

Special Rules in the House of Representatives: Themes and Contemporary Variations

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The Committee on Rules became a standing committee of the House of Representatives in 1880. Shortly thereafter, a series of precedents established the authority of the committee to report resolutions affecting the order of business, to be adopted or rejected by the House by majority vote. Before that time, no accepted procedure existed by which a majority of the House could agree to a special order making a measure, otherwise not privileged, in order for floor consideration:

Special orders have been in use in the House from the early days, but the method of making them has not always been the same. Often they were made by unanimous consent, and sometimes this method is used at the present time. If there was objection they were made by a suspension of the rules, which was in order more frequently in the earlier years than at present. This method was cumbersome, since on any question which involved party differences the attempt was very likely to fail. In 1882, in the first session of the Forty-seventh Congress, it was the usage, and apparently the only method in a case where there was opposition, to offer under motion to suspend the rules a resolution providing for consideration of a bill at a given time. This required a two-thirds vote, and a minority would sometimes refuse consent to the order until they had exacted terms as to kinds of amendments that should be permitted, etc.¹

In 1883, majority control over the order of business was enhanced when Speaker J. Warren Keifer overruled a point of order made against a resolution from the Rules Committee. Called up by Thomas Reed of Maine, the resolution permitted the House to consider and disagree to Senate amend-

¹ Asher Hinds, and Clarence M. Cannon, *Hinds' and Cannon's Precedents of the House of Representatives* (Washington, 1907, 1936), v. 4, section 3152, 191-92.

ments to a House revenue bill. Speaker Keifer ruled, in effect, that because the Rules Committee could report resolutions to make permanent changes in House rules, or suspend them for general purposes, the committee also could report resolutions changing or suspending these rules temporarily—i.e., for consideration of a particular measure:

In other words, a rule might have been reported from the committee, and properly, which would suspend or repeal or annul or set aside every rule of the House, standing or special; and if the House so decided to affirm that report by a majority vote it could do so. In this case, though it may apply to a single great and important measure now pending before Congress, it seems perfectly clear to the Chair that it would be a rule to the extent that it goes²

This reinterpretation of the committee's authority gradually became accepted and established, and stands as one of the most important of those developments during the last decades of the nineteenth century that, collectively, helped to enable the House to work its will by majority vote.

During the almost one hundred years that have followed, the Rules Committee frequently has been embroiled in controversy over the exercise of its power to influence the order of business on the House floor. Under the authority of nineteenth century rulings that were later confirmed and codified in House rules, the committee gained the right to report privileged House resolutions, generally known as special rules or simply as "rules." These rules usually enable the House to take up a measure that otherwise would not be privileged for consideration, and establish the parliamentary conditions under which the measure is to be debated and amended in Committee of the Whole and then in the House. Other types of special rules may affect the consideration of privileged measures. They also may expedite or permit other forms of legislative action. In the process, the committee can affect significantly both the content and the fate of the legislation on which it acts or fails to act.

The manner in which the Rules Committee has exercised this power has led a number of changes in House rules and to two of the most dramatic confrontations that have occurred on the House floor during the twentieth century. From 1880 to 1910, the committee was chaired and dominated by the Speaker, who appointed its other members. Not surprisingly, it served party purposes as they were understood by the Speaker. In his commentary on House precedents, published in 1907, Hinds concluded that the use of special rules (or special orders, as they were called at the time) "since 1890 has been in favor as an efficient means of bringing up for consideration bills difficult to reach in the regular order and especially a means for confining within specified limits the consideration of bills involving important policies for which the majority party in the House may be responsible."³

² Quoted in *ibid.*, section 3160, 195.

³ *Ibid.*, section 3152, 192.

The revolt against Speaker Cannon at the end of this period took the form of a resolution to remove the Speaker from the committee and to deny him the right to appoint its members. During most of the next three decades, the committee generally adopted a stance of independent cooperation with the majority party leadership, although several rules changes were made to impose some limits on its independence. As a result of a deadlock over the election of a Speaker for the Sixty-eighth Congress, a number of changes were made in House rules, three of which affected the Rules Committee. First, constraints were imposed on the power of its chairman to refuse to file reports on resolutions that the committee had ordered reported. Second, the committee was denied the right to call up special rules on the same day they are reported, except by a two-thirds vote of the House. Third, the discharge procedures then in effect were made applicable to House resolutions, including special rules, as well as to bills and joint resolutions.

From about 1937 to 1960, the Rules Committee was dominated by a voting majority of Republicans and conservative Democrats, described as a "conservative coalition," that either could prevent bills from coming to the House floor or extract substantive concessions from their proponents as a price for granting special rules. Although the coalition used this leverage selectively, it sometimes found itself at odds with a majority of the majority party and its leadership, except during the two Congresses controlled by the Republicans. The result was the 1961 contest in which, by a vote of 217 to 212, the House voted to increase temporarily the size of the committee—a change that was made permanent at the beginning of the next Congress. Since then, the Rules Committee gradually has developed into a generally consistent ally or agent of the majority party, through its elected floor leaders.

These developments have shaped and re-shaped the relationship between the committee on the one hand and both the majority party and the House membership as a whole on the other. But they have not fundamentally altered or diminished the importance of the committee's decisions for scheduling and organizing the legislative business to be considered on the floor. Its influence remains potent, although it is now being exercised in somewhat different ways and in response to a somewhat different set of institutional and political interests.

Most special rules make in order the initial floor consideration of a measure in Committee of the Whole. In addition, they limit and apportion control of the time for general debate, and may either expand or restrict the rights of members to offer amendments to the measure on the floor. The committee usually decides whether to grant such a rule, and what form it should take, after a hearing scheduled at the request of the chairman of the

committee that originally reported the measure favorably.

