

that would have excluded charitable contributions from the overall limitation on itemized deductions (after a motion to waive that section was defeated), since the amendment would have caused a loss of revenues over 5 years of \$2.5 billion and would have resulted in the savings attributed to the Finance Committee to be insufficient to meet its reconciliation instructions.<sup>169</sup> Later that day, the Chair sustained a point of order under the same section against an amendment that would have reduced the savings attributable to two committees by an amount less than the surplus of aggregate savings then contained in the reconciliation bill, since the amendment would have reduced savings attributed to the Agriculture Committee below the level it was instructed to achieve without making offsetting savings in other provisions.<sup>170</sup>

### Reconciliation Bills, Extraneous Matters:

Reconciliation bills have at times contained matters extraneous to the instructions to the various committees whose recommendations in response to those instructions comprise a reconciliation bill. In two cases, a joint leadership amendment was adopted to strike material identified to be extraneous.<sup>171</sup> Until 1985, the only recourse of a Senator who opposed the inclusion of such extraneous matter was a motion to strike, since no point of order authorized by the rules or precedents of the Senate was available to strike a provision from a measure.

On October 24, 1985, by a vote of 96-0, the Senate adopted an amendment offered by Mr. Robert C. Byrd, of West Virginia, authorizing points of order against any part of a reconciliation bill not within the jurisdiction of the committee reporting it, or extraneous to the instructions given to that committee.<sup>172</sup> The provisions of this amendment as ultimately enacted became known as the "Byrd Rule."<sup>173</sup> The Senate adopted two resolutions applying

<sup>169</sup> Oct. 18, 1990, 101-2, *Record*, pp. S 15798-804, 15807.

<sup>170</sup> Oct. 18, 1990, 101-2, *Record*, pp. S 15813-16.

<sup>171</sup> See June 22, 1981, 97-1, *Record*, pp. 13209-11; see also Oct. 13, 1989, 101-1, *Record*, pp. S 13349-57.

<sup>172</sup> Senate amendment No. 878, adopted to S. 1730, the Reconciliation Bill of 1986, Oct. 24, 1985, 99-1, *Record*, pp. 23968-74.

<sup>173</sup> The Senate incorporated the provisions of S. 1730 into H.R. 3128, and this measure was enacted as the Consolidated Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-272, with a modified version of the provisions of Senator Byrd's amendment included as sec. 20001 (Apr. 7, 1986). This section was amended by the Omnibus Reconciliation Act of 1986, Pub. L. 99-509, sec. 7006, (Oct. 21, 1986), and further amended by

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portions of this rule to conference reports and amendments between the Houses on reconciliation bills.<sup>174</sup>

A section of a reconciliation bill reported by the Budget Committee was stricken on a point of order that it was extraneous, because such provision would result in increased outlays thus causing the committee having jurisdiction over its subject matter to fall from compliance with its reconciliation instruction.<sup>175</sup>

A subsection of a reconciliation bill was stricken as extraneous on a point of order under subparagraph (d)(1)(C) of the Byrd Rule,<sup>176</sup> on the grounds that the provision in question (a reapportioning of highway funds between states) was not within the jurisdiction of the Finance Committee, which had included it in response to its reconciliation instruction.<sup>177</sup>

A point of order was sustained against an amendment offered from the floor to a reconciliation bill to provide for risk assessment for deposit insurance, on the grounds that it violated subparagraph (d)(1)(A) of the Byrd Rule in that it did not produce a change in either outlays or revenues, after a motion to waive that rule was defeated on a voice vote.<sup>178</sup>

The Chair considered en bloc (no objection being heard) a point of order made under subparagraph (d)(1)(D) of the Byrd Rule, against provisions of a reconciliation bill which would have imposed criminal penalties for violations of certain rules under the Occupational Health and Safety Act. The point of order was made against subsections (a) and (b) of section 10201 of the bill, but specifically excluded paragraph ten of subsection (a), (and was therefore two points of order). The Chair sustained the points of order on the grounds that these proposals would have a budgetary impact merely incidental to their nonbudgetary impact.<sup>179</sup>

the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. 100-119, sec. 205, (Sept. 29, 1987). This section was further amended and codified as sec. 313 of the Budget Act by the Budget Enforcement Act of 1990, Pub. L. 101-508, sec. 13214 (Nov. 5, 1990).

<sup>174</sup> S. Res. 286, adopted Dec. 19, 1985, 99-1, *Record*, pp. 38559-60, as amended by S. Res. 509, adopted Oct. 16, 1986, 99-2, *Record*, pp. 32372-73.

<sup>175</sup> Sept. 19, 1986, 99-2, *Record*, p. 24907.

<sup>176</sup> Pub. L. 99-272, sec. 20001(d)(1)(C) as amended by Pub. L. 99-509, sec. 7006 (Oct. 21, 1986). This provision was codified as sec. 313(b)(1)(C) of the Budget Act by the Budget Enforcement Act of 1990, Pub. L. 101-508, sec. 13214 (Nov. 5, 1990).

<sup>177</sup> Oct. 17, 1990, 101-2, *Record*, pp. S 15462-75.

<sup>178</sup> Oct. 18, 1990, 101-2, *Record*, pp. S 15731-38.

<sup>179</sup> Oct. 18, 1990, 101-2, *Record*, p. S 15771.

The Chair sustained a point of order under subparagraph (d)(1)(A) of the Byrd Rule against sixteen contiguous sections of a reconciliation bill affecting the management of the Tongass National Forest in Alaska, on the grounds that these provisions had no budgetary impact.<sup>180</sup>

The Chair sustained a point of order against an amendment to require the deposit of increased motor fuel taxes in the Highway Trust Fund under subparagraph (d)(1)(A) of the Byrd Rule, since the amendment had no budgetary effect.<sup>181</sup>

In response to a point of order, the Senate by a vote of 69 yeas, 39 nays, waived subparagraph (d)(1)(A) of the Byrd Rule for the consideration of aviation policy legislation having no budgetary effect, contained in a reconciliation bill.<sup>182</sup>

### Reconciliation Bills, Germaneness:

An amendment which is germane to a reconciliation bill or any of the amendments thereto reported by the committee is germane.<sup>183</sup>

An amendment that would have limited a proposed increase in a tax contained in a reconciliation bill, but also proposed to increase another tax not contained in the bill was held out of order as nongermane.<sup>184</sup>

During the consideration of measures under the Budget Act (whose provisions are modeled after a unanimous consent agreement) amendments reported by or offered by authority of the committee of jurisdiction are germane *per se*, and such amendments form part of the basis for determining germaneness. Therefore, a floor amendment to a reconciliation bill which was ruled out of order as being nongermane was reoffered on behalf of the committee which had reported the measure and since no point of order would then lie against it, none was made.<sup>185</sup>

An amendment which is either germane to an amendment for which the germaneness requirement of the Con-

<sup>180</sup> Oct. 18, 1990, 101-2, *Record*, p. S 15782.

<sup>181</sup> Oct. 18, 1990, 101-2, *Record*, pp. S 15808-10, 15815.

<sup>182</sup> Oct. 18, 1990, 101-2, *Record*, p. S 15821.

<sup>183</sup> July 20, 1982, 97-2, *Record*, pp. 16997-99.

<sup>184</sup> July 22, 1982, 97-2, *Record*, pp. 17514, 17516-17.

<sup>185</sup> July 22, 1982, 97-2, *Record*, p. 17649.