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Special Rules in the House of Representatives

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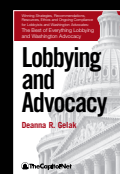
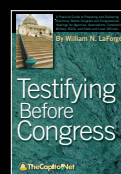


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Special Rules in the House of Representatives

Summary

The House Rules Committee enables the House to debate and vote on major legislation that is not privileged for floor consideration and that cannot pass by unanimous consent or under suspension of the rules. The Committee reports resolutions, known as rules or special rules, to make individual bills in order for floor action and to affect the procedures for debating, amending, and voting on the bills, usually in Committee of the Whole.

Open rules do not restrict the germane floor amendments that Members can propose. Closed rules generally prohibit all floor amendments, except perhaps for those recommended by the standing committee with jurisdiction over the bill. Restrictive rules, sometimes called modified open or modified closed rules, limit opportunities for offering floor amendments, usually by identifying the specific amendments that are to be in order.

The Rules Committee also may report rules with “queen-of-the-hill” or “self-executing” provisions that set aside some of the regular procedures and prohibitions of the legislative process. In addition, special rules can waive points of order against bills and amendments. Conference reports usually receive rules only or primarily to waive points of order.

The Rules Committee can devise a resolution to address, create, or avoid almost any parliamentary situation. However, each of its resolutions must be debated and adopted by majority vote on the House floor. Thus, the House first considers the proposed rule on a bill before beginning consideration of that bill under the terms and conditions of the rule.

This report was originally written by Stanley Bach, a former Senior Specialist in the Legislative Process at CRS. The contents of this report, and the examples cited herein, reflect the practices of the House with regard to special rules at the time it was written. It will be updated to reflect any changes in House practice.

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Special Rules in the House of Representatives

Introduction

The House Committee on Rules has legislative jurisdiction over measures proposing to change most of the standing rules of the House, just as the House's other standing committees have responsibility for proposals on the subjects within their respective jurisdictions. In addition, clause 1(m) of House Rule X gives the Rules Committee jurisdiction over measures relating to the "order of business of the House." It is this authority that places the committee at the heart of the legislative process on the House floor.

The Rules Committee affects the order of business by reporting resolutions that are generally known as *rules* or *special rules*; less often they also are called "special orders" or "order of business resolutions." These resolutions are instrumental in determining if and when particular bills reach the House floor, how long they may be debated, and to what extent they can be amended. The resolutions also may waive points of order that Members otherwise could make against measures, amendments, and conference reports. Each resolution the committee reports is subject to at least one hour of debate on the House floor, after which the House may accept, reject, or amend it by majority vote. So the committee only proposes its recommendations to the House; it cannot impose them. However, the House usually approves the committee's resolutions, although sometimes after heated debate and rollcall votes that divide the House largely along party lines.

This report begins by describing how special rules relate to the larger question of the order of business on the House floor. It then examines the text of a conventional special rule, explaining the reasons for and effects of its various provisions. Subsequent sections discuss and illustrate alternative provisions, especially as they affect the amending process in Committee of the Whole, as well as the forms of special rules that may affect floor consideration of general appropriations bills and conference reports. The final sections of the report discuss the ways in which special rules are developed by the Rules Committee and then considered by the House.

What follows assumes some basic familiarity with House floor procedures. Some complementary CRS reports and other related documents are listed at the end of the report.

The Reason for Special Rules

The House needs flexible procedures for arranging its order of business on the floor—for deciding what bills it will consider and when. During each Congress, the House's legislative committees recommend more bills for passage than the House has time to consider. Furthermore, the House cannot simply take up bills on the floor in the order in which its committees report them. Such an automatic procedure would disregard differences in the importance and urgency of bills and make it impossible for the House to meet deadlines, such as the beginning of a new fiscal year by which the annual appropriations bills are supposed to have been enacted into law.

In clause 1 of Rule XIV, the House's standing rules do contain a daily order of business that lists what shall take place on the House floor each day unless the House decides otherwise. In fact, the House never follows this order of business as it debates and votes on legislation. Every measure on which the House acts comes to the floor as an interruption of the regular order of business; procedures and measures that may interrupt the regular order of business are *privileged*.

There are essentially three ways in which bills become privileged and, therefore, eligible for floor consideration.

First, various House rules make certain kinds of measures privileged, including most appropriations bills, budget measures, conference reports, and measures reported from the Rules Committee either to amend the standing rules or to affect the order of business. Such a privileged measure can be called up for floor consideration whenever there is no other measure pending. The standing rules grant these measures privileged access to the floor because of their special importance for the House's ability to meet its constitutional responsibilities.

Second, the standing rules also make certain procedures in order on designated days of each week or month; measures brought up under these procedures thereby become privileged for floor consideration on those days. The most common of these special procedures is suspension of the rules. On every Monday and Tuesday, motions are in order to suspend the rules and pass individual bills (or take other legislative actions). Other days each month are set aside for floor action on motions to discharge committees from further consideration of bills, on bills listed on the Corrections and Private calendars, and on certain bills concerning the District of Columbia. Another little-used procedure called Calendar Wednesday sets aside each Wednesday for committees to call up bills they have reported and that are not otherwise privileged for floor consideration.