Until relatively recently, the controversy surrounding the Rules Committee tended to focus on its decisions to hold or refuse hearings and to grant or refuse requests for special rules. Two of the rules changes of the Sixty-eighth Congress were directed toward limiting the ability of the committee or its chairman to prevent measures from coming to the floor. The same motivation led twice to the temporary institution of the 21 day rule, by which other committees could bring to the floor measures on which the Rules Committee had failed to act. Much of the debate in 1961 on increasing the size of the committee turned on the questions of whether the committee should and would grant rules for considering the anticipated legislative proposals of the incoming Kennedy administration. The committee's friends and foes argued over its proper role, but also sought to emphasize or minimize the number and importance of the instances in which it had denied requests for rules.⁴

Among scholarly observers of the committee, James Robinson devoted considerable attention to the same questions in his analyses of the committee from the late 1930s to the late 1950s.⁵ Douglas Fox and Charles Clapp and, more recently, Eleanor Lewis also concentrated on the committee's track record in granting rules during the Kennedy and Johnson administrations.⁶ Their data, in conjunction with those compiled by Bruce Oppenheimer, indicate a general decline in the number of measures on which the Rules Committee declined to hold a hearing or grant a rule from the Ninety-first Congress (1969-1971) to the end of the Ninety-third Congress in 1975.⁷

⁴ U.S. Congress, House, *Congressional Record*, 87th Cong., 1st sess., v. 107, pt. 2. 1573-1590. See also, among others: Milton C. Cummings, Jr., and Robert L. Peabody, "The Decision to Enlarge the Committee on Rules: An Analysis of the 1961 Vote." *New Perspectives on the House of Representatives*, Ed. by Robert L. Peabody and Nelson W. Polsby (Chicago, 1963), 167-194; and Robert L. Peabody, "The Committee on Rules and the House Leadership: Some Consequences of Enlargement," a paper prepared for delivery at the 1962 Annual Meeting of the American Political Science Association, Washington, D.C.

⁵ James A. Robinson, *The House Rules Committee* (Indianapolis, 1963); see also Robinson, "The Role of the Rules Committee in Arranging the Program of the U.S. House of Representatives" *Western Political Quarterly* 12 (September 1959): 653-669; and "The Rule of the Rules Committee in Regulating Debate in the U.S. House of Representatives" *Midwest Journal of Political Science* 5 (February 1961): 59-69.

⁶ Douglas M. Fox and Charles H. Clapp, "The House Rules Committee's Agenda-Setting Function, 1961-1968" *Journal of Politics* 32 (May 1970): 440-43; Douglas M. Fox and Charles H. Clapp, "The House Rules Committee and the Programs of the Kennedy and Johnson Administrations" *Midwest Journal of Political Science* 14 (November 1970): 667-72; and Eleanor G. Lewis, "The House Committee on Rules and the Legislative Program of the Kennedy and Johnson Administrations" *Capitol Studies* 6 (Fall 1978): 27-38.

⁷ Bruce I. Oppenheimer, "The Changing Relationship Between House Leadership and the Committee on Rules," a paper prepared for delivery at a conference co-sponsored by The Everett McKinley Dirksen Congressional Leadership Research Center and the Sam Rayburn Library, June 10-11, 1980, Georgetown University Law Center, Washington, D.C., especially Table 2, 24.

By late 1973, the committee was characterized as “such a liberal sieve it is regularly being over-ruled by a more conservative House.”⁸ According to a *Congressional Quarterly* report, the House voted to reject the Rules Committee’s recommendations on eleven bills in 1973, compared with a total of only fifty such rejections during the twenty-two preceding Congresses.⁹ Early in 1974, Representative Spark Matsunaga of Hawaii, a Democratic member of the committee, was quoted as saying: “We were harassed by members for some of those rules we reported out. Members made jokes about us. The chairman got tired of hearing all those jokes. If there are going to be attempts to kill a bill by killing the rule, then we had better be more careful.”¹⁰ Perhaps in consequence, the number of hearings and special rules denied by the committee increased somewhat during the Ninety-fourth and Ninety-fifth Congresses, but this reversal of the trend of the early 1970s was not sufficient to revive widespread contentions that the committee again was thwarting the majority sentiment in the House by preventing measures from coming to the floor.

Instead, during the last years of the 1960s and the first years of the 1970s, members’ discontent with the decisions of the Rules Committee seems to have focused less on its refusals to grant some hearings and special rules than on the content of the rules that were reported and presented to the House. The specific source of dissatisfaction was the committee’s usual practice of agreeing to requests from the Committee on Ways and Means for closed rules on revenue bills—special rules that prohibited all floor amendments, or all amendments except those recommended by the Ways and Means Committee (such amendments were not subject to amendment). The closed rule was not an innovation; the members of Ways and Means had contended for years that their bills were too complex and too finely balanced to be subjected to an unconstrained amending process on the floor. In fact, in 1974, Ways and Means Committee Chairman Wilbur Mills noted that the last time a major tax bill had been considered under the equivalent of an open rule was when the House agonized over the Smoot-Hawley tariff bill in 1930.¹¹ But during the 1970s, the House entered a period of organizational and procedural change—largely in the name of internal democratization—and members expressed more intense concern over the policy consequences of changes in the tax code and their inability to modify them on the floor. As a result, the House became more reluctant to defer totally to the expertise of the Ways and Means Committee, and to

⁸ *Congressional Quarterly Weekly Report* 32 March 30, 1974): 804.

⁹ *Ibid.*, 808.

¹⁰ *Ibid.*, 804.

¹¹ Mary Russell, “Mills to Send Oil-Tax Bill to Floor of House” *Washington Post* June 7, 1974, A5.

either accept or reject that committee's proposals without opportunity for amendment.

