

## PROCEDURE IN HOUSE AND SENATE

§ 1017(a) **SEC. 1017.**<sup>1076</sup> (a) **REFERRAL.** — Any rescission bill<sup>1077</sup> introduced with respect to a special message or impoundment resolution<sup>1078</sup> introduced with respect to a proposed deferral of budget authority<sup>1079</sup> shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.<sup>1080</sup>

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<sup>1076</sup> Section 1017 is codified at 2 U.S.C. § 688 (1988).

<sup>1077</sup> Section 1011(3) defines "rescission bill." *See supra* p. 376.

<sup>1078</sup> Section 1011(4) defines "impoundment resolution." *See supra* p. 376.

<sup>1079</sup> Section 1011(1) defines "deferral of budget authority." *See supra* p. 375. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

<sup>1080</sup> The Senate requires joint referral to the Budget and Appropriations Committees of all special messages from the President on recommended rescissions and deferrals and all bills and resolutions introduced with respect to such messages under the senate resolution the referral of impoundment legislation:

S. RES. 45

Resolved,

1. That messages received pursuant to title X of the Congressional Budget and Impoundment Control Act be referred concurrently to the Appropriations Committee, to the Budget Committee, and to any other appropriate authorizing committee.

2. That bills, resolutions, and joint resolutions introduced with respect to rescissions and deferrals shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 410 of the Congressional Budget Impoundment Control Act and subject to section 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by section 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, resolutions, or joint resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the

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<sup>1088</sup>(...continued)

President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

3. If any Committee to which a bill or resolution has been referred recommends its passage, the Appropriations Committee shall report that bill or resolution together with its views and reports of the Budget and any appropriate authorizing committees to the Senate within:

A. the time remaining under the Act in the case of rescissions, or

B. within 20 days in the case of deferrals.

4. The 20 day period referred to herein means 20 calendar days; and for the purposes of computing the 20 days, recesses or adjournments of the Senate for more than 3 days to a day certain shall not be counted; and for recesses and adjournments of more than 30 calendar days, continuous duration or the sine die adjournment of a session, the 20 day period shall begin anew on the day following the reconvening of the Senate.

The resolution appears at 121 CONG. REC. S1280 (daily ed. Jan. 30, 1975) and was adopted by reference at 121 CONG. REC. S1302 (daily ed. Jan. 30, 1975).

The Senate revised paragraph 2 of the standing order on April 11, 1986. As originally agreed to on January 30, 1975, paragraph 2 read as follows:

2. That bills and resolutions introduced with respect to such messages shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 401 of the Congressional Budget and Impoundment Control Act and subject to sec. 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by sec. 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, or resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

S. Res. 45, 94th Cong., 1st Sess., § 2, 121 CONG. REC. S1280 (daily ed. Jan. 30, 1975).

In making the unanimous consent request to change this paragraph, Senator Rudman, acting on behalf of the Majority Leader, made the following statement:

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<sup>1000</sup>(...continued)

Mr. RUDMAN. Mr. President, Senate Resolution 45 adopted under a unanimous consent agreement on January 30, 1975, governs the referral of impoundment legislation in the Senate. Under this order, all special messages from the President pursuant to title X of the Congressional Budget and Impoundment Control Act and all bills and resolutions introduced with respect to such messages are referred concurrently to the Appropriations Committee, the Budget Committee, and to the appropriate authorizing committee. Section 1011 of the Impoundment Control Act provides that deferral disapprovals take the form of a simple resolution of one House. This is no longer a proper course of action, given the Supreme Court decision in *INS versus Chadha* that the one-House legislative veto is unconstitutional. Deferral disapprovals must now take the form of a bill or joint resolution.

Given this, I ask unanimous consent that the second paragraph of the standing order governing the referral of matters dealing with rescissions and deferrals be revised, as of January 21, 1986, to allow the re-referral of bills and joint resolutions disapproving deferrals to the same committees now having jurisdiction over title X impoundment resolutions.

