

108TH CONGRESS
1ST SESSION

S. RES. 173

To amend Rule XVI of the Standing Rules of the Senate with respect to new or general legislation and unauthorized appropriations in general appropriations bills and amendments thereto, and new or general legislation, unauthorized appropriations, new matter, or nongermane matter in conference reports on appropriations Acts, and unauthorized appropriations in amendments between the Houses relating to such Acts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2003

Mr. MCCAIN (for himself, Mr. KYL, Mr. SESSIONS, and Mr. FEINGOLD) submitted the following resolution; which was referred to the Committee on Rules and Administration

RESOLUTION

To amend Rule XVI of the Standing Rules of the Senate with respect to new or general legislation and unauthorized appropriations in general appropriations bills and amendments thereto, and new or general legislation, unauthorized appropriations, new matter, or nongermane matter in conference reports on appropriations Acts, and unauthorized appropriations in amendments between the Houses relating to such Acts, and for other purposes.

1 *Resolved*, That paragraph 1 of Rule XVI of the
2 Standing Rules of the Senate is amended to read as fol-
3 lows:

1 “1. (a) On a point of order made by any Senator:

2 “(1) No new or general legislation nor any un-
3 authorized appropriation may be included in any
4 general appropriation bill.

5 “(2) No amendment may be received to any
6 general appropriation bill the effect of which will be
7 to add an unauthorized appropriation to the bill.

8 “(3) No new or general legislation nor any un-
9 authorized appropriation, new matter, or non-
10 germane matter may be included in any conference
11 report on a general appropriation bill.

12 “(4) No unauthorized appropriation may be in-
13 cluded in any amendment between the Houses, or
14 any amendment thereto, in relation to a general ap-
15 propriation bill.

16 “(b)(1) If a point of order under subparagraph (a)(1)
17 against a Senate bill is sustained, then—

18 “(A) the new or general legislation or unauthor-
19 ized appropriation shall be struck from the bill; and

20 “(B) any modification of total amounts appro-
21 priated necessary to reflect the deletion of the mat-
22 ter struck from the bill shall be made and the alloca-
23 tion of discretionary budgetary resources allocated
24 under section 302(a)(2) of the Congressional Budget

1 Act of 1974 (2 U.S.C. 633(a)(2)) shall be reduced
2 accordingly.

3 “(2) If a point of order under subparagraph (a)(1)
4 against an Act of the House of Representatives is sus-
5 tained, then an amendment to the House bill is deemed
6 to have been adopted that—

7 “(A) strikes the new or general legislation or
8 unauthorized appropriation from the bill; and

9 “(B) modifies, if necessary, the total amounts
10 appropriated by the bill to reflect the deletion of the
11 matter struck from the bill and reduces the alloca-
12 tion of discretionary budgetary resources allocated
13 under section 302(a)(2) of the Congressional Budget
14 Act of 1974 (2 U.S.C. 633(a)(2)) accordingly.

15 “(c) If the point of order against an amendment
16 under subparagraph (a)(2) is sustained, then the amend-
17 ment shall be out of order and may not be considered.

18 “(d) If the point of order against a conference report
19 under subparagraph (a)(3) is sustained, then—

20 “(1) the new or general legislation, unauthor-
21 ized appropriation, new matter, or nongermane mat-
22 ter in such conference report shall be deemed to
23 have been struck;

24 “(2) any modification of total amounts appro-
25 priated necessary to reflect the deletion of the mat-

1 ter struck shall be deemed to have been made and
2 the allocation of discretionary budgetary resources
3 allocated under section 302(a)(2) of the Congres-
4 sional Budget Act of 1974 (2 U.S.C. 633(a)(2))
5 shall be deemed to be reduced accordingly;

6 “(3) when all other points of order under this
7 paragraph have been disposed of—

8 “(A) the Senate shall proceed to consider
9 the question of whether the Senate should re-
10 cede from its amendment to the House bill, or
11 its disagreement to the amendment of the
12 House, and concur with a further amendment,
13 which further amendment shall consist of only
14 that portion of the conference report not
15 deemed to have been struck (together with any
16 modification of total amounts appropriated and
17 reduction in the allocation of discretionary
18 budgetary resources allocated under section
19 302(a)(2) of the Congressional Budget Act of
20 1974 (2 U.S.C. 633(a)(2)) deemed to have been
21 made);

22 “(B) the question shall be debatable; and

23 “(C) no further amendment shall be in
24 order; and

1 “(4) if the Senate agrees to the amendment,
2 then the bill and the Senate amendment thereto
3 shall be returned to the House for its concurrence
4 in the amendment of the Senate.