These procedures are useful but they do not enable the House to take up most of the important legislation on which its Members wish to act, including tax bills, all the major authorization bills, and other bills that cannot pass by two-thirds votes under suspension motions. So each of these measures becomes privileged in a third way—by the House voting for a resolution, recommended by the Rules Committee, to make that bill in order for floor consideration. In other words, the Rules Committee reports a privileged resolution on the order of business which proposes that another particular

measure should be considered on the floor. If the House adopts that resolution by simple majority vote, the measure to which it relates then becomes privileged.¹

Thus, the Rules Committee is a critical link between the House's committee system and the House floor. If the Rules Committee fails to grant a rule (report a resolution) concerning some bill another committee has reported, that bill is unlikely ever to reach the floor for passage by simple majority vote, and so cannot become law. By deciding when to grant a rule on a bill, the committee is instrumental in arranging the House's floor agenda for each week, month, and session. And in writing its special rule on a bill, the committee affects how the bill will be considered once it does reach the floor. For these reasons, the committee's actions and inactions can be as controversial as they are important.

Of course, the committee does not act unilaterally. Most important, each of its resolutions is subject to majority vote on the floor; it can be amended or defeated. However, the House usually approves the committee's recommendations without change, in large part because it works as an effective ally of the House's majority party leadership. The Speaker and the minority leader now nominate their respective party members on the committee. And the majority party enjoys a membership advantage on the Rules Committee of two-to-one-plus-one, whereas the party ratio on other committees more closely reflects the numbers of Republicans and Democrats in the House as a whole. This deliberate partisan imbalance reflects the critical role the committee plays in controlling the House's floor agenda and defining the policy choices the House has an opportunity to make.

Types of Special Rules

The House considers most major legislation in the Committee of the Whole House on the state of the Union because the procedures that apply in Committee of the Whole allow more Members to participate in debate and offer amendments than do the procedures that apply "in the House." After the House resolves into Committee of the Whole to consider a bill, there is a period for general debate on its merits and provisions, after which the bill usually is considered for amendments with Members being able to offer their amendments to each section as it is considered. Amendments are debated under the five-minute rule, each Member being able to speak for five minutes on each amendment unless the Committee decides to limit or end the debate. When the Committee has voted on the last amendment to be offered, it "rises" and reports the bill back to the House with the amendments it has approved. These are recommendations to the House so the House must vote again on these amendments. A Member then may offer a motion to recommit the bill to committee before the House votes on passing it.

Most special rules make individual bills in order for consideration in Committee of the Whole under these procedures. Under what is known as an *open rule*, Members may offer whatever amendments they choose while the bill is being considered for

¹ A two-thirds vote is required for the House to consider a special rule on the same day the Rules Committee reports it.

amendment so long as their amendments meet the normal requirements imposed by standing House rules and well-established precedents. The rule is "open" in that it leaves the bill fully open to amendment. At the opposite extreme, the Rules Committee may propose a *closed rule*, under which no amendments are in order in Committee of the Whole, except perhaps for amendments proposed by the committee that had reported the bill; the bill is closed to all amendments that individual Members might want to offer.

In other instances, the Rules Committee reports *restrictive rules* that limit the floor amendments that Members can propose in Committee of the Whole without prohibiting amendments altogether. Sometimes these rules are called *modified open* and *modified closed* rules, though Members may disagree about these characterizations. A modified open rule, for example, may permit all floor amendments with one or more exceptions, prohibiting amendments on a certain subject or amendments to a certain provision of the bill. A modified closed rule, on the other hand, may foreclose all amendments with one or more exceptions that are specifically identified by the resolution. More complex rules contain combinations of such provisions, and perhaps others as well.

In crafting a special rule, the Rules Committee can devise whatever procedures it considers most suitable for floor action on a particular bill. From time to time, for instance, rules have contained what became known as *queen-of-the-hill* (or, in another version, "king-of-the-hill") provisions that enable Members to vote on several alternative approaches to the same subject in ways that the House's normal amendment procedures would not allow. In other cases, rules have included *self-executing* provisions by which the House's vote on adopting the rule also has the effect of amending the bill that the rule makes in order.

In unusual circumstances, a special rule may provide for a bill to be considered not in Committee of the Whole, but "in the House" or, rarely, "in the House as in Committee of the Whole." Under these procedures, floor amendments can be precluded, or the amending process can be terminated, when the House decides by majority vote to order the previous question, which has the effect of preventing further amendments from being offered.

Any of these kinds of rules also may include waivers that protect bills, provisions, amendments, or motions against points of order that Members could make against them under the House's standing rules and precedents or under the procedures of the House's budget process that have been enacted into law. In the case of general appropriations bills and conference reports, which are privileged and so do not need special rules to come to the floor, the Rules Committee may report resolutions solely for the purpose of protecting them against points of order.

There are only two provisions of House rules that the Rules Committee cannot propose to waive through a special rule. Clause 6(c) of Rule XIII prohibits the committee from reporting a rule that would interfere with the rarely-invoked Calendar Wednesday procedure because that procedure was added to the rules to protect other standing committees against inaction by the Rules Committee. And the same clause prohibits a special rule from reporting "a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause 2(b) of

Rule XIX," because that motion is an important prerogative of the minority party. At the beginning of the 104th Congress in 1995, the House amended what is now clause 6(c) to clarify that the Rules Committee may not prohibit a recommittal motion from including an amendment to the bill the House is considering if the motion is made by the minority leader or a designee.

The next several sections of this report illustrate and explain the provisions of these various types of rules by using examples drawn primarily from the 104th Congress.

Elements of an Open Rule

Although special rules can take various forms and the Rules Committee can be highly creative in drafting them, most of these resolutions are variations on the well-fixed provisions of the simple open rule, such as H.Res. 52 of the 104th Congress (Exhibit 1). An understanding of these provisions is essential to mastering the more complex provisions of rules that often govern floor action on more controversial measures.