132 CONG. REC. S4157 (daily ed. Apr. 11, 1986). In the absence of any objection, it was so ordered. *Id.* Senator Rudman referred to *Immigration and Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983).

For examples of instances when the Budget Committee has submitted its views, see S. REP. NO. 563, 95th Cong., 1st Sess. 5 (1977) ("The Committee recommends that rescission R77-16, as contained in H.R. 9019, be approved. The national priorities set forth in the second concurrent resolution on the budget for fiscal year 1978 adopted by the Congress on September 15, 1977, assumed rescission of this budget authority. With respect to rescission R77-17, . . . the committee notes that the economic policy and national priorities set forth in the second concurrent resolution on the budget for fiscal year 1978 assume expenditure of these funds to aid in reduction of the high level of unemployment. . . ."); S. REP. NO. 41, 95th Cong., 1st Sess. 8 (1977) ("The Committee recommends that Rescissions . . . contained in H.R. 3839 be approved. The national priorities set forth in the Third Concurrent Resolution of the Budget for fiscal year 1977, adopted by the Congress on March 3, 1977, assume rescission of this budget authority."); S. REP. NO. 29, 95th Cong., 1st Sess. 3 (1977) ("The matters contained in H.R. 3347 do not have significant macroeconomic effects, nor do they significantly affect national priorities. The Committee therefore has no recommendation on this bill."); S. REP. NO. 640, 94th Cong., 2d Sess. 8 (1976) ("The matters contained in H.R. 11665 do not appear to have significant macroeconomic effects, nor do they significantly affect national priorities. The Committee therefore has no recommendation on this bill."); S. REP. NO. 403, 94th Cong., 1st Sess. 11-12 (1975) ("The matter contained in H.R. 9600 . . . does not appear to have significant macroeconomic effects, nor does it significantly affect national priorities. The Committee therefore has no recommendation on this rescission request."); S. REP. NO. 35, 94th Cong., 1st Sess. 38 (1975) ("The Committee on the Budget has considered each of the provisions of the bill separately and concurs in Chapter I . . . and Chapter II . . . . The Committee (continued...)

§ 1017(b)

**(b) DISCHARGE OF COMMITTEE. —**

§ 1017(b)(1)

**(1) If the committee to which a rescission bill<sup>1081</sup> or impoundment resolution<sup>1082</sup> has been referred has not reported it at the end of 25 calendar days<sup>1083</sup> of continuous session of the Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the special message or impoundment resolution with respect to the same proposed deferral,<sup>1084</sup> as the case may be, which has been referred to the committee.**

§ 1017(b)(2)

**(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral,<sup>1085</sup> as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those**

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<sup>1080</sup>(...continued)

makes no recommendation on Chapter IV . . . . The Committee recommends against the rescission contained in Chapter II of the bill, which would reduce appropriations for the Consumer Product Safety Commission. Congress has clearly identified consumer protection as an important national priority and created the Consumer Product Safety Commission in 1972 pursuant to that priority. . . .")

<sup>1081</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1082</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1083</sup> Section 1011(5) defines this 25-day period. See *supra* p. 376.

<sup>1084</sup> Section 1011(1) defines "deferral of budget authority." See *supra* p. 375.

<sup>1085</sup> Section 1011(1) defines "deferral of budget authority." See *supra* p. 375.

favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order,<sup>1086</sup> and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.



§ 1017(c)

**(c) FLOOR CONSIDERATION IN THE HOUSE. —**

§ 1017(c)(1)

(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill<sup>1087</sup> or impoundment resolution,<sup>1088</sup> it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

§ 1017(c)(2)

(2) Debate on a rescission bill<sup>1089</sup> or impoundment resolution<sup>1090</sup> shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to

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<sup>1086</sup> Cf. 131 CONG. REC. S4503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

<sup>1087</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1088</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1089</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1090</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

limit debate shall not be debatable. In the case of an impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or impoundment resolution is agreed to or disagreed to.



§ 1017(c)(3)

(3) Motions to postpone, made with respect to the consideration of a rescission bill<sup>1091</sup> or impoundment resolution,<sup>1092</sup> and motions to proceed to the consideration of other business, shall be decided without debate.

