp 16850, 16851.
- An amendment adding further unauthorized items of appropriation or adding legislation in the form of new duties. 99–2, July 23, 1986, pp 16850, 16851.
- An amendment broadening the application of a legislative provision permitted to remain so as to apply to other funds. 100–2, June 28, 1988, p 16212; *Manual* § 836.
- An amendment adding a new paragraph in another part of the bill which indirectly increases an unauthorized amount passed in the reading. 104–1, July 12, 1995, p \_\_\_\_.

## B. Senate Amendments

### § 70. In General

#### Senate Amendments Before Stage of Disagreement

While Rule XX clause 1 requires any Senate amendment involving a new and distinct appropriation to be first considered in a Committee of the Whole (*Manual* § 828a), the modern practice bypasses this requirement by sending appropriation bills with Senate amendments directly to conference either by unanimous consent or a motion under clause 1, notwithstanding the fact that the stage of disagreement has not been reached (92–2, Aug. 1, 1972, p 26153). Thus earlier precedents (4 Hinds §§ 4797–4806; 8 Canon §§ 2382–2385) governing initial consideration of Senate amendments to appropriation bills in Committee of the Whole are largely anachronistic, and the practices discussed below regarding disposition of Senate amendments normally involve the post-conference stage of consideration where the stage of disagreement has been reached and motions in the House to dispose of Senate amendments are privileged (*Manual* §§ 528a–d).

**Amending Senate Amendments**

A point of order under Rule XXI clause 2 does not lie against a Senate amendment to a House general appropriation bill. See *Manual* §§ 829, 842g; 7 Cannon § 1572. 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. Deschler Ch 25 § 13.13; Deschler Ch 26 § 6.1. Similarly, where the Senate attaches a “legislative” amendment to the bill, it is in order in the House to concur with a perfecting amendment provided such amendment is germane to the Senate amendment. Deschler Ch 25 § 13.14. In amending a Senate amendment the House is not confined within the limits of the amount set by the original bill and the Senate amendment. Deschler Ch 25 § 13.15.

**Amendments Reported in Disagreement**

A Senate amendment containing legislation reported from conference in disagreement (see § 71, *infra*) may be amended by a germane amendment even though the proposed amendment is also legislative. Deschler Ch 26 § 6.9; *Manual* § 842g. Although Rule XX clause 2 prohibits House conferees from agreeing to a Senate amendment which proposes legislation on an appropriation bill without specific authority from the House, that rule is a restriction upon the managers only, and does not provide for a point of order against such amendment when it is reported in disagreement and comes up for separate action by the House. 7 Cannon § 1572. It is customary for the managers to report such amendments in technical disagreement; after disposing of the conference report, which includes those Senate amendments not in violation of clause 2, Rule XXI, whether reported in technical or true disagreement, are taken up in order and disposed of directly in the House by separate motion. 7 Cannon § 1572; *Manual* § 829. Accordingly, where a Senate amendment proposing legislation on a general appropriation bill is reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment is in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement. *Manual* §§ 829, 842g. See also Deschler Ch 26 § 6.5.

**§ 71. Authority of Conference Managers****Generally**

Under Rule XX clause 2, the managers on the part of the House may not agree to any Senate amendment to a general appropriation bill if that

amendment, had it originated in the House, would have been in violation of Rule XXI clause 2, unless such agreement is specifically authorized by separate vote prior thereto. Since the addition of Rule XXI clauses 2(c) and (d) in 1983, this restriction on House managers' authority has been interpreted to extend to Senate amendments in the form of limitations since limitation amendments are in violation of that clause unless offered at the end of reading for amendment in Committee of the Whole. It has been the practice of the managers at a conference on a general appropriation bill to bring Senate amendments containing limitations back to the House in technical disagreement. The House may then dispose of them by proper motion, the stage of disagreement having been reached.

The applicable rule also precludes House managers from agreeing in conference to Senate appropriation amendments on any bill other than a general appropriation bill unless authorized by separate vote. Rule XX clause 2. *Manual* § 829. Under this rule, where a House legislative measure has been committed to conference, and the conferees agree to a Senate amendment appropriating funds, the conference report thereon may be ruled out. Deschler Ch 25 §§ 13.8, 13.9. But a point of order against an appropriation in a conference report on a legislative bill will lie under the rule only if that provision was originally contained in a Senate amendment, and will not lie against a provision permitted by the House to remain in its bill. Deschler Ch 25 § 13.12. Moreover, since the rule applies only to Senate amendments which are sent to conference, it does not apply to appropriations contained in Senate legislative bills. Deschler Ch 25 § 13.11. Generally, see CONFERENCES BETWEEN THE HOUSES.