The first purpose of most special rules—to make a bill in order for floor consideration—is accomplished by the first sentence of this resolution, which authorizes the Speaker to declare the House resolved into Committee of the Whole to consider the bill. Without this authority, the Speaker would not have the power to do so. This provision appears in identical form (except for the bill number and title, of course) in all special rules providing for initial floor consideration of measures in Committee of the Whole.

Before 1983, special rules made in order a motion to resolve, which the House would decide by majority vote without debate. The result was numerous votes each Congress on such procedural motions, the outcome of which was rarely if ever in doubt. To avoid the need for these votes, the House amended what now is Rule XVIII (then Rule XXIII) in January 1983, at the opening of the 98th Congress, to grant the Speaker the authority to declare the House resolved into Committee of the Whole to consider a particular bill, but only when authorized to do so by a special rule the House has adopted.

Although this change might seem to have increased the Speaker's power, it did not really have this effect in practice. Even before the 1983 rules change, the power to determine the House's daily schedule rested largely with the Speaker and his fellow members of the majority party leadership. By adopting a special rule for considering a bill, the House votes to make that bill in order for floor action. However, special rules rarely require that the House proceed to consider a bill immediately. More often than not, the House begins debate on a bill on the same day or the day after it adopts the rule allowing the bill to come to the floor. But this practice is not mandated by the House's standing rules. It is largely up to the majority party leaders to decide what legislation the House will consider each day from among those measures eligible for floor action. So under the pre-1983 practices of the House, motions to resolve were not made without prior consultation with and approval by the Speaker.

The next series of provisions in H.Res. 52 all address how the bill will be debated and how it may be amended in Committee of the Whole. None of these provisions is essential in the sense that the standing rules of the House and the House's precedents would govern these stages of the process if a special rule did not address them. However, these provisions of a customary open rule do expedite and facilitate the deliberative process in several ways.

The first of these provisions, on lines 1 and 2 of page 2, dispenses with the first reading of the bill. Clause 8 of Rule XVI requires bills and joint resolutions to be read three times before being passed. For a bill being considered in Committee of the Whole, the first reading occurs when the Committee of the Whole begins to consider it. After general debate, as we shall see, the bill then may be read for amendment. And the third reading, by title only, takes place in the House, after the Committee of the Whole has completed its work, and shortly before the vote on final passage.

Every rule for considering a bill in Committee of the Whole waives the first reading. If it did not, any Member could demand that the bill be read in full. This could cause considerable delay and would contribute little to the legislative process, especially in light of the requirement that the bill, and the accompanying committee report, be available for three days before it may be considered on the floor. These layover requirements give Members a much better opportunity to master a bill's provisions than they would have from listening to it being read on the floor.

Several provisions that follow control the first of the two stages of consideration in Committee of the Whole. This is the time for general debate on the bill and the issues it addresses; during this time, amendments also may be discussed but they cannot yet be offered.

First, at lines 2 and 3, the rule requires that the debate address the subject of the bill. House rules require that debate in the House must be germane, but there is no corresponding requirement governing general debate in Committee of the Whole. Special rules invariably impose this requirement. (House procedures do require that debate on amendments in Committee of the Whole must be germane.)

Second, at lines 3-5, the rule limits general debate to one hour, to be equally divided and controlled by the chairman and ranking minority member of the standing committee that had reported the bill—in this case, the Committee on Resources. Without these provisions, or unless the House limited the length of general debate in some other way, each Member conceivably could speak for an hour during general debate. General appropriations bills may be considered under rules that only (or at least primarily) waive points of order. In that case, the House decides by unanimous consent to limit and divide the time for general debate, doing so just before agreeing to resolve into Committee of the Whole. Otherwise, the House can vote to limit general debate, but only after the debate has begun; this option is not used in current practice.

House Calendar No. 8

104TH CONGRESS
1ST SESSION**H. RES. 52****[Report No. 104-13]**

Providing for the consideration of the bill (H.R. 400) to provide for the exchange of lands within Gates of the Arctic National Park and Preserve, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1995

Mr. MCINNIS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 400) to provide for the exchange of lands within Gates of the Arctic National Park and Preserve, and for other purposes.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 400) to provide for the exchange
6 of lands within Gates of the Arctic National Park and Pre-



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1 serve, and for other purposes. The first reading of the bill
2 shall be dispensed with. General debate shall be confined
3 to the bill and shall not exceed one hour equally divided
4 and controlled by the chairman and ranking minority
5 member of the Committee on Resources. After general de-
6 bate the bill shall be considered for amendment under the
7 five-minute rule. Each section shall be considered as read.
8 At the conclusion of consideration of the bill for amend-
9 ment the Committee shall rise and report the bill to the
10 House with such amendments as may have been adopted.
11 The previous question shall be considered as ordered on
12 the bill and amendments thereto to final passage without
13 intervening motion except one motion to recommit.

The time for general debate is almost always controlled by the chairman and ranking member of the reporting committee. In the case of a bill that was referred to and considered by more than one committee, each committee leader usually is allocated control of part of the time. In most cases, general debate is limited to one hour, though it may be longer to accommodate all the Members who want to speak on a particularly controversial bill or to allow sufficient time to be controlled by the majority and minority leaders of two or more committees.

At the conclusion of general debate on a bill, the Committee may "rise," transforming itself back into the House, and then resolve back into Committee of the Whole at some later time to resume consideration of the bill. Alternatively, it may continue immediately into the next stage of consideration, which is the amending process.