The consequence was an addition to the rules of the House Democratic Caucus, rather than a change in House rules themselves, that appeared to be directed more to the decisions of the Committee on Rules than to those of the Committee on Ways and Means. On February 21, 1973, the Caucus adopted a procedure by which fifty or more Democratic members may require a meeting of the Caucus to be held to consider an amendment they wish to offer to a measure on which a closed rule has been requested by the committee reporting it. The Caucus then may vote to direct the Democratic members of the Rules Committee to report a special rule making the amendment in order on the floor.¹² Although the Democratic Caucus and the Republican Conference traditionally have exercised effective control over committee assignments and chairmanships, this was the first instance in recent congressional history in which the majority party organization adopted an internal party rule that had a direct impact on the legislative procedures of the House.¹³

Not unexpectedly, this new Caucus procedure was first invoked to permit amendments to a revenue bill reported by the Ways and Means Committee, then under the chairmanship of Wilbur Mills of Arkansas. On May 15, 1974, the Democratic Caucus directed its members of the Rules Committee to make in order amendments dealing with the oil depletion allowance and foreign tax credits. In response, Chairman Mills threatened to bring the bill directly to the floor as a privileged measure, in which case it would have been subject to extended debate and all germane amendments. Instead, the bill was dropped, thus obviating the Caucus instructions to the Rules Committee.¹⁴ The struggle was renewed the following year when, on February 25, 1975, the Caucus voted to instruct Rules Committee Democrats to permit two amendments on the depletion allowance to be offered during floor consideration of another bill from Ways and Means, by this time chaired by Al Ullman of Oregon. This bill was not withdrawn, and the Rules Committee reported a special rule making in order the two specified amendments and several others.¹⁵

Since then, the issue of closed rules, like the questions of hearings and rules denied by the committee, seems to have declined as a source of public

¹² This procedure is included as section IX of the Manual of the Democratic Caucus, dated May 2, 1979.

¹³ Since then, the Caucus has adopted an additional rule that establishes guidelines to be followed by the Speaker in recognizing members to move to suspend the rules and pass measures.

¹⁴ *Congressional Quarterly Almanac for 1974*, Washington, 1975, 188-189.

¹⁵ *Congressional Quarterly Almanac for 1975*, Washington, 1976, 101. See also Bruce I. Oppenheimer, "The Rules Committee: New Arm of Leadership in a Decentralized House" *Congress Reconsidered*, Ed. by Lawrence C. Dodd and Bruce I. Oppenheimer (New York, 1977), 96-116.

controversy. Recourse to the Caucus has been infrequent, although its availability probably has discouraged the Ways and Means Committee, and others, from seeking totally closed rules. From the Ninetieth through the end of the Ninety-sixth Congress, the fourteen years from 1967 through 1980, the Rules Committee reported a total of 1,434 special rules that laid out full sets of parliamentary conditions for considering measures in Committee of the Whole. Of all these rules, only fifty-two (or 4 percent of the total) permitted only committee amendments to be offered. In none of these Congresses did closed rules constitute more than 8 percent of all special rules reported for initial floor consideration in Committee of the

TABLE 1
IMPACT ON THE AMENDING PROCESS OF SPECIAL RULES REPORTED BY THE HOUSE
RULES COMMITTEE: 90TH CONGRESS — 96TH CONGRESS

	90th		91st		92nd		93rd		94th		95th		96th	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Simple open rules	140	77	135	67	119	66	142	64	150	61	97	48	85	44
Committee substitute														
open rules	31	17	40	20	39	22	55	25	64	26	57	28	59	30
Complex rules	4	2	11	5	14	8	26	12	31	13	43	21	40	20
Closed rules	8	4	16	8	8	4	0	—	2	1	7	3	11	6
Total number of special rules	183	100	202	100	180	100	223	100	247	100	204	100	195	100
Open rules waiving points of order against:														
Consideration of measures	0	—	4	2	14	9	20	10	34	16	59	38	68	47
Provisions of measures	3	2	12	7	15	9	20	10	19	9	16	10	21	15
Committee amendments, including substitutes	19	11	18	10	25	16	34	17	26	12	38	25	45	31
Open rules waiving all points of order against measure	19	11	2	1	3	2	0	—	1	—	0	—	0	—
Total number of open rules	171	100	175	100	158	100	197	100	214	100	154	100	144	100

Sources: Data for the Ninetieth through the Ninety-second Congresses are derived primarily from an inspection of all House Resolutions of those Congresses. When necessary, floor debates in the *Congressional Record* were consulted for clarification. Since the Ninety-third Congress, the Rules Committee has issued a *Legislative Calendar* that includes descriptions of the provisions of the "Rules Granted," which are the primary source of data for the Ninety-third through the Ninety-sixth Congresses. These tables assume the accuracy and completeness of each description, unless its terms clearly indicate that information is missing. In such cases, the texts of the special rules themselves have been examined. The characterizations of special rules—as open, closed, etc.—in these tables do not agree in every case with their characterizations in the *Calendars*.

Note: This table includes data only on special rules providing for initial consideration in Committee of the Whole of measures other than general appropriation measures; types of special rules and waivers of House rules are discussed in the text.

Whole. From 1973 through the end of 1980, twenty closed rules were reported, of which eighteen were considered on the floor. Of these, only two were rejected, seven were adopted by voice vote, and only five were adopted by roll call votes with more than 100 members in opposition. Data on the impact of special rules on the amending process are presented in Table 1.¹⁶

It is even more striking that only four of the eighteen closed rules considered by the House were subjected to roll call votes on ordering the previous question. Because the House must vote to refuse to order the previous question before a substantive amendment may be offered to a special rule, this would seem to indicate that House members have been willing to accept closed rules when the Rules Committee has found it necessary to report them, or that opposition has been based more on distaste for the measure itself than for the closed rule under which it was to be considered.

This is not to suggest that closed rules, when reported, do not inspire controversy, nor that recent revenue bills have been considered as privileged measures or under open rules. Instead, there seems to have been another shift in the primary focus of controversy surrounding the decisions of the Rules Committee during the middle and late years of the past decade and especially since the beginning of the Ninety-fourth Congress. There has been a notable increase in the number of special rules that are neither simply open nor simply closed, but are more complex in their effects on the process of floor consideration generally and especially on the amending process in Committee of the Whole.