#### **Authorization by Special Rule**

The managers on the part of the House may be authorized by special rule reported by the Committee on Rules to agree to Senate amendments carrying appropriations in violation of Rule XXI clause 2. 7 Cannon § 1577. Where the special rule 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, and the bill goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since the waiver carries over to the consideration of the same provisions when the conference report is before the House. *Manual* § 829 (note).

#### **Authorization by Unanimous Consent**

A Member may seek unanimous consent to send an appropriation bill to conference and authorize the House conferees to agree to Senate legisla-

tive amendments notwithstanding the restrictions contained in Rule XX clause 2. Deschler Ch 26 § 6.3. But unanimous consent merely to take from the Speaker's table and send to conference a bill with Senate amendments does not waive the provisions of the rule restricting the House conferees' authority. 7 Cannon § 1574.

## VII. Nonprivileged Appropriation Measures

### § 72. In General; Continuing Appropriations

A continuing appropriations measure is legislation enacted by the Congress to provide budget authority for specific ongoing federal programs when a regular appropriation for those programs has not been enacted. See Deschler Ch 25 § 7.1.

Joint resolutions continuing appropriations pending enactment of general appropriation bills for the ensuing fiscal year are not "general" appropriation bills and therefore are not reported or called up as privileged (8 Cannon § 2282) unless reported after September 15 preceding the beginning of such fiscal year. Rule XI clause 4(a); *Manual* § 726; Deschler Ch 25 § 7. Calling up by unanimous consent or under a special rule, see § 75, *infra*.

A continuing resolution is not a "general appropriation bill" within the meaning of clause 2 Rule XXI and is therefore not subject to its provisions. The restrictions against unauthorized items or legislation in a general appropriation bill or amendment thereto are not applicable to a continuing resolution despite inclusion of diverse appropriations which are not "continuing" in nature. 94-1, June 17, 1975, p 19176; Deschler Ch 26 § 1.2.

### § 73. Supplemental Appropriations

A supplemental appropriation provides budget authority in addition to regular or continuing appropriations already made. Bills making supplemental appropriations for diverse agencies are considered general appropriation bills and are reported as such. Deschler Ch 25 § 7.

A waiver of points of order against a supplemental appropriation bill may be provided for by special rule from the Committee on Rules. The rule may waive points of order against the entire bill (Deschler Ch 25 § 9.7) or against a specific paragraph in the bill (Deschler Ch 25 § 9.6). Such a rule has been considered and agreed to by the House even after general debate on the bill has been concluded and reading for amendment has begun in the Committee of the Whole. Deschler Ch 25 § 9.1.

**§ 74. Appropriations for a Single Agency**

A measure making an appropriation for a single department or agency is not a “general” appropriation bill within the meaning of Rule XI clause 4(a) and is therefore not privileged for consideration when reported by the Committee on Appropriations. Deschler Ch 25 §§ 7.3, 7.4; 89–1, May 5, 1965, p 9518. Moreover, because such measures are not general appropriation bills, they are not subject to points of order under Rule XXI clause 2. 95–1, Feb. 3, 1977, p 3473.

**§ 75. Consideration****By Special Rule, Consent, or Suspension**

The consideration of nonprivileged appropriation measures may be made in order by a special rule from the Committee on Rules. Deschler Ch 25 § 7.3. The consideration of such measures may also be made in order by unanimous consent. 97–2, Mar. 23, 1982, p 5012; 98–2, Oct. 1, 1984, pp 27961, 27962. Thus, a joint resolution continuing appropriations for a fiscal year may be called up unanimous consent, even where such joint resolution has been reported pursuant to the rule (*Manual* § 743) relating to the filing of nonprivileged reports. Deschler Ch 25 § 8.8.

A nonprivileged appropriation bill may also be considered pursuant to a motion to suspend the rules. Deschler Ch 25 § 13.18.

**Consideration in House As In Committee of the Whole**

Joint resolutions continuing appropriations pending enactment of regular annual appropriation measures are often considered in the House *as in* Committee of the Whole, but are sometimes considered in Committee of the Whole to permit more extensive general debate. Deschler Ch 25 § 6 (note). Joint resolutions providing supplemental appropriations may also be considered in the House *as in* Committee of the Whole. Deschler Ch 25 §§ 11.5, 11.6. Such consideration may be provided for by unanimous consent (Deschler Ch 25 § 8.7) or pursuant to a special rule from the Committee on Rules (Deschler Ch 25 § 8.4).