In its simplest form, an open rule devotes only a few words to this process, even though it is the most important stage of a bill's consideration on the House floor. On lines 6 and 7, H.Res. 52 merely states that "the bill shall be considered for amendment under the five-minute rule. Each section shall be considered as read."

The first of these two provisions simply reiterates the basic procedure by which the bill would be amended if the special rule were silent on this subject. Under standing House rules and precedents, bills being considered in Committee of the Whole are read for amendment, and each amendment is debated under the five-minute rule. A proponent and an opponent of each amendment may speak for five minutes each, after which other Members gain the floor for five minutes apiece by "moving to strike the last word," motions that are known as *pro forma* amendments because they are offered only for the purpose of obtaining time for debate.

Furthermore, the bill is read for amendment one section at a time unless a special rule provides otherwise. Because this rule merely provides that "the bill shall be considered for amendment under the five-minute rule," it implies that the bill is to be read section by section. Alternatively, the rule could state explicitly that the bill shall be read for amendment by titles instead of by sections, or that the bill shall be considered as having been read and shall be open to amendment at any point.

Under standing rules and precedents, the clerk is to read each section (or title) of a bill before the Committee of the Whole considers amendments to it. By providing that "[e]ach section shall be considered as read," the special rule expedites the amending process by waiving this requirement. Again, recall that the layover rule gives all Members three days to study the bill, any proposed committee amendments, and the committee's written report, before the process of floor consideration can begin.

Under a conventional open rule, the Committee of the Whole debates and votes on amendments to each section of the bill, one section at a time. When the Committee has disposed of the last amendment to be offered to the last section of the bill, it has completed its work. It only votes on amendments; it does not vote on the bill as a whole. Furthermore, the Committee of the Whole, like any standing committee of the House, does not actually amend legislation; only the House has this authority. The Committee only votes on whether to recommend each amendment to the House. The

House itself must vote on the recommended amendments, even if they already had been subject to record votes in Committee of the Whole.

Without a special rule, the majority floor manager would move, at the end of the amending process in Committee of the Whole, that the Committee rise and report the bill back to the House with the amendments it has adopted. Most special rules make this motion unnecessary by providing (at lines 8-10) that the Committee shall rise and report automatically. This provision simply precludes the possibility of a record vote on a motion that is sure to be adopted.

The final provisions of a simple open rule, on lines 11-13, expedite the final stages of the bill's consideration, stages that take place in the House after the Committee of the Whole has risen and reported. Without these provisions, the House could debate, and even amend, each of the Committee's recommended amendments under the hour rule (which governs debate in the House). And after the House disposed of all the Committee's proposed amendments, Members could offer their own amendments to the bill, and debate each of them under the hour rule. The result could be a time-consuming repetition of the debates that already took place in Committee of the Whole, but this time under potentially more time-consuming debate rules and with the possibility of rollcall votes on each amendment. To avoid this possibility, the bill's majority floor manager could move the previous question on the bill and all amendments to it. The effect of ordering the previous question is to preclude further debate and any amendments other than those reported from the Committee of the Whole.

Special rules make this motion unnecessary by providing that the previous question already "shall be considered as ordered on the bill and amendments thereto." In this way another potentially time-consuming rollcall vote is avoided. In addition, the rule protects against the possibility of any other "intervening" motion being made before the House finally votes on passing the bill. However, there is one important exception: the rule protects the right of a Member to offer a motion to recommit. By implication, this motion may take one of two forms. If adopted, a simple or straight motion to recommit the bill to committee has the effect of killing it. A motion to recommit the bill to committee with instructions most often directs the committee to report the bill back to the House immediately ("forthwith") with an amendment contained in the instructions. Alternatively, the instructions merely may direct the committee to hold additional hearings or take some other action without requiring that it do so "forthwith."

Thus, a motion to recommit with instructions usually constitutes a last attempt to amend the bill before the House votes on passing it. And because the Speaker gives preference to a Member of the minority party who wishes to offer a recommittal motion, this amendment often represents the minority's position on the bill.

To recapitulate, a simple open rule contains the following elements:

1. authority for the Speaker to declare the House resolved into Committee of the Whole to consider a bill,
2. dispensing with the first reading of the bill before general debate,

3. a germaneness requirement on general debate,
4. a limitation on the length of general debate,
5. allocation of control of the time for general debate,
6. provision for how or whether the bill is to be read for amendment,
7. direction to the Committee to rise and report to the House at the end of the amending process,
8. ordering the previous question in advance on the bill and amendments to it once the Committee of the Whole has reported to the House, and
9. protection for offering a motion to recommit.

Almost every special rule for considering a bill in Committee of the Whole contains these provisions or provisions on these subjects.² There is essentially no variation in these provisions from one simple open rule to the next. What distinguishes an open rule from either a closed or restrictive rule are its provisions governing the amending process in Committee of the Whole. As we shall see in subsequent sections of this report, if a rule does not simply provide for a bill to be considered for amendment, by sections or titles, that rule also contains other provisions that take account of how the bill is to be amended. But some of the provisions of a closed or restrictive rule are identical to those of an open rule, and the others are variations on the basic pattern that has been described and explained here.

Of course, these same provisions do not appear in special rules that the Rules Committee reports for other purposes: for example, for considering measures in the House or for waiving points of order against conference reports.

Open Rules for Amendments in the Nature of Substitutes

Instead of reporting a simple open rule, the Rules Committee frequently recommends a somewhat more complicated form of open rule, most often to take account of how the standing committee of jurisdiction has reported the bill that the rule proposes to bring to the House floor.

