

Ch. 41 § 12 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The SPEAKER pro tempore. The gentleman from West Virginia (Mr. STAGGERS) concedes the point of order.

Therefore, the point of order is sustained.

§ 13. Section 401(b)

Section 401(b) of the Congressional Budget Act⁽¹⁾ precludes the consideration of “new entitlement authority”⁽²⁾ that becomes effective during the current fiscal year (*i.e.*, before the start of the next fiscal year). This “timing” point of order is applicable to bills or joint resolutions (in the House, as reported), amendments, motions,⁽³⁾ or conference reports.⁽⁴⁾

Prior to the Budget Enforcement Act of 1997, section 401(b) used a different terminology when referring to the fiscal year covered by its prohibition. The previous formulation of section 401(b) prohibited the consideration of measures containing new entitlement authority that became effective “before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.”⁽⁵⁾ The Budget Enforcement Act of 1997 clarified the definition by referring simply to the “current” fiscal year in which such measure is considered.

As noted earlier,⁽⁶⁾ section 401(c) provides an exception to section 401(b) points of order for new budget authority the outlays of which are derived from certain trust funds, including the Social Security Trust Fund.

§ 13.1 An amendment providing a rule of eligibility for certain Federal employee retirement benefits was held to constitute new entitlement authority under section 401(b) of the Congressional Budget Act,⁽¹⁾ which could become effective during the current fiscal year.

1. 2 USC § 651(b).
 2. In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.*, 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(3)).
 3. For example, motions to concur in Senate amendments containing new entitlement authority. See § 13.2, *infra*.
 4. See § 13.3, *infra*.
 5. See *Parliamentarian’s Note* at § 13.3, *infra*.
 6. See § 12, *supra*.
1. 2 USC § 651(b). In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.*,

On May 9, 1995,⁽²⁾ the following occurred:

AMENDMENT OFFERED BY MR. NADLER

Mr. [Jerrold] NADLER [of New York]. Mr. Chairman, I offer an amendment.
The Clerk read as follows:

Amendment offered by Mr. NADLER: At the end of title IV (page 43, after line 13), add the following new section (and amend the table of contents accordingly):

SEC. . TRANSITION FOR CIVILIAN PERSONNEL UNEMPLOYED DUE TO CLOSURE OR REALIGNMENT OF COAST GUARD INSTALLATIONS.

(a) **ELIGIBILITY FOR RETIREMENT.**—A civilian employee of the Coast Guard assigned to the Coast Guard installation located at Governor's Island, New York, who becomes unemployed as a result of a closure or realignment of that installation and who would have been eligible for retirement within 5 years after becoming unemployed shall be eligible for full retirement benefits.

(b) **ELIGIBILITY FOR REEMPLOYMENT.**—For purposes of seeking new employment, the authorized geographic area of a civilian employee of the Coast Guard assigned to the Coast Guard installation located at Governor's Island, New York, who becomes unemployed is deemed to be all United States Coast Guard installations located in the United States.

Mr. NADLER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the *Record*. . . .

POINT OF ORDER

The CHAIRMAN.⁽³⁾ Does the gentleman from North Carolina [Mr. COBLE] persist in his point of order?

Mr. [Howard] COBLE [of North Carolina]. I do, Mr. Chairman.

The CHAIRMAN. The gentleman will state his point of order.

Mr. COBLE. It is my belief, Mr. Chairman, that the amendment from the distinguished gentleman from New York [Mr. NADLER] violates section 401(b)(1) of the Budget Act of 1974. It provides new entitlement authority for the current fiscal year.

The CHAIRMAN. Does the gentleman from New York [Mr. NADLER] wish to be heard?

Mr. NADLER. I await the ruling of the Chair.

The CHAIRMAN (Mr. DICKEY). The Chair is ready to rule.

The gentleman from North Carolina makes a point of order under section 401–B of the Congressional Budget Act that the amendment offered by the gentleman from New York provides new entitlement authority effective during fiscal year 1995 on a bill reported to the House in calendar year 1995.