**Consideration in House**

Under modern practice, continuing appropriation joint resolutions are often considered by unanimous consent or by special rule “in the House” under the hour rule (Deschler Ch 25 §§ 8.9–8.12), and often with the previous question considered as ordered to prevent amendment. See 102–1, Sept. 24, 1991, p \_\_\_\_.

## VIII. Appropriations in Legislative Bills

### § 76. In General

#### Generally

Restrictions against the inclusion of appropriations in legislative bills are provided for by House Rule XXI clause 5(a). A bill or joint resolution carrying appropriations may not be reported by a committee not having jurisdiction to report appropriations. The rule also prohibits amendments proposing appropriations on a reported legislative bill. *Manual* § 846a. Under this rule, a provision appropriating funds that is included in a bill reported by a legislative committee is subject to a point of order. 7 Cannon § 2133; Deschler Ch 25 § 4.24. But since the rule by its terms applies to appropriations “reported” by legislative committees, the point of order does not apply to an appropriation in a bill which has been taken away from a non-appropriating committee by a motion to discharge. 7 Cannon § 1019a. Nor does it apply to a special order reported from the Committee on Rules “self-executing” the adoption to a bill of an amendment containing an appropriation, since the amendment is not separately before the House during consideration of the special order. 103–1, Feb. 24, 1993, p \_\_\_\_.

#### Application to Senate Bills or Amendments Between the Houses

The rule forbidding consideration of items carrying appropriations in bills reported by nonappropriating committees applies to Senate bills as well as to House bills. 7 Cannon §§ 2136, 2147. The point of order may be made against an appropriation in a Senate bill under consideration (in lieu of a reported House bill) even though the bill has not been reported by a committee of the House. 7 Cannon § 2137. This rule also applies to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations. 96–2, Oct. 1, 1980, pp 28638–42.

#### Application to Private Bills

Rule XXI clause 5(a) does not apply to private bills since the committees having jurisdiction of bills for the payment of private claims may report bills making appropriations within the limits of their jurisdiction. 7 Cannon § 2135.

### § 77. What Constitutes an Appropriation in a Legislative Bill

#### Generally

As used in Rule XXI clause 5(a), an “appropriation” means taking money out of the Treasury by appropriate legislative language for the sup-

port of the general functions of government. Deschler Ch 25 § 4.43. Rulings on points of order under clause 5(a) have frequently depended on whether language allegedly making an appropriation was in fact merely language authorizing an appropriation. Deschler Ch 25 § 4. Thus, a provision that disbursements “shall be paid from the appropriation made to the department for that purpose” was construed as an authorization merely and not an appropriation, and therefore not subject to a point of order under clause 5(a). 7 Cannon § 2156.

### **Provisions Held In Order**

Provisions in a legislative bill which have held not to violate clause 5(a) have included:

- Language authorizing an appropriation of not less than a certain amount for a specified purpose. Deschler Ch 25 § 4.34.
- Language providing that an appropriation when made should come out of any unexpended balances heretofore appropriated or made available for emergency purposes. Deschler Ch 25 § 4.35.
- Language in a bill providing that all funds “available” for carrying out the act “shall be available” for allotment to certain bureaus and offices, no use of existing funds being permitted. Deschler Ch 25 § 4.36.
- Language authorizing and directing an executive officer to advance, when appropriated, sums of money out of the Treasury. Deschler Ch 25 § 4.38.
- An authorization for the withdrawal of money from the Treasury belonging to a governmental agency, even though it would otherwise eventually revert to the government. 7 Cannon § 2158.
- Language in a housing bill authorizing the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Deschler Ch 25 § 4.43.

### **Provisions Held Out of Order**

Provisions reported by a legislative committee and ruled out of order as constituting an appropriation in violation of Rule XXI clause 5(a) have included:

- A direction that funds previously appropriated be used for a purpose not specified in the original appropriation. 7 Cannon § 2147.
- Language reappropriating or diverting an appropriation for a new purpose. 7 Cannon § 2146; Deschler Ch 25 §§ 4.1, 4.4.
- An amendment requiring the diversion of previously appropriated funds in lieu of the enactment of new budget authority. 100-2, Aug. 10, 1988, p 21719.
- Language providing for the transfer of unexpended balances of appropriations and making such funds available for expenditure. Deschler Ch 25 § 4.5.