In reporting a bill favorably, a standing committee has four options. First, it can report without amendments a bill that was referred to it. Second, it may report that bill with one or more amendments that would make changes in various places in the bill—for example, changing a sentence in one section, deleting a subsection of another section, and adding a new section at the end of the bill. Third, the committee can

² From time to time, the Rules Committee has reported a special rule that only provided for general debate on a bill. It then reported a second rule to govern how the bill was to be subject to amendment in Committee of the Whole.

report a "clean" bill, which is a new bill that incorporates whatever amendments the committee approved during its markup process. The committee may have marked up a bill referred to it or a staff draft prepared at the chairman's direction. In either case, if the committee decides to report a clean bill, that text receives a new bill number and the committee typically orders it reported at the end of the committee's markup meeting.

Fourth, the committee may decide to report a bill that had been referred to it, recommending one amendment that proposes to entirely replace the bill's text. This kind of amendment, which is known as an *"amendment in the nature of a substitute,"* proposes to strike out everything after the enacting or resolving clause of a measure and insert instead a new and different text on the same subject. This approach preserves the number and sponsor(s) of the bill that the committee marked up, but enables the committee to propose what may be a fundamentally different approach to the issues the bill addresses.

A committee's decision to report a bill with an amendment in the nature of a substitute—or, more simply, a committee substitute—also can affect the amendments that Members can propose on the floor. A committee substitute is a first-degree amendment just like any other amendment, meaning that Members can offer second-degree amendments to it. But if a committee chooses to report a clean bill instead, Members can amend the committee's recommendations in two degrees. In either event, the House is almost certain to adopt the committee's position after amending it. So a question arises: Why should Members be able to offer floor amendments in two degrees when a committee reports a clean bill, but only offer amendments in one degree when a committee reports a committee substitute for a bill? To put it differently, why should a committee's decision about how to report its recommendations affect the rights of Members to offer floor amendments in Committee of the Whole?

In response to these questions, the Rules Committee has developed a variant of the simple open rule that gives Members essentially the same amending rights and opportunities, regardless of whether a standing committee reports a clean bill or a committee substitute. An example is H.Res. 125 of the 104th Congress, which is Exhibit 2.

Notice first that the text of this rule through line 4 on page 2 is generally equivalent to that of a simple open rule. This resolution provides for the House to resolve into Committee of the Whole to consider a bill, H.R. 1271, dispenses with the first reading of the bill, requires that general debate be germane, limits and divides control of the time for general debate, and provides for the bill to be considered for amendment under the five-minute rule.

Beginning on page 2, line 4, the rule takes account of the fact that the reporting committee—in this case, the Committee on Government Reform and Oversight—had reported H.R. 1271 with an amendment in the nature of a substitute. To take account of this fact, the rule makes the committee substitute in order "as an original bill for the purpose of amendment under the five-minute rule." This provision means that

House Calendar No. 37

104TH CONGRESS
1ST SESSION

H. RES. 125

[Report No. 104-97]

Providing for the consideration of the bill (H.R. 1271) to provide protection
for family privacy.

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 1995

Mr. McINNIS, from the Committee on Rules, reported the following resolution;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 1271) to
provide protection for family privacy.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 1271) to provide protection for fam-
6 ily privacy. The first reading of the bill shall be dispensed
7 with. General debate shall be confined to the bill and shall
8 not exceed one hour equally divided and controlled by the

1 chairman and ranking minority member of the Committee
2 on Government Reform and Oversight. After general de-
3 bate the bill shall be considered for amendment under the
4 five-minute rule. It shall be in order to consider as an
5 original bill for the purpose of amendment under the five-
6 minute rule the amendment in the nature of a substitute
7 recommended by the Committee on Government Reform
8 and Oversight now printed in the bill. Each section of the
9 committee amendment in the nature of a substitute shall
10 be considered as read. At the conclusion of consideration
11 of the bill for amendment the Committee shall rise and
12 report the bill to the House with such amendments as may
13 have been adopted. Any Member may demand a separate
14 vote in the House on any amendment adopted in the Com-
15 mittee of the Whole to the bill or to the committee amend-
16 ment in the nature of a substitute. The previous question
17 shall be considered as ordered on the bill and amendments
18 thereto to final passage without intervening motion except
19 one motion to recommit with or without instructions.

it is the committee substitute that will be read for amendment, not the text of the underlying bill that the rule brings to the floor. Moreover, as "an original bill" for purposes of amendment, the committee substitute is not treated as a first degree amendment; instead, it may be amended in two degrees, just as if it were a bill. On lines 8-10, the rule specifies that each section of the committee substitute is to be considered as read, just as the simple open rule examined in the preceding section of this report provided for each section of the bill to be considered as read.

With the benefit of these provisions, Members can amend the committee substitute for H.R. 1271 to the same extent that would have been possible if the committee had reported a clean bill in place of H.R. 1271. However, the committee substitute remains an amendment, even though it is being considered as "an original bill for the purpose of amendment." So it must meet the same requirements as any other amendment, including the requirement that amendments must be germane to the text they would amend. This can present a problem in the case of a committee substitute because that amendment may address the subject of the underlying bill in such a different way as to be non-germane in one or more respects. To prevent the committee substitute from falling to a point of order, therefore, a rule such as H.Res. 125 can protect the substitute by waiving all points of order against it for violating clause 7 of Rule XVI, which is the germaneness requirement. In similar fashion, the Rules Committee can waive any other points of order that might be made against a committee substitute or against any other amendment that the committee expects to be offered in Committee of the Whole. No such waivers were needed in this case, but we shall see waivers in other rules that are examined in later sections of this report.