The dichotomy between open and closed rules is insufficient to characterize the special rules reported by the Rules Committee. Some rules, for example, are reported for purposes other than for initial consideration in Committee of the Whole of non-privileged measures or privileged revenue measures that, almost invariably, are considered under special rules. The Rules Committee reported such special rules for special purposes 259 times from 1967 through 1980, constituting 15 percent of all 1,693 rules reported during that period. These special rules have been for purposes such as protecting the consideration and provisions of general appropriation bill, providing for consideration of measures in the House or in the House as in Committee of the Whole, and permitting further action on measures after their initial passage by the House. The number of special rules for purposes such as these has been increasing—from ten in the Ninetieth Congress to

¹⁶ See the notes accompanying each table for information on data and sources. There are some discrepancies between the data presented in these tables and those displayed in Tables 2-4 of Oppenheimer, "The Changing Relationship Between House Leadership and the Committee on Rules," 24-26.

thirty-six in the Ninety-third Congress, to more than fifty in each of the Ninety-fourth and Ninety-fifth Congresses, and to sixty-four during the Ninety-sixth Congress. Moreover, there also has been an increase in this type of special rule as a proportion of all special rules. Special rules for

TABLE 2
SPECIAL RULES REPORTED BY THE HOUSE RULES COMMITTEE FOR SPECIAL PURPOSES: 90TH CONGRESS — 96TH CONGRESS

	90th		91st		92nd		93rd		94th		95th		96th	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
To waive points of order against general appropriation measures ^a	5	50	14	74	13	54	17	47	22	41	25	48	20	31
To provide for consideration of measures in the House ^b	0	—	0	—	0	—	5	14	9	17	5	10	10	16
To provide for consideration of measures in the House as in Committee of the Whole ^{a,b}	0	—	0	—	0	—	1	3	5	9	2	4	7	11
To set procedures governing further consideration of measures	—	—	0	—	0	—	0	—	1	2	1	2	1	2
To dispose of Senate amendments to House-passed measures	3	30	4	21	1	4	1	3	4	7	6	12	4	6
To request or agree to conference on measures	0	—	1	5	1	4	0	—	0	—	0	—	2	3
To waive points of order against conference reports	2	20	0	—	9	38	10	28	13	24	11	21	15	23
Other purposes	—	—	0	—	0	—	2	6	0	—	2	4	5	8
Total special rules reported for such purposes	10	100	19	100	24	100	36	100	54	100	52	100	64	100

^a Also may restrict amendments or make specific amendments in order for consideration.

^b Also may include waivers of House rules.

For example, to provide for consideration of resolutions to confirm vice-presidential nominations; to make in order an amendment to a concurrent budget resolution; to permit consideration of conference reports en bloc; to provide for concurrent consideration of two resolutions.

Sources: See note on sources accompanying Table 1.

Note: This table excludes data on special rules for initial consideration in Committee of the Whole of measures other than general appropriation measures.

special purposes constituted only 5 percent of the rules reported during the Ninetieth Congress, but 20 to 25 percent of the special rules reported from 1977 through the end of 1980. Table 2 presents data on the frequency and purposes of such rules.

This type of special rule aside, the distinction between open and closed rules remains inadequate for describing the majority of rules that do provide for the House to resolve itself into Committee of the Whole to consider a particular bill or resolution. First, there are differences among those special rules that are open in the sense that they do not impose any restrictions on amendments other than the restrictions derived from House rules and precedents. Second, open rules may affect the process of consideration in various ways by waiving the application of certain House rules. Third, an increasing number of special rules are neither open nor closed—they are either more open than open rules or less closed than closed rules.

In its prototypical form, an open rule provides that, once the House has resolved into Committee of the Whole to consider the measure made in order by the rule, the time for general debate permitted under the rule is to be divided and controlled by the chairman and ranking minority member of the committee that reported the measure; the measure is to be subject to all germane amendments that are in order under House rules and precedents and, after the amending process has been completed, the House is to act on the committee's recommendations without further debate, amendments, or motions, other than the motion to recommit, which the Rules Committee may not prohibit.

Special rules of this type remain common, but there has been a steady decline since 1973 in such open rules as a percentage of all special rules, and even as a percentage of special rules for purposes of initial consideration in Committee of the Whole. During the Ninetieth Congress, the Rules Committee reported 183 special rules for the initial floor consideration of measures in Committee of the Whole. Of this total, 77 percent were simple open rules. This percentage declined through the sixtieth percentile range during the Ninety-first through the Ninety-fourth Congresses, and was slightly less than 50 percent during the Ninety-fifth and Ninety-sixth Congresses. Simple open rules as a percentage of all special rules also have declined in frequency—from 55 percent during 1973-1974 to 33 percent during 1979-1980.

Part of this decline undoubtedly is attributable to a countervailing trend—an increase in the number and proportion of special rules that focus attention and action in Committee of the Whole on a committee amendment in the nature of substitute for the text of the measure itself. In reporting a bill favorably, House committees have four primary options: to report the bill without amendment; to report a “clean” bill that incorporates the

committee's amendments; to report the bill with a series of discrete amendments or; to report the bill with an amendment in the nature of a substitute, that proposes to strike the entire text of the bill and replace it with a revised text developed by the committee. When a committee adopts the last of these options, it then may request that the Rules Committee provide in its special rule that the amendment in the nature of a substitute be made in order as "an original bill for the purpose of amendment." This arrangement permits the committee substitute to be amended in two degrees, rather than the one degree that would be available were the substitute to be offered as a first degree amendment.

Underlying this practice is the assumption that the proposal to which the Committee of the Whole should devote its attention is the committee's version of the measure, not the text of the measure as originally introduced. By providing for consideration of the committee's substitute as an original bill for the purpose of amendment, the Rules Committee encourages this focus while protecting members' rights by allowing them to offer amendments to the substitute in both the first and second degrees. For the same reason, several other standard changes are made in the texts of such special rules to assure members the same parliamentary opportunities they would have in the absence of a committee substitute.

A special rule with only these provisions is an open rule in that it does not restrict the amending process. In fact, its purpose is to ensure that the amending process in Committee of the Whole and later action in the House are not affected significantly by the committee's decision to report an amendment in the nature of a substitute. But it differs from the prototypical simple open rule in that it gives special standing to a particular amendment and makes compensatory changes in the votes that may occur and the recommittal motion that may be made in the House after the Committee of the Whole has completed its work.