The Chair finds that amendment offered by the gentleman from New York provides new entitlement authority in the form of public retirement benefits. The Chair also finds that the new entitlement authority would be effective on the date of enactment of the bill. Finally, the Chair is constrained to contemplate immediate enactment of the bill.

Accordingly, the Chair holds that the amendment of the gentleman from New York fails to comply with section 401–B of the Budget Act. Accordingly, the point of order is sustained.

157 CONG. REC. H9 [Daily Ed.] 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(3)).

2. 141 CONG. REC. 12177, 12718, 104th Cong. 1st Sess.

3. Jay Dickey, Jr. (AR).

§ 13.2 Section 401(b)(1) of the Congressional Budget Act⁽¹⁾ prohibits consideration of motions to concur in Senate amendments providing new entitlement authority that would become effective during the current fiscal year.

On June 26, 1986,⁽²⁾ the following occurred:

MOTION OFFERED BY MR. WHITTEN TO CONCUR IN SENATE AMENDMENT NO. 175

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 4515) making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes, with the Senate amendment to the House amendment to the Senate amendment No. 175 and to concur therein.

The SPEAKER pro tempore.⁽³⁾ The Clerk will report the title of the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to Senate amendment No. 175, as follows:

At the end of the amendment insert:

CHAPTER VIII A—TRADE ADJUSTMENT ASSISTANCE

SECTION 1. (a) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

“SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

“(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

“(1) a significant number or proportion of the workers' in such workers firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated, . . .

(c)(1) The amendments made by this section shall apply with respect to petitions for certification which are filed or pending—

(A) on or after September 30, 1986, and

(B) before October 1, 1987.

(2) Notwithstanding any other provision of law, no worker shall be eligible for assistance under subchapter B of chapter 2 of title II of the Trade Act of 1974 if—

(A) such worker is covered by a certification made under subchapter A of such chapter only by reason of the amendment made by subsection (a) of this section, and

(B) the total or partial separation of such worker from adversely affected employment occurs after September 30, 1987. . . .

Mr. WHITTEN. Mr. Speaker, I have moved that the House concur in the Senate amendment to the House amendment to the Senate amendment No. 175.

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. FRENZEL. Mr. Speaker, I make a point of order that the amendment violates section 401(b)(1) of the Budget Act. Section 401(b)(1) prohibits consideration of any bill, resolution, or amendment which provides new spending authority which is to become effective before the first day of the fiscal year which begins during the calendar year in which the bill or resolution is reported.

1. 2 USC § 651(b)(1).
2. 132 CONG. REC. 15728, 15729, 99th Cong. 2d Sess.
3. James Wright (TX).

The Senate amendment amends the Trade Act of 1974 to expand eligibility under the trade adjustment assistance program to cover workers and firms supplying essential parts or services to the oil and gas industry. The amendment would apply to petitions for certification which are filed or pending on or after September 30, 1986, and before October 1, 1987. The amendment would thereby provide new spending authority for worker weekly cash benefits effective in fiscal year 1986.

Since the effective date is before the first day of fiscal year 1987, the Senate amendment is a clear violation of section 401(b)(1) of the Budget Act and the point of order should be sustained.

Mr. WHITTEN. Mr. Speaker, I consented to the point of order.

The SPEAKER pro tempore (Mr. WRIGHT). The Chair will rule: The gentleman from Minnesota makes the point of order that the motion offered by the gentleman from Mississippi to concur in the Senate Amendment to the House amendment to the Senate amendment number 175 to H.R. 4515 violates section 401(b)(1) of the Congressional Budget Act of 1974. That provision prohibits the consideration of a bill, or amendment, which provides new entitlement spending authority, as defined in section 401(c)(2)(C) of the Budget Act, which is to become effective before the first day of the fiscal year beginning in the calendar year in which the bill under question is reported.⁽⁴⁾

The bill H.R. 4515 was reported in the 1986 calendar year. The Chair agrees with the argument of the gentleman from Minnesota that the Senate amendment in question provides new entitlement authority for adjustment assistance under the Trade Act of 1974, since it requires the Secretary of the Labor to certify a newly defined group of workers as eligible for trade adjustment assistance. Since the Senate amendment provides for such spending authority to apply to petitions filed or pending on or after September 30, 1986, before the beginning of fiscal year 1987, the Chair therefore sustains the point of order against the motion offered by the Gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, the point I make, if I may be permitted, is that in textiles and in shoes and in many other things in this country we have faced the same situation. The motion that I have to make here I understand is correct under the rules. I can express the hope that the other side of the Capitol will add these other things to it.