Because the purpose of a committee substitute open rule is to give Members the same amending opportunities on the floor that they would have under a simple open rule, committee substitute rules also contain several other provisions that are included to achieve the same result. These provisions govern what happens to the bill in the House after the Committee of the Whole rises and reports.

The requirement that the House must vote on each amendment that the Committee of the Whole has approved gives Members an opportunity to have a second vote that can defeat an amendment they had adopted when it was originally offered in Committee of the Whole. However, the House only votes on amendments to the text of the bill that were adopted in Committee of the Whole, no matter how extensively any of these amendments had been amended before being approved. In the case of a committee substitute rule, the last vote in Committee of the Whole is on agreeing to the committee substitute, however it may have been amended. And the Committee reports only the substitute back to the House. Thus, there would be no way for the House to have a separate vote on any amendment to the substitute that the Committee had adopted.

To address this problem, committee substitute rules contain the provisions on lines 13-16 of page 2, which allow any Member to demand a separate vote in the House on any amendment adopted in Committee of the Whole to the bill "or to the committee amendment in the nature of a substitute." The effect of this provision again is to protect a right that Members enjoy under a simple open rule.

For much the same reason, committee substitute rules make one final change in the text of simple open rules by providing, as on line 19 of page 2, for a motion to recommit "with or without instructions." As discussed in the preceding section, instructions in recommittal motions usually direct a standing committee to report the bill back to the House immediately with a particular amendment; if the House agrees to the motion, it then votes on adopting that amendment. However, amendments in recommittal motions are subject to the same requirements and prohibitions as other amendments, including not only the germaneness requirement but also the stricture that an amendment may not propose only to amend some portion of a bill that already has been amended.

In the case of committee substitutes, this presents a problem because when the House agrees to the committee substitute that the Committee of the Whole has reported, it thereby amends the bill in every respect. There is now no part of the bill that has not been amended. Consequently, no recommittal motion with instructions containing an amendment is in order because any such amendment would propose to re-amend text that already has been amended. So again to ensure Members the rights they enjoy under a simple open rule, most committee substitute rules provide explicitly for a motion to recommit "with or without instructions."

To summarize, whenever a committee reports a bill with an amendment in the nature of a substitute, the Rules Committee usually includes certain predictable provisions in its special rule for considering the bill. These provisions are designed to take account of the effect that the committee's action otherwise would have on Members' rights and opportunities on the floor. In such cases, the rule provides for the committee substitute to be read for amendment instead of the bill, and for the substitute to be amendable in two degrees as if it were a bill. The rule then includes two other compensating changes in its regular provisions—one affecting separate votes on amendments in the House, the other concerning a motion to recommit with instructions—that also give Members the same amending rights they would have under a simple open rule.

Other Provisions Included in Some Special Rules

Although the Rules Committee may include almost any procedure it can imagine in the special rules it reports, it has included certain provisions often enough to deserve special mention. Three of them are illustrated by H.Res. 197, which is Exhibit 3.

Through line 11 on page 2, this rule is comparable to H.Res. 125 in providing that, after general debate, the proposed committee substitute for the bill (in this case, H.R. 70) is to be read for amendment and may be amended in two degrees. However, H.Res. 197 then includes two additional provisions that the Rules Committee sometimes included in the special rules it reported during the 104th-106th Congresses. At the beginning of the 107th Congress, the second of these provisions was incorporated into the House's standing rules.

First, H.Res. 197 encourages Members to make available to the House the amendments they intend to offer to the bill. On lines 11-17 of page 2, the rule authorizes the chairman of the Committee of the Whole to give priority in recognizing

Members to offer amendments to those Members who had submitted their amendments in writing so that the amendments could be printed in a special section of the *Congressional Record*.

Clause 8 of House Rule XVIII provides for a special section in each day's *Record* for Members to have printed the text of amendments they intend to offer to a bill on some later day. There is no requirement that Members submit their amendments for printing, and thereby reveal their intentions to all their colleagues, but there is an incentive for them to do so. In Committee of the Whole, a simple majority may vote to close debate on the pending section or title of a bill and all amendments to it, or, if the bill has been read in full, on the entire bill and all amendments to it. After debate has been closed, Members may continue to offer amendments but they have no time to explain or justify them, which makes it much more likely that their amendments will be rejected. However, if a Member has printed his or her amendment in the *Record* in advance, he or she is assured of having five minutes to defend the amendment, with another five minutes available to a Member who opposes it.

Until recently, this rule had been unrelated to the order in which the chairman recognizes Members in Committee of the Whole to offer amendments to each section (or title) of a bill as it is reached in the amending process. Instead, the chairman has followed well-established customs that give preference in recognition to Members who serve on the committee that reported the bill. Furthermore, the chairman is expected to recognize committee members roughly in order of their seniority and to alternate in recognition between Republicans and Democrats. In themselves, these practices do not entitle a Member to any preference in recognition simply because he or she has submitted an amendment for printing in the *Record*.

The provision of H.Res. 197 cited above does authorize the chairman to give priority to amendments that have been printed in the *Record*. Although the chairman is not directed to do so, the authority granted the chair in a special rule such as H.Res. 197 can be a strong incentive for Members to submit their amendments for printing. Members tend to believe that their colleagues are more likely to be receptive to amendments that are offered early in the amending process and early in the day. With this assumption in mind, Members may believe that it is in their interests to submit their amendments for printing in order to qualify for the preferential consideration that H.Res. 197 authorizes the chair to give them. In turn, this practice also gives the bill's floor managers and all other Members at least one day's opportunity to review the printed amendments, assess their implications, decide whether to support or oppose them, and prepare for the floor debate on them.