5 “(e)(1) If a point of order under subparagraph (a)(4)
6 against a Senate amendment is sustained, then—

7 “(A) the unauthorized appropriation shall be
8 struck from the amendment;

9 “(B) any modification of total amounts appro-
10 priated necessary to reflect the deletion of the mat-
11 ter struck from the amendment shall be made and
12 the allocation of discretionary budgetary resources
13 allocated under section 302(a)(2) of the Congres-
14 sional Budget Act of 1974 (2 U.S.C. 633(a)(2))
15 shall be reduced accordingly; and

16 “(C) after all other points of order under this
17 paragraph have been disposed of, the Senate shall
18 proceed to consider the amendment as so modified.

19 “(2) If a point of order under subparagraph (a)(4)
20 against a House amendment is sustained, then—

21 “(A) an amendment to the House amendment
22 is deemed to have been adopted that—

23 “(i) strikes the new or general legislation
24 or unauthorized appropriation from the House
25 amendment; and

1 “(ii) modifies, if necessary, the total
2 amounts appropriated by the bill to reflect the
3 deletion of the matter struck from the House
4 amendment and reduces the allocation of discre-
5 tionary budgetary resources allocated under sec-
6 tion 302(a)(2) of the Congressional Budget Act
7 of 1974 (2 U.S.C. 633(a)(2)) accordingly; and

8 “(B) after all other points of order under this
9 paragraph have been disposed of, the Senate shall
10 proceed to consider the question of whether to con-
11 cur with further amendment.

12 “(f) The disposition of a point of order made under
13 any other paragraph of this Rule, or under any other
14 Standing Rule of the Senate, that is not sustained, or is
15 waived, does not preclude, or affect, a point of order made
16 under subparagraph (a) with respect to the same matter.

17 “(g) A point of order under subparagraph (a) may
18 be waived only by a motion agreed to by the affirmative
19 vote of three-fifths of the Senators duly chosen and sworn.
20 If an appeal is taken from the ruling of the Presiding Offi-
21 cer with respect to such a point of order, the ruling of
22 the Presiding Officer shall be sustained absent an affirma-
23 tive vote of three-fifths of the Senators duly chosen and
24 sworn.

1 “(h) Notwithstanding any other rule of the Senate,
2 it shall be in order for a Senator to raise a single point
3 of order that several provisions of a general appropriation
4 bill, a conference report on a general appropriation bill,
5 or an amendment between the Houses on a general appro-
6 priation bill violate subparagraph (a). The Presiding Offi-
7 cer may sustain the point of order as to some or all of
8 the provisions against which the Senator raised the point
9 of order. If the Presiding Officer so sustains the point of
10 order as to some or all of the provisions against which
11 the Senator raised the point of order, then only those pro-
12 visions against which the Presiding Officer sustains the
13 point of order shall be deemed stricken pursuant to this
14 paragraph. Before the Presiding Officer rules on such a
15 point of order, any Senator may move to waive such a
16 point of order, in accordance with subparagraph (g), as
17 it applies to some or all of the provisions against which
18 the point of order was raised. Such a motion to waive is
19 amendable in accordance with the rules and precedents of
20 the Senate. After the Presiding Officer rules on such a
21 point of order, any Senator may appeal the ruling of the
22 Presiding Officer on such a point of order as it applies
23 to some or all of the provisions on which the Presiding
24 Officer ruled.

1 “(i) Notwithstanding any provision of the Congres-
 2 sional Budget Act of 1974 (2 U.S.C. 621 et seq.), no point
 3 of order provided for under that Act shall lie against the
 4 striking of any matter, the modification of total amounts
 5 to reflect the deletion of matter struck, or the reduction
 6 of an allocation of discretionary budgetary resources allo-
 7 cated under section 302(a)(2) of the Congressional Budget
 8 Act of 1974 (2 U.S.C. 633(a)(2)) to reflect the deletion
 9 of matter struck (or to the bill, amendment, or conference
 10 report as affected by such striking, modification, or reduc-
 11 tion) pursuant to a point of order under this paragraph.

12 “(j) For purposes of this paragraph:

13 “(1)(A) The term ‘unauthorized appropriation’
 14 means an appropriation—

15 “(i) not specifically authorized by law or
 16 Treaty stipulation (unless the appropriation has
 17 been specifically authorized by an Act or resolu-
 18 tion previously passed by the Senate during the
 19 same session or proposed in pursuance of an es-
 20 timate submitted in accordance with law); or

21 “(ii) the amount of which exceeds the
 22 amount specifically authorized by law or Treaty
 23 stipulation (or specifically authorized by an Act
 24 or resolution previously passed by the Senate
 25 during the same session or proposed in pursu-

1 ance of an estimate submitted in accordance
2 with law) to be appropriated.