Therefore, I move at this time, Mr. Speaker, to disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate.

Mr. FRENZEL. Mr. Speaker, has the Chair ruled on the point of order?

The SPEAKER pro tempore. The Chair has ruled on the point of order and sustained the point of order of the gentleman from Minnesota.

§ 13.3 It is not in order to consider an amendment, including an amendment recommended in a conference report, which provides new entitlement authority to become effective during the current

4. See *Parliamentarian's Note* at § 13.3, *infra*.

fiscal year,⁽¹⁾ under section 401(b)(1) of the Congressional Budget Act.⁽²⁾

On Sept. 23, 1976,⁽³⁾ the following occurred:

Mr. [Joesph] VIGORITO [of Pennsylvania]. Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER.⁽⁴⁾ Is there objection to the request of the gentleman from Pennsylvania?

POINT OF ORDER

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, I make a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. ROUSSELOT. Mr. Speaker, I have two points or [sic] order to raise against the conference report on H.R. 10339 (H. Rept. 94-1516).

The first is under the Budget Control Act. The second is under House Rule XXVIII.

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93-344) provides as follows:

(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

1. *Parliamentarian's Note:* Because section 401(b) points of order are concerned with the timing of the effectiveness of the proposed new entitlement authority, it is important to establish both the "current" fiscal year (as described in section 401(b)) and the effective date of the new entitlement. At the time of this precedent, section 401(b) used a different terminology than "current fiscal year," prohibiting new entitlement authority that became effective "before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported." Such phrasing invites differing interpretations in situations (as here) where a committee's reporting to the House of a measure providing no new entitlement authority occurs in one calendar year but consideration of a Senate amendment that does provide new entitlement authority occurs in the next calendar year. The Parliamentarian's position was that the date on which the conference report containing the new entitlement authority was filed in the House, rather than the date of the initial reporting in the House, governs the analysis under section 401(b). The alternative interpretation opens a loophole to the rule, by which a House measure reported in the previous calendar year could be used by the Senate to add new entitlement authority (to become effective before the start of the fiscal year) without triggering section 401(b) points of order.
2. 2 USC § 651(b)(1).
3. 122 CONG. REC. 32099, 32100, 32104, 94th Cong. 2d Sess. See also Deschler-Brown Precedents Ch. 29 § 2.36, Ch. 31 § 4.14, and Ch. 33 § 25.19, *supra*.
4. Carl Albert (OK).

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill.

This bill is effective during the so-called transition period of July 1–September 30, 1976.

In any event it is a new spending authority effective before October 1, 1976, which marks the beginning of fiscal year 1977 but occurs in the calendar year in which the conference report is being called up in the House.

“New spending authority” is defined in section 401(c)(2)(C) to include “payments * * * the budget authority for which is not provided for in advance by appropriation Acts, to any person * * * if * * * the United States is obligated to make such payments to persons * * * who meet the requirements established by such law.”

In the instance at hand, hay payments are mandated by the language directing that the President shall direct the Secretary of Agriculture to pay 80 percent of hay transportation costs—up to \$50 per ton.

The second point of order is that section 8 of the conference report is not in compliance with rule XXVIII, clause 4, and if such language were offered to H.R. 10339 during its consideration in the House it would not be deemed to be germane under rule XI, clause 7.

The SPEAKER. Does the gentleman from Pennsylvania (Mr. VIGORITO) desire to be heard on the points of order?

Mr. VIGORITO. Yes, Mr. Speaker, I would like to be heard on the two points of order.

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. VIGORITO. Mr. Speaker, my understanding is that if this program is an entitlement program under section 401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substantial length of time. We have less than a week before October 1 comes about.