- Language making available an appropriation or a portion of an appropriation already made for one purpose to another (100–2, Aug. 10, 1988, p 21719), or for one fiscal year to another (102–2, Mar. 26, 1992, p \_\_\_\_).
- Language providing for the collection of certain fees and authorizing the use of the fees so collected for the purchase of certain installations. Deschler Ch 25 § 4.16.
- An amendment establishing a user charge and making the revenues collected therefrom available without further appropriation. Deschler Ch 25 § 4.19.
- A provision making available for administrative purposes money repaid from advances and loans. Deschler Ch 25 § 4.21.
- Language directing disbursements from Indian trust funds. 7 Cannon § 2149.
- An amendment permitting the acquisition of buses with funds from the highway trust fund. 92–2, Oct. 5, 1972, p 34115.
- A provision establishing a special fund, to be available with other funds appropriated, for the purpose of paying of refunds. 7 Cannon § 2152.
- Language making excess foreign currencies available to stimulate private enterprise abroad. Deschler Ch 25 § 4.22.
- Language providing that the cost of certain surveys would be paid from the appropriation theretofore or thereafter made for such purposes. Deschler Ch 25 § 4.10.
- Language in a bill making available unobligated balances of appropriations “heretofore” made to carry out the provisions of the bill. Deschler Ch 25 § 4.11.
- An amendment to a legislative bill waiving provisions in an appropriation act which limited the availability of funds appropriated therein for a specified purpose, thereby increasing the availability of appropriated funds. 93–2, Apr. 4, 1974, pp 9846, 9847.
- An amendment which provided for the transfer of existing federal funds into a new Treasury trust fund and for their immediate availability for a new purpose. 93–2, June 20, 1974, pp 20273–75.
- Language authorizing the Treasurer to honor requisitions of the Archivist in such manner and in accordance with such regulations as the Treasurer might prescribe. Deschler Ch 25 § 4.15.
- A provision in an omnibus reconciliation bill reported by the Budget Committee making a direct appropriation to carry out a part of the Energy Security Act. 99–1, Oct. 24, 1985, p 28812.

## § 78. Points of Order; Timeliness

### Generally

A point of order under clause 5 Rule XXI against an appropriation in a bill reported by a legislative committee should be raised at the appropriate time in Committee of the Whole and does not lie in the House prior to consideration of the bill. 94–1, Sept. 10, 1975, pp 28270, 28271. The provision

in clause 5, that a point of order against the appropriation can be made “at any time” has been interpreted to require the point of order to be raised during the pendency of the amendment under the five-minute rule. Deschler Ch 25 § 12.14. Such a point of order comes too late after the amendment has been agreed to and has become part of the text of the bill, and cannot then be raised against further consideration of the bill as amended. 94–1, Apr. 28, 1975, p 12049.

A point of order under clause 5 applies to the appropriation against which it is directed and not to the bill carrying it. A point of order in the House that the bill is improperly on the Union Calendar does not lie. 7 Cannon § 2140. The point of order should be directed to the item of appropriation in the bill at the proper time and not, in the House, to the act of reporting the bill. 7 Cannon § 2142. It follows that motions to discharge nonappropriating committees from consideration of bills carrying appropriations are not subject to points of order under the rule. 7 Cannon § 2144.

The intervention of debate or the consideration of amendments following the reading do not preclude points of order under clause 5. Points of order against appropriations in legislative bills may be raised even after debate has taken place on the merits of the proposition. Deschler Ch 25 § 12.15. A point of order against an amendment to a legislative bill containing an appropriation can be raised “at any time” during its pendency, even in its amended form, though the point of order is against the amendment as amended by a substitute and though no point of order was directed against the substitute prior to its adoption. 94–1, Apr. 23, 1975, pp 11512, 11513.

### **Waiving Points of Order**

Points of order based on clause 5 have sometimes been waived by resolution. Deschler Ch 25 § 4.3. Where the House has adopted a resolution waiving points of order against certain appropriations in a legislative bill, a point of order may nevertheless be raised against an amendment to the bill containing an identical provision. 94–1, Apr. 23, 1975, p 11512.

### **§ 79. — Directing Points of Order Against Objectionable Language**

A point of order under Rule XXI clause 5 against an appropriation in a legislative bill should be directed against that portion of the bill (or against the amendment thereto) in which the appropriation is contained and cannot be directed against the consideration of the entire bill. 7 Cannon § 2142; Deschler Ch 25 § 4.2. If such a point of order is sustained with respect to

a portion of a section of a legislative bill containing an appropriation, only that portion is stricken. But if the point of order is directed against the entire section for inclusion of that language, the entire section will be ruled out. 93-2, Apr. 4, 1974, pp 9845, 9846.