A second provision of H.Res. 197 was intended to minimize some inconvenience to Members when the Committee of the Whole is considering and voting on numerous amendments to a bill. In Committee of the Whole, there can be as little as five or ten minutes of debate on an amendment, followed by the possibility of a record vote which requires Members who were not attending the debate to come to the House chamber from their offices or committee hearing rooms. A sequence of record votes at regular intervals during the course of a day can make it more difficult for Members to devote

House Calendar No. 77104TH CONGRESS
1ST SESSION**H. RES. 197****[Report No. 104-198]**

Providing for the consideration of the bill (H.R. 70) to permit exports of certain domestically produced crude oil, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 1995

Mr. MCINNIS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 70) to permit exports of certain domestically produced crude oil, and for other purposes.

- 1 *Resolved*, That at any time after the adoption of this
- 2 resolution the Speaker may, pursuant to clause 1(b) of
- 3 rule XXIII, declare the House resolved into the Committee
- 4 of the Whole House on the state of the Union for consider-
- 5 ation of the bill (H.R. 70) to permit exports of certain
- 6 domestically produced crude oil, and for other purposes.
- 7 The first reading of the bill shall be dispensed with. Gen-

1 eral debate shall be confined to the bill and shall not ex-
2 ceed one hour equally divided and controlled by the chair-
3 man and ranking minority member of the Committee on
4 Resources. After general debate the bill shall be considered
5 for amendment under the five-minute rule. It shall be in
6 order to consider as an original bill for the purpose of
7 amendment under the five-minute rule the amendment in
8 the nature of a substitute recommended by the Committee
9 on Resources now printed in the bill. Each section of the
10 committee amendment in the nature of a substitute shall
11 be considered as read. During consideration of the bill for
12 amendment, the Chairman of the Committee of the Whole
13 may accord priority in recognition on the basis of whether
14 the Member offering an amendment has caused it to be
15 printed in the portion of the Congressional Record des-
16 ignated for that purpose in clause 6 of rule XXIII. Amend-
17 ments so printed shall be considered as read. The chair-
18 man of the Committee of the Whole may postpone until
19 a time during further consideration in the Committee of
20 the Whole a request for a recorded vote on any amend-
21 ment. The chairman of the Committee of the Whole may
22 reduce to not less than five minutes the time for voting
23 by electronic device on any postponed question that imme-
24 diately follows another vote by electronic device without
25 intervening business, provided that the time for voting by

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1 electronic device on the first in any series of questions
2 shall be not less than fifteen minutes. At the conclusion
3 of consideration of the bill for amendment the Committee
4 shall rise and report the bill to the House with such
5 amendments as may have been adopted. Any Member may
6 demand a separate vote in the House on any amendment
7 adopted in the Committee of the Whole to the bill or to
8 the committee amendment in the nature of a substitute.
9 The previous question shall be considered as ordered on
10 the bill and amendments thereto to final passage without
11 intervening motion except one motion to recommit with
12 or without instructions.

13 SEC. 2. (a) After passage of H.R. 70, it shall be in
14 order to take from the Speaker's table the bill S. 395 and
15 to consider the Senate bill in the House. All points of
16 order against the Senate bill and against its consideration
17 are waived. It shall be in order to consider in the House,
18 any rule of the House to the contrary notwithstanding,
19 the motion to amend described in subsection (b). The mo-
20 tion to amend shall not be subject to a demand for division
21 of the question. The previous question shall be considered
22 as ordered on the motion to amend and on the Senate
23 bill without intervening motion except one motion to re-
24 commit the bill with or without instructions. If the motion
25 to amend is adopted and the Senate bill, as amended, is

1 passed, then it shall be in order to move that the House
2 insist on its amendments to S. 395 and request a con-
3 ference with the Senate thereon.

4 (b) The motion to amend the Senate bill made in
5 order by subsection (a) is as follows:

6 “(1) Strike title I.

7 “(2) Strike sections 201 through 204 and insert
8 the text of H.R. 70, as passed by the House.

9 “(3) Strike section 205.

10 “(4) Strike section 206.

11 “(5) Strike title III.”

concentrated time and attention to their other legislative or representational activities.

With this potential problem in mind, H.Res. 197, beginning on line 17 of page 2, authorizes the Chairman of the Committee of the Whole to postpone requests for record votes on amendments until later on the same day. Then he or she may direct that any postponed record votes take place one immediately after another. In this way, Members who are not present on the floor during the debate because they are intimately concerned with the bill being considered need come to the chamber only once to vote, and then they can cast a series of votes on different amendments that already have been debated. This arrangement not only is convenient for individual Members, it also can save time for the House. Members usually have at least 15 minutes to reach the chamber and participate in a vote that is conducted by use of the electronic voting system. But when a series of votes are conducted one right after another, there is no need to give Members 15 minutes for the second and successive votes because they already have come to the floor. Therefore, H.Res. 197 provides that, if Members are given at least 15 minutes to cast the first vote in a series of votes, they can be allowed only five minutes to cast each of the other votes in the series.

There no longer is any need for the Rules Committee to include this provision in its special rules. When the 107th Congress began on January 3, 2001, the House adopted its rules for the new Congress in the form of H.Res. 5, which added the following new paragraph to clause 6 of Rule XVIII:

The Chairman may postpone a request for a recorded vote on any amendment. The Chairman may resume proceedings on a postponed request at any time. The Chairman may reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes.