In both relative and absolute terms, this committee substitute variant of the open rule has become more common since 1967. The Rules Committee reported thirty-one such special rules during the Ninetieth Congress; it proposed fifty-nine of them during the Ninety-sixth Congress. As a proportion of all special rules for initial consideration in Committee of the Whole, the frequency of committee substitute variants has increased from 17 percent in the Ninetieth Congress to 30 percent in the Ninety-sixth Congress. Relative to open rules only, the frequency of committee substitutes has more than doubled—from 18 percent in the Ninetieth Congress to 41 percent in the Ninety-sixth. From 1975 through 1980, more than one of every three open rules provided for consideration of a committee amendment in the nature of a substitute as an original bill for purposes of amendment.

Taken together, open rules in both simple and committee substitute forms have constituted 85 percent of all the special rules for initial consideration in Committee of the Whole that the Rules Committee reported from 1967 through 1980. If this period is divided into two parts, however, a decline of some magnitude emerges. From the Ninetieth through the Ninety-fourth Congress, 88 percent of all rules for initial floor consideration were open rules in one form or the other. This figure declined to 75 percent during the Ninety-fifth and the Ninety-sixth Congresses.

These data on open rules of both types are based on generous criteria for identifying them, in that many of the open rules reported from 1967 through 1980 included waivers of potential points of order. The prototypical simple open rule, and its committee substitute variant, do not explicitly waive the application of House rules. For purposes of this analysis, however, special rules are considered to be open rules even though they may waive one or more House rules that could provide the basis for points of order against: consideration of the measure; provisions of the measure or; consideration or provisions of committee amendments, including an amendment in the nature of a substitute, whether or not considered as an original bill.

Certain House rules, if violated, provide grounds for points of order against the consideration of measures, unless waived in special rules. Clause 2 of House Rule XI requires that a number of matters be contained in the committee reports that accompany measures reported from committee—including minority and supplemental views, if any, available oversight findings, committee cost estimates, and an inflationary impact statement. Clause 3 of Rule XIII also stipulates that committee reports that change existing law must include a comparative print (or “Ramseyer”) by which the changes in law proposed in the measure can be placed in context.¹⁷ A measure may not be considered if a point of order is made and sustained at the appropriate time that the committee report on the measure fails to satisfy one or more of these requirements. In addition, clause 2 of Rule XI states that a measure reported from committee may not be considered until the report accompanying it has been available for three days. Special rules reported by the Rules Committee are subject to a different requirement.

¹⁷ Such a comparative print usually includes the full text of the statutory provisions to be changed by the bill that the report accompanies. The text to be stricken is identified by lining it out; the text to be inserted is printed in italics. Other typographical devices and techniques may be used instead to achieve the same purpose: to permit members to examine the text of existing law as that text would be changed by the bill. The obligation to include a comparative print is known as the “Ramseyer” requirement in recognition of Representative C. William Ramseyer of Iowa, who offered the resolution to impose the requirement. The House agreed to the resolution on January 28, 1929, during the 2nd session of the 70th Congress, and the requirement has been retained and expanded in the rules of subsequent Congresses.

Other points of order against consideration of measures may be based on provisions of the Congressional Budget Act of 1974 which, although not codified in the body of House rules themselves, have the force and effect of rules. Under the terms of the Budget Act, for instance, it is not in order for the House to consider:

1. a bill affecting budget or spending authority, revenues, or the public debt ceiling for a fiscal year before adoption of the first concurrent budget resolution for that fiscal year (section 303(a));
2. a bill that provides new spending authority that is not subject to appropriation acts (section 401(a));
3. a bill creating new entitlement authority that becomes effective before the beginning of the next fiscal year (section 401(b));
4. a bill providing new or renewed authorizations that is reported after May 15th preceding the beginning of the fiscal year in which the authorizations become effective (section 402(a)); or
5. a bill affecting revenues or budget or spending authority that would violate a second or subsequent concurrent budget resolution that has been adopted (section 311(a)).

Special rules may, and frequently do, waive one or more of these prohibitions as well.

Points of order also may lie against individual provisions of measures being considered if they violate clause 5 of Rule XXI, which prohibits the inclusion of appropriations in measures not reported by the Appropriations Committee. This is one of the pair of prohibitions that are intended to protect the integrity of the authorization-appropriation sequence, and it has been interpreted to apply to provisions that do not directly appropriate new funds.¹⁸ For example, the creation of a trust fund or the transfer of appropriated funds from one department to another may be construed to be an appropriation. It is not uncommon for special rules to include waivers of this prohibition to protect provisions of measures that contain what often are described as technical violations of the rule.

The prohibition of appropriations in legislation and some provisions of the Budget Act may provide grounds for points of order against amendments as well. And all amendments, including committee amendments in

¹⁸ The other is the prohibition in clause 2 of Rules XXI against consideration of an appropriation included in or proposed as an amendment to a general appropriation bill for an expenditure not previously authorized by law, except to continue public works programs already in progress.

the nature of substitutes, are subject to the germaneness requirement of clause 7 of Rule XVI—that “no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.” Thus, the Rules Committee can have a significant impact on the fate of a measure as it decides whether or not to waive points of order that might be made under one or more of these rules.

The policy of the Rules Committee with respect to such waivers changed during the late 1960s and 1970s. During the Ninetieth Congress, special rules did not identify at all the specific House rules that were being waived. Instead, waivers applied to all points of order that might lie against the measure, or its provisions, or committee amendments to be offered to it.¹⁹ During the following two Congresses, the Rules Committee continued to include such general waivers, but it also began to be more specific—waiving particular rules either for all or specified purposes. From 1967 through 1972, forty special rules waived all points of order against measures, but only three such waivers were reported during 1973-1976 and none during the following three years. A comparable change occurred with regard to waivers that protected provisions of measures and amendments to them.

