

2021 REGULAR SESSION • SENATE

SECTION 2 – AMENDMENTS

2-4. AMENDMENT FOUND NOT GERMANE

2-4.32 CANNABIS LICENSES FOR MINORITY BUSINESS ENTERPRISES

The amended bill established a process to adjust U.S. census population data to count certain incarcerated individuals at their addresses before incarceration instead of at their correctional facility addresses, for purposes of determining legislative and municipal voting districts. Senate amendment "B" required a set-aside of 25 per cent of licenses for minority business enterprises upon the passage of any act legalizing the growing, production and retail distribution of cannabis and cannabis products in the state.

The president pro tempore raised a point of order that the amendment was not germane to the bill. He cited *Mason* 402(2), which states that to determine germaneness, "the question to be answered is whether the amendment is relevant, appropriate, and in a natural and logical sequence to the subject matter of the original bill." He stated that that connection was not present with the amendment and that Senate "B" was introducing a new subject matter to the bill. He cited Senate precedents 2-4.27 and 2-4.30 that ruled that germaneness required more than the occurrence of a few words of relationship or an idea of a relationship that does not go to the substance of the bill, noting that if Senate "B" were to be ruled germane, there would be almost no standard for germaneness because virtually any subject could be connected to any other subject.

The president ruled the point well taken.

The proponent of the amendment appealed the ruling. He stated the language of the bill clearly had more than just a passage with reference to race and that there was discussion of the collection of data that the Office of Policy and Management and the Department of Corrections will be sharing. The member cited a different Senate precedent, 2-3.16, that ruled the reference to the Metropolitan District Commission in both a bill and an amendment to the bill was sufficient for germaneness. The member continued that during dialogue on the bill, the information that was embedded in the bill was discussed, and the information included in the amendment addressed distribution based on minority business enterprises, also race.

The minority leader spoke on the appeal and cited *Mason* 402(3), which states, "To be germane, an amendment is required only to relate to the same subject to be germane. It may entirely change the effect of or be in conflict with the spirit of the original motion or measure and still be germane to the subject." He stated that when the bill was initially brought out, the discussion was about equity; the bill required information concerning the person's race to be provided to the Secretary of the Office of Policy and Management and the amendment talked specifically about cannabis licenses to be issued to minority business enterprises, the same subject. He noted germaneness attached because it only had to relate to the same subject, in this instance, equity, with regard to where individuals who are incarcerated will be counted for legislative districting purposes but also in the allocation of licenses to the same subject population. The minority leader also cited *Mason* 244 and 245 for the propositions that the presiding officer's ruling may be deferred and allow for the presiding officer to request the advice or opinion of members.

The president pro tempore spoke in favor of upholding the ruling, reiterating that the key was not whether certain words by coincidence might happen to appear in the amendment as opposed to the underlying bill; rather, it was the substance of the underlying bill and the substance of the proposed amendment. The substance of the bill dealt with the apportionment of prisoners' residences for the census count and the substance of the amendment was licenses for the sale of cannabis to be issued to minority business enterprises; the substance of the amendment had nothing to do with the substance of the underlying bill.

On a roll call vote, the ruling was upheld. *Bysiewicz, May 5, 2021.*

2-9. AMEND A CONSTITUTIONAL AMENDMENT

2-9.1 AMENDMENT TO HOLDOVER RESOLUTION AMENDING STATE CONSTITUTION OUT OF ORDER

The resolution amended the state constitution to allow the General Assembly to provide for early voting. It passed the 2019 General Assembly in the regular session by less than a three-fourths majority, so it was resubmitted as a holdover resolution to the 2021 General Assembly as the constitution requires.

A strike-all amendment, Senate amendment "A," was introduced, which replaced the language of the underlying resolution with language that specified the number of days early voting would be allowed during the 5 days prior to the day of election.

The majority leader raised a point of order that the amendment was not properly before the chamber. While an issue of first impression in the Senate, the majority leader cited to House precedents 2-2.1 and 2-2.2, which ruled that the General Assembly may only confirm or reject the action taken by the previous General Assembly on the submission of a constitutional amendment. He detailed the ruling of HP 2-2.2 and noted that these rulings found support in several areas of *Mason*: 6(2) providing that a constitutional provision regulating procedure controls over all other rules of procedure; 7(1) providing that constitutional provisions prescribing exact or exclusive time or methods for certain acts are mandatory and must be complied with; and 12(1) providing that a legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the constitution governing it.

The chair entertained debate on the point of order. The proponent of Senate "A" stated his belief that the constitutional amendment before the chamber was a new amendment with a new resolution number and stated that it went through the Government Administration and Elections committee as new policy with a public hearing. He noted that he offered the same amendments in committee, which were voted on by the committee, that the actions of a completely different legislature in 2019 should not bind what the body was doing here, and that the body should still have the power to amend the resolution.

The minority leader agreed with the majority leader that this was an issue of first impression for the chamber but that the House rules were for the House and not for the Senate. He stated that, although *Mason* rules were cited by the majority leader, there was no constitutional procedure that would require them to follow the acts of a prior legislature; the body was free to deal with the resolution in any manner the body chose and it had great latitude. He reiterated that just because something passed in 2019 or any prior year did not mean the body was bound to follow what the prior legislature did.