§ 1017(c)(4)

(4) All appeals from the decisions of the Chair relating to the applications of the Rules of the House of Representatives to the procedure relating to any rescission bill<sup>1093</sup> or impoundment resolution<sup>1094</sup> shall be decided without debate.

§ 1017(c)(5)

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any rescission bill<sup>1095</sup> or impoundment resolution<sup>1096</sup> and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

§ 1017(d)

**(d) FLOOR CONSIDERATION IN THE SENATE. —**

<sup>1091</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1092</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1093</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1094</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1095</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1096</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

§ 1017(d)(1)

(1) Debate in the Senate on any rescission bill<sup>1097</sup> or impoundment resolution,<sup>1098</sup> and all amendments thereto (in the case of rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.



§ 1017(d)(2)

(2) Debate in the Senate on any amendment to a rescission bill<sup>1099</sup> shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or impoundment resolution<sup>1100</sup> shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. No amendment<sup>1101</sup> that is not germane<sup>1102</sup> to the provisions of a rescission bill shall be



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<sup>1097</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1098</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1099</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1100</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.

<sup>1101</sup> An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *supra* note 295 (regarding section 303(a)).

<sup>1102</sup> For a discussion of germaneness, see *supra* note 352.

received.<sup>1103</sup> Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.<sup>1104</sup>

§ 1017(d)(3)

(3) A motion to further limit debate is not debatable. In the case of a rescission bill,<sup>1105</sup> a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment resolution,<sup>1106</sup> no



<sup>1103</sup> The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. See *supra* note 353 (regarding that language in section 305(b)(2)).

<sup>1104</sup> An amendment to a rescission bill to restore funding resulting from appropriations enacted in a previous year does not give rise to a point of order under the Congressional Budget Act. 125 CONG. REC. 4987 (1981) (inquiry of Sen. Johnston regarding an amendment by Sen. Kennedy); Senate Precedent PRL19790314-001 (Mar. 14, 1979) (LEGIS, Rules database); ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 630 (1992). This is so because the amendment does not provide new budget authority. 125 CONG. REC. 4987 (1981) (statement of Presiding Officer); Senate Precedent PRL19790314-001 (Mar. 14, 1979) (LEGIS, Rules database). The Senate Parliamentarian disapproves of authority to the contrary. See 127 CONG. REC. H2124-25 (1981); Senate Precedent PRL19810512-002 (May 12, 1981) (LEGIS, Rules database) (reporting a ruling of the Chair in the House of Representatives sustaining a point of order under Congressional Budget Act section 311). Contrast the case of an amendment to an *appropriations* bill to restore funding that such a bill seeks to rescind. As that bill would (in the words of section 302(f)) "provide[] for budget outlays, new budget authority, or new spending authority," such an amendment could cause the appropriate allocation to be exceeded. See *supra* note 258.

<sup>1105</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1106</sup> Section 1011(4) defines "impoundment resolution." See *supra* p. 376.



amendment or motion to recommit is in order.<sup>1107</sup>

§ 1017(d)(4) (4) The conference report on any rescission bill<sup>1108</sup> shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

§ 1017(d)(5) (5) During the consideration of the Senate of the conference report on any rescission bill,<sup>1109</sup> debate shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.



§ 1017(d)(6) (6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the con-



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<sup>1107</sup> Cf. 131 CONG. REC. S4503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

<sup>1108</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

<sup>1109</sup> Section 1011(3) defines "rescission bill." See *supra* p. 376.

erees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

§ 1017(d)(7)

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment<sup>1110</sup> that is not germane<sup>1111</sup> to the provisions of such amendments shall be received.<sup>1112</sup>

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<sup>1110</sup> An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 295 (regarding section 303(a)).

<sup>1111</sup> For a discussion of germaneness, see *supra* note 352.

<sup>1112</sup> The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. *See supra* note 353 (regarding that language in section 305(b)(2)).