This increase in specificity reflected a deliberate policy decision on the part of the Rules Committee. For example, early in the first session of the Ninety-fourth Congress, the House considered H. Res. 142, providing for consideration of a bill to suspend the president’s authority to adjust oil import fees. This special rule severely restricted the amendments that could be offered on the floor and waived all points of order against the bill. In response to a question about this waiver, Representative B.F. Sisk of California, the Democratic floor manager of the resolution, justified it as an exception to the committee’s usual practice:

I think, if the gentleman will yield further, the Committee on Rules, as I say, was faced with a flat request agreed to, I might say, by both the majority and minority members of the Committee on Ways and Means, for a total waiver. We simply, in order to expedite the situation, the action we did take was to go ahead and give a blanket waiver.

Let me say further to my colleague that I agree with the gentleman that normally the committee does specify. We have been moving, as the gentleman knows, in the last 2 years toward becoming

¹⁹ The debates on these special rules indicate that such general waivers were included most often as protection against points of order based on the Ramseyer requirement and the prohibition against including appropriations in other than appropriation bills. However, in the case of H. Res. 1238, for consideration of the Housing and Urban Development Act of 1968, Representative Madden of the Rules Committee stated: “The provision in the rule waiving points of order is usual in a bill of this size and complexity. Every major housing bill that I recall has had this kind of rule. Actually I know of nothing in the bill on which a point of order could be raised. . . we have found nothing which might be the subject of a point of order. However, it is a necessary safeguard on a bill of this size. Certainly, it would be tragic if consideration of this vital legislation were blocked because of a technicality.” House *Congressional Record*, 90 Cong., 2 sess., vol. 114, pt. 15, 20058-20059.

specific in waiving only in those areas where it was essential. In this case, I think as a matter of time saving, we simply faced this as a blanket manner.²⁰

The effect of this policy change was to let members know what rules they were being asked by the committee to set aside in order to consider a measure, provision, or amendment. By the Ninety-sixth Congress, the

TABLE 3
WAIVERS OF HOUSE RULES IN SPECIAL RULES REPORTED BY THE HOUSE RULES
COMMITTEE: 90th CONGRESS — 96TH CONGRESS

	90th		91st		92nd		93rd		94th		95th		96th	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Special rules protecting consideration of measures	0	—	10	5	18	10	21	9	48	19	90	44	91	47
Special rules protecting provisions of measures ^a	3	2	16	8	18	10	26	12	22	9	25	12	30	15
Special rules protecting consideration or provisions of committee substitutes considered as original measures	14	8	14	7	21	12	29	13	23	9	41	20	40	21
Special rules protecting other committee amendments	11	6	26	13	17	9	12	5	11	4	15	7	25	13
Special rules protecting floor amendments made in order	4	2	5	2	9	5	12	5	8	3	24	12	19	10
Special rules including no waivers of House rules	139	76	142	70	109	61	143	64	159	64	72	35	59	30
Special rules including one or more waivers of House rules	44	24	60	30	71	39	80	36	88	36	132	65	136	70
Special rules waiving all points of order against measures	22	12	9	4	9	5	1	—	2	1	0	—	0	—
Total number of special rules	183	100	202	100	180	100	223	100	247	100	204	100	195	100

All or specifically identified provisions of measures.

Sources: See note on sources accompanying Table 1.

Note: This table includes data only on special rules providing for initial consideration in Committee of the Whole of measures other than general appropriation measures. Excluded are waivers that pertain to Senate measures made in order for subsequent consideration.

²⁰ House, *Congressional Record* 94 Cong., 1 sess., vol. 121, pt. 2, 2321. Unless otherwise noted, discussion of the provisions of and debates on particular special rules is based on the *Congressional Record*.

change was complete; every waiver included in special rules for consideration of measures in Committee of the Whole was directed toward a specifically identified rule or provision of a rule-making statute, as in the case of the Budget Act.

One reason the Rules Committee may have changed its practice was the increase in the number of special rules that included one or more waivers. Of all special rules for considering measures in Committee of the Whole, 24 percent of those reported during the Ninetieth Congress waived points of order. As Table 3 indicates, this figure rested within the thirtieth percentile range during the Ninety-first through the Ninety-fourth Congress, but then jumped dramatically—to 65 percent in the Ninety-fifth Congress and 70 percent in the Ninety-sixth Congress. Similar increases occurred in the frequency of waivers in open rules, in both simple and committee substitute forms. Between 1973 and 1980, there was an increase in the frequency with which the Rules Committee proposed waivers of clause 5 of Rule XXI, and a somewhat greater increase in the number of waivers to protect committee amendments, including substitutes. More importantly, the percentage of open rules waiving points of order against the consideration of measures increased from 10 percent in the Ninety-third Congress and 16 percent in the Ninety-fourth to 38 percent in the Ninety-fifth Congress and 47 percent in the Ninety-sixth. (See Table 1.)

Waivers of House rules, therefore, have become a common component of special rules—both open rules and others that permit consideration of measures in Committee of the Whole.²¹ Beyond question, the most important development affecting the frequency of such waivers was the enactment of the Budget Act in 1974. In the Ninety-fifth Congress, waivers of one or more provisions of this act accounted for 44 percent of all specific waivers of House rules, and this percentage increased to 47 percent during the Ninety-sixth Congress. At the same time, the total number of specific waivers included in special rules also increased quickly and sharply. The 223 special rules for action in Committee of the Whole reported during the Ninety-third Congress included ninety-one specific waivers of House rules. By contrast, there were 254 such waivers in the 204 such rules reported in the Ninety-fifth Congress, and 272 in the 195 rules that the Rules Committee recommended during the Ninety-sixth Congress. Moreover, these data, presented in Table 4, do not include waivers included in special rules reported for other purposes, and a majority of these resolutions were necessary only to waive House rules during the consideration of conference reports and general appropriation bills.

²¹ In his 1961 article, cited in note 5, Robinson discusses waivers of points of order only as they affect consideration of privileged general appropriation bills.