The chair ruled the point of order well taken. On the issue of whether a proposed constitutional amendment, which has been passed in a previous General Assembly by a majority but not a three-quarters majority, can be amended on its second presentation to the next General Assembly, the chair found persuasive the rulings of the two House precedents cited by the majority leader and the support found in *Mason*, noting that SR 32 provides the 2010 edition of *Mason* governs the Senate whenever applicable and not inconsistent with the standing rules and orders of the Senate or the joint rules of the Senate and the House of Representatives.

The chair found that the constitutional provision providing that a proposed constitutional amendment that is adopted by a majority of the General Assembly is to be carried forward to the next General Assembly, was a regulation of procedure and as such, under *Mason* 6(2), the constitutional provision controls all the rules of procedure. In addition, under *Mason* 7(1), the constitutional provision of a mandatory carryover period to the next General Assembly is mandatory and must be complied with. Finally, the offering of an amendment to a previously passed but not yet adopted constitutional amendment would create the opportunity to evade or avoid the effect of a rule prescribed by the constitution governing it and, under *Mason* 12(1), was not allowed. The chair observed that if a previously adopted constitutional amendment presented to the General Assembly for a second time had the opportunity to be amended, an untenable scenario could arise that the adopted amendment would create a new proposal that would then have to be carried over to the next General Assembly after that if adopted by less than a three-quarters vote. There could then be another amendment offered at that time, resulting in a potentially infinite series of proposed constitutional amendments that kept getting amended without the question ever getting to the voters for their consideration. The chair stated that that was a kind of untenable provision not contemplated under the constitution or the rules and, with the reasoning of the House speakers in construing that section of the constitution, the feasibility of offering an amendment to a previously adopted provision being presented for the second time should not be allowed.

The minority leader appealed the ruling. On a roll call vote, the ruling was upheld. *Looney, May 27, 2021.*

2021 REGULAR SESSION • HOUSE

SECTION 10 – DEBATE

10-1C. SPEAKING DURING DEBATE

10-1C.12 SPEAKING FOR THIRD TIME

During debate on House amendment "G" on a Judiciary Committee bill, the minority leader raised a point of order that the member speaking needed permission of the chamber to speak for a third time.

The deputy speaker ruled the point of order well taken. *Candelaria, May 27, 2021.*

10-1D. OTHER CONDUCT DURING DEBATE

10-1D.4 REFERENCING CONTENT IN DOCUMENT ON HOUSE FLOOR

During debate on a bill concerning the provision of explanations of benefits for certain health insurance policies, a member produced the member's own explanation of benefits document and referenced content contained therein. Another member noted that, according to the rules, the use of direct evidence was not permitted in debate.

The speaker stated the member would be allowed to continue but asked the member to acknowledge that rule and suggested the member make reference to the document generally rather than read from it. *Ritter, M., May 4, 2021.*

2021 SEPTEMBER SPECIAL SESSION • HOUSE

SECTION 31 – SPECIAL SESSION

31-1. GENERALLY

31-1.8 AMENDMENT TO HOUSE RESOLUTION NOT WITHIN CALL OF SPECIAL SESSION

The Governor called the General Assembly into special session for the purpose of approving the renewal through February 15, 2022 of the Governor's declaration of public health and civil preparedness emergencies in response to the COVID-19 pandemic.

During debate on the emergency-certified House resolution approving such renewal, a member called House amendment "A", which amended the resolution to require that any executive order issued pursuant to such renewed declarations have a public hearing at least 72 hours prior to the filing of such executive order with the Secretary of the State.

The majority leader raised a point of order that the amendment was outside of the call to either approve or disapprove or to approve in accordance with the Governor's call for the special session. He stated the special session was taking place under special act 21-5 and the amendment would seek to amend that act and was therefore out of order.

The deputy speaker stated that her analysis of special act 21-5, which she noted directs both houses' actions, revealed that the act expresses the authorities of each chamber to consider approval of the Governor's renewal but does not expressively (*sic*) permit the modification of such renewal. The deputy speaker stated that since the amendment modifies the Governor's renewal, it was not authorized by special act 21-5 nor was it authorized within the Governor's call, and ruled the point of order well taken.

The member appealed the ruling. A second member spoke against the ruling, stating that the technicality of the rules should not prohibit or stop people from public participation and that the amendment would be a way to accomplish it. The minority leader spoke in support of appealing the ruling, stating that the amendment was seeking not to modify the up or down vote authorized by special act 21-5, which would continue, but to be a conditional approval of the resolution by requiring the Governor to hold a public hearing prior to the issuance of an executive order. The minority leader reiterated that the amendment did not change the underlying yea or nay vote but made the resolution conditional upon an act to precede it, and that therefore the amendment was proper.

The majority leader stated the amendment was seeking to amend the process by which an executive order was issued and asked members to oppose the appeal.

On a roll call vote, the ruling of the chair was sustained. Cook, September 27, 2021.