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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 to guidelines the House follows when it conducts business on the floor under a set of procedures known as consideration by the “House as in Committee of the Whole.” Consideration by the “House as in Committee of the Whole” is not the same as the more common practice of the House “resolving itself into Committee of the Whole House” but is, instead, a more rarely used set of procedures that combines elements of both procedures used in the House and procedures used in Committee of the Whole. This report briefly discusses these procedures as they relate to legislative business conducted on the floor and in committee.

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Background

The rules of the House of Representatives are ambiguous in many respects to the procedures that its standing committees are to follow when they 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*.” At the same time, clause 2(a) of the same rule directs each standing committee to adopt written rules governing its own actions 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 from this ambiguity. First, the House rules do not clearly define which House rules are applicable to committees and subcommittees, nor do they provide criteria to judge whether individual committee rules are consistent with overall House rules. Second, the House’s rules contain different sets of procedures that the House uses under different circumstances to consider legislation on the floor. It would not be possible for all of these procedures to apply to committees simultaneously.

House as in Committee of the Whole

Over time, markup procedures in standing committees of the House of Representatives have come to generally conform to practices the House follows when it conducts business on the floor under a rarely used set of procedures called consideration by the “House as in Committee of the Whole.” It is important to note that consideration by the “House as in Committee of the Whole” is not the same as the common practice of the House “resolving itself into Committee of the Whole House” but is, instead, a more infrequently used hybrid set of procedures that combines elements of both procedures used in the House and procedures used in Committee of the Whole. It is not a practice that is defined in the House rules.

The House parliamentarian provides guidance when he notes in the commentary accompanying Section 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, some of which are discussed below.

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”; this nearly universal practice has simply evolved over time. It is generally left to each committee to enforce or disregard its procedures governing debate and amendment during markup sessions.

On the Floor

The House follows a distinctive set of procedures when it considers a measure on the floor in the House as in Committee of the Whole. These procedures are not spelled out in the House’s standing rules; they are a matter of precedent, 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 Oversight and 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 are brought to the floor by unanimous consent. In the last two cases, however, these bills are usually passed without any formal debate, so the procedures, while technically in force, are rarely 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 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. A quorum is 218 Members, as opposed to a quorum of 100 in Committee of the Whole. 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 can still 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) may also 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

House Rule XI, clause 2(g)(3), states that a committee markup may not begin sooner than the third day on which committee members have had notice of the markup unless the chairman and ranking Member concur that there is good cause to hold the meeting sooner or the committee has voted to do so. Clause 2(g)(4) of the same rule requires that the chairman of a committee make available in electronic form the text of legislation to be marked up at least 24 hours prior to the commencement of the markup meeting. When a standing committee begins meeting to mark up the text or draft of a legislative measure, the measure must first be read in full. This requirement derives from a provision of *Jefferson's Manual* (Section XXVI) that continues to apply to the House today. However, Rule XI, clause 1(a)(1)(B), 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 is then 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 must be read, not merely designated. By contrast, on the floor, 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 motion.

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. Unless they obtain unanimous consent, members may not offer amendments to a section of the bill that has not yet been read or to a section after a subsequent section has been read. Each amendment offered 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 by the member offering it without the need for unanimous consent unless the committee has already 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 needs to seek recognition from the chair.

In recognizing committee members to speak and offer amendments, the chair 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. Some committees have voluntarily established so-called "early bird" rules that afford priority in recognition to members who arrived before the hearing commenced.

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). However, because a 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 just a section of a bill.

In addition, under one commonly used procedure, the chair can offer, or recognize another member to offer, an amendment in the nature of a substitute, which is essentially a full-text alternative to the pending measure. Such an amendment can be offered only at the beginning or end of the process and is then open to amendment at any point. When an amendment in the nature of a substitute is offered at the beginning of the markup, it serves as the base text for committee deliberations, and members will ordinarily direct their amendments to the substitute rather than the underlying bill. Some committees choose to use this procedure because it allows the previous question to be moved on such an amendment following debate on it, cutting off all further discussion and amendments to the measure being marked up. An amendment in the nature of a substitute can also have other political and parliamentary advantages. Using such an amendment allows the chair to have the committee mark up recently written text while still maintaining the bill number, sponsor, and cosponsors of the measure being amended. Reporting one committee substitute that represents all of the changes made at a markup is also potentially easier to deal with on the House floor than reporting a bill with multiple "cut and bite" amendments.

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 is rarely employed in committee because “when a proposed amendment is laid on the table the pending bill goes there also.”

At the end of a committee markup, the final vote is taken on a motion to order the measure reported to the House. Clause 2(h)(1) of Rule XI requires that a numerical majority of the committee, often called a “reporting quorum,” be physically present in order to order such a report.

Points of Order

It is generally left to each committee to enforce or disregard its procedures governing debate and amendment during markup sessions. The House parliamentarian has stated 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 grounds 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 House rules specifically permit the raising of such objections.¹

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Acknowledgments

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¹ William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2011), ch. 11, §15, p. 271.

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