TABLE 4
TYPES OF HOUSE RULES WAIVED BY SPECIAL RULES REPORTED BY THE HOUSE RULES COMMITTEE: 90th CONGRESS — 96TH CONGRESS

	90th		91st		92nd		93rd		94th		95th		96th	
	#	%*	#	%*	#	%*	#	%*	#	%*	#	%*	#	%*
Number of waivers of ^a														
Committee procedure requirements ^b	0	—	0	—	0	—	1	1	0	—	1	—	0	—
Committee report requirements ^c	0	—	9	64	10	17	7	8	10	9	22	9	15	5
Three day layover requirement	0	—	0	—	7	12	13	14	20	17	7	3	6	2
Germaneness requirement	0	—	2	14	16	27	19	21	19	16	52	20	43	16
Prohibition of appropriations in legislation	0	—	2	14	26	44	50	55	39	34	59	23	80	29
Congressional Budget Act provisions	—	—	—	—	—	—	—	—	27	23	112	44	128	47
Other rules ^d	0	—	1	7	0	—	1	1	0	—	1	—	0	—
Total number of specific waivers of House rules	0	—	14	100	59	100	91	100	115	100	254	100	272	100

* The number of each type of waiver as a percentage of all specific waivers of House rules.

^a Entries represent the number of times specific rules were waived, with rules listed separately or grouped in classes; waivers of all points of order have been excluded.

^b Requirement that a majority be present to report measure.

^c E.g., inclusion of Ramseyer print, cost estimates, oversight findings, inflationary impact statement, roll call vote to report measure, and supplemental, minority, and additional views.

Special restriction relating to roads legislation.

Sources: See note on sources accompanying Table 1.

Note: This table includes data only on special rules providing for initial consideration in Committee of the Whole of measures other than general appropriation measures. Excluded are waivers that pertain to Senate measures made in order for subsequent consideration.

Because of their frequency and potential importance, waivers of Budget Act provisions deserve special note. The act is intended to require the Congress to agree on a series of targets, covering total expenditures and revenues for the coming fiscal year and the allocation of expenditures among a number of functional categories, before it acts on individual spending and taxing measures. Congress then must review its decisions on these individual measures and revise them if necessary, shortly before the new fiscal year begins. The act includes a series of deadlines and prohibitions designed to enforce this sequential process. For example, as already noted, section 303(a) prohibits consideration of a taxing or spending bill before

House and Senate agreement on the first concurrent budget resolution, and section 402(a) requires that measures authorizing funds for the next fiscal year be reported by May 15th of that year so that the necessary appropriations can be considered and enacted before action on the second budget resolution.

Much of the responsibility for enforcing the Budget Act rests on the Rules Committee. Although the committee responded by including 112 waivers of Budget Act provisions in 204 special rules of the Ninety-fifth Congress, and 128 such waivers in 195 rules reported during the Ninety-sixth Congress, these data should not be taken to mean that the prohibitions of the act have been breached at will. First, the Rules Committee has developed the practice of consulting with the House Budget Committee before granting requested waivers of the Budget Act, and usually accepts the latter committee's recommendations. Second, many of the waivers that are included in special rules are technical, in the sense that they are granted with the assurance that the violations will be cured by amendments on the floor.

During debate on H. Res. 599 of the Ninety-fourth Congress, for consideration of the Energy Conservation and Oil Policy Act of 1975 (H.R. 7014), Representative Bauman of Maryland noted that the special rule proposed to waive section 401 of the Budget Act, which provides that new spending authority is to be subject to appropriation acts. Replying on behalf of the Rules Committee, Representative Pepper of Florida noted:

So the chairman of the committee [the House Budget Committee], the gentleman from Washington (Mr. Adams) appeared [before the Rules Committee] and stated that he had no objection to the language that was in the bill, because he had been advised that the chairman of the appropriate committee that would handle the matter would offer an amendment on the floor to the effect that that obligation of the U.S. Government would not become binding until approved by the Committee on Appropriations. . . .²²

Pepper went on to remind members that this was not an unusual procedure, even at such an early stage in the implementation of the Budget Act:

[I]t is the same procedure that has been followed in other instances where the provisions in the bill were in obvious conflict with the Budget Committee law. There has not been a single instance where a commitment made to modify the bill so that it would conform with the budget requirements has not been made and allowed by the House²³

This has continued to be a common practice, and one that often is necessitated by the time House committees have required to consider and

²² House, *Congressional Record* 94 Cong., 1 sess., vol. 121, pt. 18, 22734.

²³ *Ibid.*

report on legislation. For example, a bill introduced in the first session of a Congress may include authorizations to become effective during the fiscal year beginning during the second session. But if the bill is not reported until after May 15th of the second session, it may come to the floor under a special rule protecting its consideration, with the understanding that a committee amendment will be offered to delay the effect of the authorization until the following fiscal year. On occasion, however, special rules have waived Budget Act prohibitions on the grounds that strict compliance with the act would be at odds with the requirements of public policy. An illustrative case was H. Res. 666 of the Ninety-fifth Congress, for consideration of H.R. 7171, the Agricultural Act of 1977. Representative Sisk of California, the majority floor manager of the resolution, discussed the Budget Act waivers it included:

The rule provides for several waivers of the Budget Act in order for the bill to be considered. This is necessary because H.R. 7171 contains violations of sections 303(a)(4), 401(a), 401(b)(1), and 402 of the Budget Act. Most of these violations, however, are merely technical since the Committee on Agriculture has indicated that it will offer floor amendments to correct all of the problems with one exception. . . .

H.R. 7171 sets target prices for certain commodities at one level for the 1977 crop, a higher level for the 1978 crop, and a yet higher level for the 1979 crop. Since support payments for a given crop year are made the following fiscal year, this provision creates some entitlements first effective in fiscal year 1978 for the 1977 crop, some in fiscal year 1979 for the 1978 crop, and some in fiscal year 1980 for the 1979 crop. Applying the requirements of section 303(a)(4) of the Budget Act, the fiscal year 1979 and fiscal year 1980 entitlements cannot be considered until after the first budget resolution for the appropriate fiscal year has been agreed to.