On the second point of order, Mr. Speaker, I only want to say that although the gentleman has a perfect right under the rules to raise a point of order at this point, I rather regret that he is doing so in view of the seriousness of the drought problem and the requirement that we do something now if assistance is going to actually be helpful. I will oppose any motion to delete the hay assistance provision in the event that the point of order should be sustained.

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The SPEAKER. The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget Impoundment and Control Act, as the entitlement to those payments might vest prior to October 1. If, as the Chair understands it, the entitlement to payments only vested after October 1, 1976, there would be no violation of the Budget Control Act.

What is the gentleman's answer to that?

Mr. VIGORITO. The intent is only to begin after October 1, 1976.

The SPEAKER. Of course, the Chair sees before him language which it seems to the Chair—and the Chair is sympathetic with what the gentleman is trying to do—indicates that:

In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

This language does not say when the entitlement to payments vests and does not imply when the payments begin. It does say when the payments end. But the point is that the payments cannot begin before October 31, 1976, without violating the Congressional Budget Act.

Mr. VIGORITO. I would like to bring to the attention of the Speaker and the House that the Department of Agriculture currently has authority to help on this situation. They can pay up to 50 percent of the cost of the freight for transporting the hay.

The SPEAKER. This changes that, though.

Mr. VIGORITO. I beg the Speaker's pardon?

The SPEAKER. This changes that.

Mr. VIGORITO. This changes that?

The SPEAKER. Yes.

Mr. VIGORITO. It increases the entitlement to 80 percent from 50 percent, with a limit of \$50.

The SPEAKER. The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order.

The Chair will not rule on the second point of order, on germaneness grounds, because one point of order against the entire conference report has been sustained.⁽⁵⁾

Will the gentleman undertake to work that out within the next day or two?

Mr. VIGORITO. Mr. Speaker, I ask unanimous consent to pull this off so that we can work this out.

The SPEAKER. The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure. . . .

5. If one of multiple points of order is sustained, the Chair need not rule on the others. See Deschler-Brown Precedents Ch. 31 § 1.12, *supra*. With respect to conference reports, the Chair will attempt to rule on points of order which, if sustained, would vitiate the entire report before entertaining points of order which, if sustained, would merely excise the offending material. Deschler-Brown Precedents Ch. 33 § 25.19, *supra*.

Mr. [Robert] BERGLAND [of Minnesota]. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, with Senate amendments thereto, and consider the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 4, strike out "1975" and insert: "1976". . . .

Mr. BERGLAND (during the reading). Mr. Speaker, I ask unanimous consent that Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. [John] MCFALL [of California]). Is there objection to the request of the gentleman from Minnesota?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, can the gentleman tell us if the problem of compliance with the budget resolution is included in the gentleman's motion?

Mr. BERGLAND. If the gentleman will yield, the answer is yes. The question which the gentleman raised earlier has been met. The effective date is October 1, 1976, therefore clearing up the question of entitlement in violation of the Budget Act.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I would like to inquire of the chairman of the Committee on the Budget if he is satisfied that the requirements of the budget resolution have now been complied with.

Mr. [Brock] ADAMS. If the gentleman will yield, I am satisfied with the statement that has been made by the gentleman from Minnesota (Mr. BERGLAND) and it is correct.

Mr. ROUSSELOT. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection. . . .

§ 14. Former Section 402(a)

Former section 402(a) of the Congressional Budget Act⁽¹⁾ provided a point of order that prohibited the consideration of bills or resolutions containing new spending authority unless the bill or resolution was reported in the House or Senate on or before May 15. This point of order was repealed by Gramm-Rudman-Hollings,⁽²⁾ and replaced with a new provision providing a point of order against bills providing new credit authority not subject to appropriations. That replacement was itself repealed by the Budget Enforcement Act of 1997⁽³⁾ and the credit authority points of order were collapsed into section 401(a).⁽⁴⁾

1. Now repealed. Formerly codified at 2 USC § 652.

2. Pub. L. No. 99-177.

3. Pub. L. No. 105-33.

4. As noted in Section 12, this requirement that credit authority be subject to appropriations should be read in conjunction with section 504(b) of the Congressional Budget