3 “(B) An appropriation is not specifically au-
4 thorized if it is restricted or directed to, or author-
5 ized to be obligated or expended for the benefit of,
6 an identifiable person, program, project, entity, or
7 jurisdiction by earmarking or other specification,
8 whether by name or description, in a manner that—

9 “(i) discriminates against other persons,
10 programs, projects, entities, or jurisdictions
11 similarly situated that would be eligible, but for
12 the restriction, direction, or authorization, for
13 the amount appropriated; or

14 “(ii) is so restricted, directed, or author-
15 ized that it applies only to a single identifiable
16 person, program, project, entity, or jurisdiction,
17 unless the identifiable person, program, project, enti-
18 ty, or jurisdiction to which the restriction, direction,
19 or authorization applies is described or otherwise
20 clearly identified in a law or Treaty stipulation (or
21 an Act or resolution previously passed by the Senate
22 during the same session or in the estimate submitted
23 in accordance with law) that specifically provides for
24 the restriction, direction, or authorization of appro-

1 priation for such person, program, project, entity, or
 2 jurisdiction.

3 “(2) The term ‘new or general legislation’ has
 4 the meaning given that term when it is used in para-
 5 graph 2 of this Rule.

6 “(3) The terms ‘new matter’ and ‘nongermane
 7 matter’ have the same meaning as when those terms
 8 are used in Rule XXVIII.”.

9 **SEC. 2. STATEMENT REGARDING EFFECT OF REPORT LAN-**
 10 **GUAGE.**

11 Paragraph 7 of Rule XVI of the Standing Rules of
 12 the Senate is amended by adding at the end “It shall not
 13 be in order to proceed to the consideration of a general
 14 appropriation bill if the report on that bill contains matter
 15 that requires or permits the obligation or expenditure of
 16 any amount appropriated in that bill for the benefit of
 17 an identifiable person, program, project, entity, or juris-
 18 diction by earmarking or other specification, whether by
 19 name or description, in a manner that—

20 “(A) discriminates against other persons, pro-
 21 grams, projects, entities, or jurisdictions similarly
 22 situated that would be eligible, but for the require-
 23 ment or permission, for the amount appropriated; or

24 “(B) it applies only to a single identifiable per-
 25 son, program, project, entity, or jurisdiction,

1 unless the identifiable person, program, project, entity, or
 2 jurisdiction is described or otherwise clearly identified in
 3 a law or Treaty stipulation (or an Act or resolution pre-
 4 viously passed by the Senate during the same session or
 5 in the estimate submitted in accordance with law).”.

6 **SEC. 3. STATEMENT REGARDING EFFECT OF JOINT EX-**
 7 **PLANATORY STATEMENT LANGUAGE.**

8 Rule XXVIII of the Standing Rules of the Senate is
 9 amended—

10 (1) by striking “The” in paragraph 1 and in-
 11 serting “Except as provided in paragraph 7, the”;
 12 and

13 (2) by adding at the end the following:

14 “7. It shall not be in order to proceed to the consider-
 15 ation of a conference report on a general appropriations
 16 bill if the joint explanatory statement contains matter that
 17 requires or permits the obligation or expenditure of any
 18 amount appropriated in that bill for the benefit of an iden-
 19 tifiable person, program, project, entity, or jurisdiction by
 20 earmarking or other specification, whether by name or de-
 21 scription, in a manner that—

22 “(A) discriminates against other persons, pro-
 23 grams, projects, entities, or jurisdictions similarly
 24 situated that would be eligible, but for the restric-
 25 tion or direction, for the amount appropriated; or

1 “(B) is so restricted or directed that it applies
 2 only to a single identifiable person, program, project,
 3 entity, or jurisdiction,
 4 unless the identifiable person, program, project, entity, or
 5 jurisdiction to which the restriction or direction applies is
 6 described or otherwise clearly identified in a law or Treaty
 7 stipulation (or an Act or resolution previously passed by
 8 the Senate during the same session or in the estimate sub-
 9 mitted in accordance with law).”.

10 **SEC. 4. READING OF CONFERENCE REPORT AND JOINT EX-**
 11 **PLANATORY STATEMENT.**

12 (a) VITIATING THE STANDING ORDER OF THE SEN-
 13 ATE REGARDING THE READING OF CONFERENCE RE-
 14 PORTS.—The Standing Order of the Senate regarding the
 15 reading of conference reports established by the second
 16 sentence of section 903 of Division A of Appendix D—
 17 H.R. 5666 of the Consolidated Appropriations Act, 2001
 18 (114 Stat. 2763A–198) is vitiated.

19 (b) READING OF JOINT EXPLANATORY STATE-
 20 MENT.—There is established, as a Standing Order of the
 21 Senate, that the presentation of a conference report in-
 22 cludes the presentation of the joint explanatory statement
 23 of the conferees required by paragraph 4 of Rule XXVIII
 24 of the Standing Rules of the Senate, and that a demand
 25 for the reading of the joint explanatory statement be sub-

- 1 ject to the same rules, precedents, and procedures as apply
- 2 to a demand for the reading of the conference report.