However, full compliance with the Budget Act in this regard would preclude consideration of new price support measures for a given crop year until after the crops are planted. Clearly, compliance in this case would be inconsistent with any sound farm policy. Consequently, the Budget Committee recommended that a waiver of section 303(a)(4) be granted. The Committee on Rules concurred with this recommendation and the rule contains the waiver.²⁴

In summary, then, waivers of House rules have become an increasingly frequent component of special rules, in considerable part because of the stringent requirements of the Congressional Budget Act. Even in its consideration of open rules, the Rules Committee has been called upon to make recommendations with policy consequences concerning the extent to which the consideration of measures, their provisions, and committee amendments to them, should be protected from the full force and effect of House rules.

As the data in Table 1 indicate, not all recent special rules for considering bills in Committee of the Whole fit comfortably into the two mutually exclusive categories of open rules (in simple or committee substitute form) and closed rules. The resolutions classified in this table as "complex rules"

²⁴ House, *Congressional Record* 96 Cong., 1 sess., vol. 123, pt. 18, 23698-23699.

have constituted a small but growing minority of all special rules reported during recent Congresses. Although relatively few in number, it is these rules that are most likely to spark controversy in the contemporary House and that reflect an increasing tendency for the Rules Committee to attempt to shape the policy options available to members with a discrimination that sometimes approaches surgical precision.

Through the use of complex rules, the Rules Committee can affect proceedings during both stages of consideration in Committee of the Whole in ways that are uncharacteristic of both open and closed rules. For example, such rules frequently have permitted more than two members to control and allocate time for general debate. Under the terms of complex rules, the control of general debate time may be divided among the chairmen and ranking minority members of two or more committees; in more unusual cases, some time also may be allocated for control by an additional, specifically named member who is the primary proponent of a major amendment that is to be offered.

More importantly, complex rules affect the amending process by means of provisions that are restrictive, expansive or both. Restrictive provisions impose some limitations on the rights of members to offer amendments that otherwise would be in order without foreclosing amendments altogether. Expansive provisions, on the other hand, may permit members to offer floor amendments that violate House rules or precedents—most commonly, the prohibition of Rule XVI against non-germane amendments. Under other circumstances, expansive provisions may define the order in which a complicated series of amendments are to be proposed, even if no waivers of points of order are necessary for the amendments to be considered. A single special rule may include only restrictive or expansive provisions, or it may be restrictive in some respects but expansive in others—hence the generic designation of such rules as “complex” rules.

In comparison with earlier foci of controversy involving the Rules Committee—whether to report a rule at all, and whether that rule should be fully open or fully closed—the emergence of complex rules has permitted the committee to intervene in the amending process, with increasing frequency, in discriminating ways that influence legislative outcomes by defining the alternatives among which members may choose. Although these special rules, like all others, require adoption by majority vote on the floor, they usually have withstood attack, sometimes from an extraordinarily unified Republican minority.

Like most developments affecting congressional operations, the development of complex rules has no single cause, and it is impossible to measure with any precision the respective weights of possible contributing causes. Nonetheless, two factors—one clear, and the other more amorphous—deserve special note.

Without doubt, the provisions of many complex rules reflect the potential parliamentary complications posed by the referral of measures to more than one House committee. Having made two inconclusive efforts during the 1970s to revise committee jurisdictions, the House recognized that no ideal system for the division of labor among committees could be devised, much less implemented. Consequently, the House authorized multiple referrals as part of the Committee Reform Amendments of 1974, and since then, an increasing number of bills and resolutions have been considered, in whole or in part, by two or more committees, each examining the policy proposals within its jurisdiction. In such cases, special rules generally have allocated control over some part of the general debate to the leaders of each of the committees involved. In many cases too, these rules have included special arrangements for considering each committee's amendments on the floor. In some instances, the Rules Committee evidently has taken pains to offer each committee an equitable opportunity to present its position. In other instances, the provisions of complex rules for dealing with committee amendments arguably have given one committee a significant parliamentary advantage over another. It seems likely also that the frequency of multiple referrals may be one reason for the increasing number of waivers in special rules. For example, the sequential referral of a single bill to two committees imposes an additional obstacle to meeting the requirement of the Budget Act that authorization bills are to be reported by May 15th of each year.

A second stimulus for the emergence of complex rules probably lies in a series of developments which, collectively, have resulted in a decline in the deference of members to the recommendations of their standing committees. Almost one-half of the members of the Ninety-seventh Congress are in their first, second, or third term of continuous service. Only six of the twenty-two members who chaired standing committees of the House at the beginning of the Ninety-fifth Congress in 1977 continued to chair the same committee at the beginning of the Ninety-seventh Congress four years later. In addition, the position of committee chairman has become less pivotal and influential. One of the major themes of change in the House during the 1970s was the dispersion of authority and control from House committees to their subcommittees. This trend toward decentralization has increased the number of members with pretensions to leadership, each within a narrow policy domain, and necessarily complicated the task of coalition-building within committees.

Taken together, these developments probably have made members less willing to defer to committee recommendations and more likely to offer floor amendments of their own. At the same time, individual floor initiatives also have been encouraged by the 1970 provision for recorded votes on amendments in Committee of the Whole and the cross-cutting cleavages

that came to characterize the Democratic majority in the House during the past decade. Moreover, the electoral independence of members from party and the limited leverage available to House party leaders mean that there are relatively few costs to be incurred, compared with the great potential benefits to be derived, from members' staking out their own positions and claiming credit for shaping legislation on the floor.

In this context, complex special rules become a means for both accommodating and controlling the proclivity of members to amend bills on the floor. Expansive provisions in such rules permit consideration of legislative options and dimensions of issues other than those proposed by the committee or committees of jurisdiction. Restrictive provisions offer members greater latitude than closed rules, but also can be used to protect against certain amendments being offered, and against an excessively lengthy amending process. In general, then, the increased complexity and variability in the provisions of special rules may be viewed as a useful, and in some respects necessary, response to the difficulties of aggregating interests successfully by party or in the committees of the contemporary House of Representatives.²⁵

²⁵ For a more extended discussion of complex rules, and both parliamentary and strategic consequences of restrictive and expansive provisions in such rules, see Stanley Bach, "The Structure of Choice in the House of Representatives: The Impact of Complex Special Rules," in a forthcoming 1981 issue of the *Harvard Journal on Legislation*.