

House Rules and Precedents Affecting Committee Markup Procedures

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Summary

Markup procedures in standing committees of the House of Representatives generally conform with the procedures that the House follows when it conducts business on the floor “*as in Committee of the Whole*” (in contrast to being in Committee of the Whole). This report briefly discusses those procedures, on the floor and in committee. It does not discuss the various procedures that House committees have adopted as part of their own rules.

Background

The rules of the House of Representatives are ambiguous with respect to the procedures that standing committees are to follow at meetings to mark up legislation.

Clause 1(a)(1) of Rule XI generally provides that “[t]he Rules of the House are the rules of its committees and subcommittees *so far as applicable*.” And clause 2(a) of the same rule directs each standing committee to adopt written rules governing its procedures that “may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House....”

Two problems arise in interpreting these rules. First, they do not define which House rules are applicable to committees and subcommittees, nor do they provide criteria to judge whether committee rules are not inconsistent with House rules. Second, the House’s rules make available different sets of procedures that the House uses under different circumstances to consider various bills and resolutions on the floor. It would not be possible for all of these procedures to be applicable to committees at the same time. By the same token, it would not be possible for committees to adopt rules that would be “not inconsistent” with all of these procedures.

The House parliamentarian provides guidance when he notes in the commentary accompanying Sec. XXX of *Jefferson’s Manual* that “[t]he procedures applicable in the House as in the Committee of the Whole generally apply to proceedings in

committees of the House of Representatives.” He also points out several exceptions to this general statement that are discussed below.

On the Floor

There is a distinctive set of procedures that the House follows when it considers a measure on the floor “in the House as in Committee of the Whole.” These procedures are not stated in the House’s standing rules—they are a matter of well-established precedent instead—and the House does not use them very often.

There are four circumstances in which the House may consider measures in the House as in Committee of the Whole. First, when the Committee on Government Reform calls up a bill on one of the days specially set aside for measures concerning the District of Columbia, the House may agree by unanimous consent to consider that bill in the House as in Committee of the Whole. Second, the House sometimes has agreed, by unanimous consent, to consider an appropriations or rescission measure in this way. Third, private bills are to be considered in the House as in Committee of the Whole. Fourth, this set of procedures is to be used for considering measures that are on the Union Calendar (or would be placed on the Union Calendar if reported from committee) and that are brought to the floor by unanimous consent. In the last two cases, however, these bills usually are passed without formal debate, so the procedures rarely are actually invoked.

As its name suggests, the procedures applicable in the House as in Committee of the Whole combine elements of the procedures that apply in the House and those that are followed in Committee of the Whole. When a bill is considered in the House as in Committee of the Whole, the Speaker continues to preside. The House does not actually resolve itself into Committee of the Whole, but in some respects, it acts as if it had. There is no general debate, and all debate takes place under the five-minute rule, not the one-hour rule. Thus, the majority floor manager moves to strike the last word in order to secure five minutes in which to make his or her opening statement. Other Members also use such pro forma amendments to gain time for debate.

In the House as in Committee of the Whole, the bill is not read for amendment; it is open to amendment at any point. During consideration of the bill and each amendment to it, both the motion to limit or close debate and the motion to order the previous question are available.

The majority floor manager (or another Member) may move to limit or close debate on a pending amendment and all amendments thereto. Adopting this motion requires only a simple majority vote. If the motion is adopted and after any remaining time for debate expires, Members still can offer amendments to the pending amendment before the House votes on it, but there is no time for debating any of these amendments either. Because the bill is open to amendment at any point, the majority floor manager (or another Member) also may move to limit or close debate on the entire bill and all amendments thereto. Again, once debate ends,

additional amendments remain in order but cannot be explained, except by unanimous consent.

Alternatively, the majority floor manager (or another Member) may move to order the previous question on the pending amendment or on the bill and all amendments thereto. If the House adopts this motion, also by simple majority vote, that ends the debate, precludes further amendments, and brings the House to a vote on adopting the amendment or a vote on passing the bill (unless a Member intervenes by offering a motion to recommit). The previous question may not be moved on a portion of a bill.

In Committee

When a standing committee begins meeting to mark up the text or draft of a measure, it first is to be read in full. This requirement derives from a provision of *Jefferson's Manual* (Sec. XXVI) that continues to apply to the House today. However, Rule XI, clause 1(a)(1), provides for a highly privileged and nondebatable motion to waive this first reading in committee or subcommittee if printed copies of the text are available.

In committee, the text then is read for amendment, section by section. The text is not considered as read and open to amendment at any point; this is one respect in which the procedures of the House as in Committee of the Whole do not apply in committee. Furthermore, each section is to be read, not merely designated. On the floor, by contrast, when the House considers a bill in Committee of the Whole under the terms of a special rule, that rule often provides for each section to be designated, not read. In committee, the reading of a section can be dispensed with by unanimous consent, but not by majority vote.

When a section has been read, committee members may offer amendments to it, just as they can on the floor when the House has resolved into Committee of the Whole. Without unanimous consent, a Member may not offer an amendment to a section of the bill that has not yet been read or to a section after a later section has been read. Each amendment must be in writing and must be read before debate on it begins, unless the reading is waived by unanimous consent. An amendment may be withdrawn without the need for unanimous consent unless the committee has acted on it.

Committee members may speak on the bill and amendments under a five-minute rule. In contrast to the House's floor procedures, however, committee members do not have to offer pro forma amendments (*i.e.*, moving to strike the last word) in order to secure five minutes for debate. A committee member who wishes to speak for five minutes merely seeks recognition from the chair. In recognizing committee members to speak and offer amendments, the chair presumably is expected to be guided by the same practices that the chairman of the Committee of the Whole follows on the floor: generally alternating between members of the two parties and generally recognizing members in order of their seniority.

In committee, a motion is in order to limit or close debate on the pending amendment (and all amendments thereto) or on the pending section of the bill (and all amendments thereto). Because the bill is read for amendment by sections, it is not in order to move to *limit or close debate* on the entire bill until the reading of the bill has been completed or the committee has agreed by unanimous consent to consider the bill as having been read. Similarly, a member may move the *previous question* on the pending amendment (and all amendments thereto), or on the entire bill (and all amendments thereto) after the bill has been read or considered as read. As on the House floor, the previous question may not be moved and ordered on a section of a bill.

The parliamentarian notes that committees “may employ the ordinary motions which are in order in the House,” such as motions to adjourn, table, postpone to a day certain, postpone indefinitely, and reconsider. During debate on amendments, however, the motion to table rarely is employed because “when a proposed amendment is laid on the table the pending bill goes there also”.

It should be emphasized that the rules of the House do not explicitly direct House committees to follow the procedures applicable in the House as in Committee of the Whole. (As discussed above, the House parliamentarian has stated that these procedures only “generally apply” to proceedings in House committees.) Furthermore, it is generally left to each committee to enforce or disregard its procedures governing debate and amendment during markup sessions. In *Procedure in the House* (ch. 17, sec. 11.1), the House parliamentarian states that “a point of order does not ordinarily lie in the House against consideration of a bill by reason of defective committee procedures occurring prior to the time the bill was ordered reported to the House. Such point of order, if made in the House, may be overruled on the ground that the rules of a particular committee are for that committee to interpret unless they are in direct conflict with the rules of the House or unless the House rules specifically permit the raising of such objections.”