

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 This point of order was repealed by Gramm-Rudman-Hollings,⁽²⁾ and replaced with a new provision providing a point of order against bills providing new credit authority not subject to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 That replacement was itself repealed by the Budget Enforcement Act of 1997⁽³⁾ and the credit authority points of order were collapsed into section 401(a).⁽⁴⁾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 Now repealed.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

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As noted above, former section 402(a) applied only to bills and resolutions, and not to amendments,⁽⁵⁾ including amendments in the nature of a substitute made in order by a special order of business.⁽⁶⁾ Consideration of bills or resolutions by suspension of the rules waives all points of order against such legislation, including section 402(a) of the Budget Act.⁽⁷⁾ The Committee on Rules was also given authority in former section 402(b) to recommend emergency waivers of section 402(a).

In its original form, section 402(d) provided an exception to points of order under section 402(a) for “companion” measures originating in the Senate. This exception provided that if the House measure complied with the section 402(a) deadline, a Senate companion measure (or similar bill) would be in order in the House, regardless of the date it was reported from committee in the Senate.⁽⁸⁾

The current section 402 of the Budget Act was former section 403—a provision requiring the Congressional Budget Office to provide certain cost estimates for bills and resolutions.⁽⁹⁾

The following precedents relate to the former section 402(a) of the Congressional Budget Act.

§ 14.1 The chairman of the Committee of the Whole overruled a point of order raised under former section 402(a) of the Congressional Budget Act⁽¹⁾ against an amendment because section 402(a), requiring bills containing authorization of new budget authority to be reported by May 15 preceding the effective fiscal year, only prohibited initial consideration of bills containing such provisions, and not consideration of amendments containing such authorizations or of the bill as so amended.

On Sept. 13, 1983,⁽²⁾ the following occurred:

Act, which provides a separate limitation on certain government loans not subject to appropriations.

5. See § 14.1, *infra*.

6. See, *e.g.*, 123 CONG. REC. 7858, 95th Cong. 1st Sess., Mar. 17, 1977.

7. See 123 CONG. REC. 11108, 95th Cong. 1st Sess., Apr. 19, 1977.

8. For an example of a special order of business waiving section 402(a) against initial consideration of a House bill that was not reported prior to the May 15 deadline and further making in order a motion to insert the House text into a Senate companion measure, see 123 CONG. REC. 17258, 95th Cong. 1st Sess., June 2, 1977. Because the House measure did not meet the requirements of section 402(a), the Senate companion measure could not take advantage of the exception provided by section 402(d) and thus also required a waiver of 402(a) in the special order of business.

9. See § 7, *supra*.

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

2. 129 CONG. REC. 23881–84, 98th Cong. 1st Sess. See § 9.2, *supra*.

AMENDMENT OFFERED BY MR. WRIGHT

Mr. [James] WRIGHT [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WRIGHT: Add at the end of the bill the following new title:

TITLE V—SPECIAL IMPACT AID FOR IMMIGRANT CHILDREN EDUCATION

SHORT TITLE

SEC. 501. This title may be cited as the “Emergency Immigrant Education Act of 1983”.

DEFINITIONS

SEC. 502. As used in this title—

(1) The term “immigrant children” means children who were not born in a State and who have been attending schools in any one or more States for less than three complete academic years.

(2) The terms “elementary school”, “local educational agency”, “secondary school”, “State”, and “State educational agency” have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

(3) The term “elementary or secondary nonpublic schools” means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(4) The term “Secretary” means the Secretary of Education.

AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this title are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under this title for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the event [sic] that funds become available for making payments under this title for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced. . . .

POINT OF ORDER

Mr. [John] ERLNBORN [of Illinois]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.⁽³⁾ The gentleman from Illinois (Mr. ERLNBORN) will state his point of order.

3. David Bonior (MI).

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□ 1640

Mr. ERLNBORN. Mr. Chairman, I make the point of order against the pending amendment on the grounds that section 503 of the pending amendment violates section 402(a) and 303(a)(1) and (2).

In addition, Mr. Chairman, I make a point of order against the amendment in that section 503(b)(1) violates sections 303(a)(4) and 401(c)(2) of the Budget Control Act.

Now, Mr. Chairman, section 303(a) of the Budget Control Act states that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution or amendment thereto which provides: First, new budget authority for a fiscal year; or second, an increase or decrease in revenues to become effective during a fiscal year.

Mr. Chairman, 503(a) of the pending amendment creates new budget authority in that it states that there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986 such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

Mr. Chairman, the effect of section 503(b)(1) and later provisions of this amendment, the amendment providing for \$500 per pupil entitlement under this bill for this new impact act program to be funded jointly from 503(a), which is the direct budget authority, and 503(b)(1) which authorizes transfers from other existing budget authority, violates 401(c)(2) in that it creates new entitlement authority.

For these reasons I believe that the pending amendment violates these provisions of the Budget Act and is subject to this point of order.

The CHAIRMAN. Does the gentleman from Texas (Mr. WRIGHT) wish to be heard on the point of order?

Mr. WRIGHT. Yes, Mr. Chairman, I would like to be heard.

As I understand the gentleman's point of order, he argues that this amendment would not be in order because it would create a new entitlement and because it would be contrary to and excessive of the budget resolution.

With respect to the latter, I should simply point out that this does not create any entitlement which would be triggered absent an appropriation. There would have to be an appropriation in order for these moneys to be made available to the school districts which the amendment would make eligible for said moneys.

503(a), Subsection b, provides that to the extent the Congress should fail to appropriate adequate funds, there would be a rateable reduction to each of the States otherwise made eligible.

In other words, by its own provisions it contains a means of restraining the entitlement that otherwise would be created within the amounts that are appropriated by Congress.

Nothing thus far has been appropriated. This is simply an authorizing proposal. It is no more violative of the provisions cited by the distinguished gentleman from Illinois than are other provisions already adopted in this legislation in title IV in that they also create, just as this new title would create, an additional eligibility for Federal assistance.

Inasmuch as the Supreme Court has ruled that it is the responsibility, under the Constitution, of every school district to provide educational opportunity for all of the children residing within that district, whether legally or not, then quite clearly, it falls within the responsibility of the Federal Government to be able, if the Congress in its wisdom so

determines, to provide assistance to those school districts upon whom this burden has been imposed by decree of the Supreme Court.

The CHAIRMAN. Does the gentleman from Kentucky (Mr. PERKINS) desire to be heard on the point of order?

Mr. [Carl] PERKINS [of Kentucky]. I do, Mr. Chairman.

Mr. Chairman, I concur in the argument made by the gentleman from Texas that the amendment is germane. It is not an entitlement. This amendment creates no entitlements. The program is purely an authorization of appropriations. All grants are subject to reduction if appropriations are not sufficient.

There is nothing here that is nongermane about this amendment. The amendment is germane.

Mr. ERLNBORN. Mr. Chairman, I would submit, respectfully, that the arguments of the gentleman from Texas and the gentleman from Kentucky neither of them addressed the issue of violation of section 303(a) of the Budget Control Act which prohibits the consideration of bills or amendments creating new budget authority until the first concurrent resolution on the budget for such year has been agreed to, pursuant to section 301.

And the provisions of this amendment create new budget authority for fiscal years 1984, 1985, and 1986.

I might also state in support of my point of order, Mr. Chairman, that the amendment may well also—depending upon the interpretation of the Parliamentarian—violate section 402(a) of the Budget Control Act, which prohibits the consideration of bills or resolutions creating new budget authority unless they are reported before May 15.

Now, I submit that this bill was not reported before May 15.

There is a waiver for the bill, but there is no waiver in the rule for amendments to the bill.

Now it could be argued, Mr. Chairman, that because the rule does not prohibit the consideration of an amendment, but only bills and resolutions, that therefore this does not apply.

I would submit, however, that if this amendment is adopted, we will then, in further consideration of the bill, be considering a bill which at that time after the adoption of this amendment would contain new budget authority that had not been reported in the bill before May 15. So that is one additional reason for the sustaining of my point of order.

Mr. WRIGHT. Mr. Chairman, very briefly I would like to be heard. In the first place, it is my distinct impression, and I believe would be confirmed by a reading of the act, that section 402(a) of the Budget Act does not apply to amendments, but only to bills.

Second, that a waiver of that section has been obtained with respect to this bill.

□ 1650

Third, that the language proposed in this amendment provides nothing by way of educational spending authorization beyond that which already has been done in the bill itself and that inasmuch as this bill is permitted to come before the House and is being considered by the House under a waiver of section 402(a), and since section 402(a) has no application whatsoever, by its own terms, to an amendment per se, then the amendment is germane and the amendment would be in order.

The CHAIRMAN. The Chair is prepared to rule.

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On the first question that the gentleman from Illinois raised with respect to the amendment, an amendment is not covered by the May 15 reporting deadline in section 402(a) of the Budget Act and, therefore, that point of order is not sustained.

With regard to the issue of budget authority, the Chair would rule that the amendment contemplates that budget authority would rest in an appropriations bill. This is an authorization proposal that is being put forth by the gentleman from Texas.

Now, with respect to the third question that was raised by the gentleman from Illinois on the question of an entitlement, the Chair will read the Congressional Budget Act definition of "entitlement," in section 401(c)(2)(C) of that act, and I quote:

. . . to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments. . . .

Now, the Chair would point out that in section 503(b)(1) of the amendment by the gentleman from Texas, language pertaining to ratable reduction is being offered by the gentleman from Texas, which negates the entitlement features which the gentleman from Illinois alludes to by giving discretion to the Appropriation Committee and, therefore, the Chair would rule that indeed it does not constitute an advance entitlement that the gentleman referred to. The point of order is overruled.

§ 14.2 By unanimous-consent, the House permitted all committees to file reports by a date certain (when the House would not be in session),⁽¹⁾ and all reports filed by that time were considered to have been filed within the time permitted by former section 402(a) of the Congressional Budget Act,⁽²⁾ with respect to fiscal year 1981 authorizations.

On May 13, 1980,⁽³⁾ the following occurred:

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I ask unanimous consent that all committees may have until 12 o'clock noon on Friday, May 16, 1980, to file reports, and that reports filed by that time be considered to have been filed within the time permitted by section 402(a) of the Congressional Budget Act, with respect to fiscal 1981 authorizations.

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

□ 1210

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, reserving the right to object, could the gentleman tell us how many bills may fall into this category? Are there a great number? I know in the past the Rules Committee has on each bill waived the filing deadline as the rule was granted.

1. For additional examples of similar unanimous-consent requests to permit committees to meet the May 15 deadline, see, *e.g.*, 122 CONG. REC. 12922, 94th Cong. 2d Sess., May 7, 1976; and 129 CONG. REC. 12423, 98th Cong. 1st Sess., May 16, 1983.
2. Now repealed. Formerly codified at 2 USC § 652.
3. 126 CONG. REC. 10996, 96th Cong. 2d Sess. See also 122 CONG. REC. 12922, 94th Cong. 2d Sess., May 7, 1976.
4. Thomas O'Neill (MA).

Mr. WRIGHT. If the gentleman would yield, I am not sure that I have an outside number. I honestly do not know how many would be affected by this. I do know that there are bills in the Committee on Interstate and Foreign Commerce which are going to have to be hurriedly prepared and put together if we do not give them this extra 12 hours. Their staff has been burdened with a lot of activity with two conference committees, among other things, and it is largely at their request that we have sought this unanimous consent.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

§ 15. Section 315

Section 315 of the Congressional Budget Act,⁽¹⁾ added by the Budget Enforcement Act of 1997,⁽²⁾ provides that self-executed amendments or amendments made in order as original text by a special order are considered “as reported” for purposes of titles III and IV of the Budget Act. Special orders utilizing these types of amendments often do so for the purpose of “curing” parliamentary violations (under the Congressional Budget Act or otherwise) contained in the underlying legislation. Before the advent of section 315, such curative amendments would not have qualified under the Congressional Budget Act as having been “reported” from committee.⁽³⁾ Thus, the legislation would still have required a waiver of Budget Act points of order despite the clear intention to remove any Budget Act violations via the curative amendment.

Relatedly, the House has also adopted free-standing orders to apply Budget Act points of order to such “self-executed” amendments or amendments made in order as original text for purposes of amendment. In the 106th through the 112th Congresses, the House adopted a separate order on opening day⁽⁴⁾ to evaluate section 303(a) points of order against reported bills

1. 2 USC § 645a.

2. Pub. L. No. 105–33.

3. See also Rule XXI clause 8 (rendering title III of the Congressional Budget Act applicable to unreported measures). *House Rules and Manual* § 1068c (2011).

4. 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(2)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(2)); 153 CONG. REC. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(2)); 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(2)); 149 CONG. REC. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(2)); 147 CONG. REC. 24, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(2)); 145 CONG. REC. 47, 106th Cong. 1st Sess., Jan. 6, 1999 (H. Res. 5, sec. 2(a)(3)). See § 9, *supra*.