Finally, H.Res. 197 contains a third provision that the Rules Committee often includes, in one form or another, when the Senate already has passed a bill on the same subject as the House bill the committee proposes to make in order on the House floor. The House and Senate must pass the same bill (for example, H.R. 1 or S. 2) with precisely the same text before it can be enacted into law. At some stage in the process, therefore, the House must pass a Senate bill or the Senate must pass a House bill, even if each house prefers initially to debate and amend the bill developed by one of its own standing committees.

To satisfy this requirement, the House typically considers and passes its own bill (*e.g.*, H.R. 1) and then takes up the bill the Senate already has passed (*e.g.*, S. 2) on the same subject. The House will then amend the Senate bill by striking out all after its enacting clause and inserting instead the text of the House bill it has just passed. Then the House will pass this Senate bill. In this way, both houses will have passed the Senate bill (in this example, S. 2) and can begin the process of reaching agreement on its provisions, either by creating a conference committee or by sending amendments back and forth between the House and Senate.

A special rule such as H.Res. 197 can simplify this process by providing for many or all of the procedural steps it involves. In this case, the resolution provides in Sec. 2 that, after the House passage of H.R. 70, the House may consider in the House (not in Committee of the Whole) S. 395, a Senate bill on the same subject. On lines 15-17 of page 3, the resolution waives all points of order that Representatives might be able to make against the Senate bill and its consideration on the House floor. H.Res. 197 then makes in order an amendment to S. 395 that is printed in Sec. 2(b)—in this case, the House amendment is not an amendment in the nature of a substitute—and precludes debate and additional amendments by using much the same language that appears at the end of Sec. 1 of the resolution to expedite final passage of H.R. 70. Finally, the resolution provides that, if the House passes S. 395 with the House amendment printed in the special rule, a motion then will be in order for the House to seek a conference with the Senate on S. 395. Without this last provision of the special rule, such a motion to go to conference could be made only if authorized by the House committee with jurisdiction over the two bills.

In this way, the special rule provides for linking up a bill the House has passed with the Senate's bill on the same subject. Although the precise form of these provisions can vary somewhat, they rarely are controversial. If a majority of the House is prepared to consider and pass a bill, then presumably it wishes to see the House and Senate reach an agreement on it so that it can eventually become law. The provisions of Sec. 2 of H.Res. 197 expedite and simplify that process.

Alternative Substitutes as Original Text

From time to time, the Rules Committee will report a rule with the special provisions for an amendment in the nature of a substitute to be considered as original text even when the complete substitute is not a formal committee amendment. There are various reasons why the Committee may do so. For example, the standing committee's leadership may not decide until after the bill has been reported that it prefers to have the House consider an amendment in the nature of a substitute for the bill's text. Or the bill may have been referred to two or more committees which, in turn, have proposed different amendments to the bill. In the latter case, the leaders of the committees may agree informally on an amendment in the nature of a substitute that combines their amendments or embodies a compromise among them.

Whatever the reason, the amendment in the nature of a substitute may be printed in the report accompanying the Rules Committee's resolution. Alternatively, it could be printed in the *Congressional Record* as an amendment to the introduced bill, or it might be introduced as a new bill with a different number. In any case, it is this complete substitute that Members ask the Rules Committee to make in order as original text in the same way it treats committee substitutes.

An example is H.Res. 55 of the 104th Congress, appearing as Exhibit 4 and providing for the consideration of H.R. 2. This rule contains the same basic provisions as the two committee substitute rules we already have examined. Notice, however, that, on lines 2-7 of page 2, it provides for two hours of general debate, with one hour to be controlled by the leaders of each of two committees. This is a fairly common

House Calendar No. 10104TH CONGRESS
1ST SESSION**H. RES. 55****[Report No. 104-15]**

Providing for the consideration of the bill (H.R. 2) to give the President item veto authority over appropriation Acts and targeted tax benefits in revenue Acts.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1995

Mr. GOSS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 2) to give the President item veto authority over appropriation Acts and targeted tax benefits in revenue Acts.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 2) to give the President item veto
6 authority over appropriation Acts and targeted tax bene-
7 fits in revenue Acts. The first reading of the bill shall be

1 dispensed with. General debate shall be confined to the
2 bill and shall not exceed two hours, with one hour equally
3 divided and controlled by the chairman and ranking mi-
4 nority member of the Committee on Government Reform
5 and Oversight and one hour equally divided and controlled
6 by the chairman and ranking minority member of the
7 Committee on Rules. After general debate the bill shall
8 be considered for amendment under the five-minute rule.
9 In lieu of the amendments recommended by the Commit-
10 tee on Government Reform and Oversight and the Com-
11 mittee on Rules, it shall be in order to consider as an origi-
12 nal bill for the purpose of amendment under the five-
13 minute rule the amendment in the nature of a substitute
14 printed in the report of the Committee on Rules accom-
15 panying this resolution. That amendment in the nature
16 of a substitute shall be considered as read. Points of order
17 against the amendment in the nature of a substitute for
18 failure to comply with clause 7 of rule XVI are waived.
19 During consideration of the bill for amendment, the Chair-
20 man of the Committee of the Whole may accord priority
21 in recognition on the basis of whether the Member offering
22 an amendment has caused it to be printed in the portion
23 of the Congressional Record designated for that purpose
24 in clause 6 of rule XXIII. Amendments so printed shall
25 be considered as read. At the conclusion of consideration

1 of the bill for amendment the Committee shall rise and
2 report the bill to the House with such amendments as may
3 have been adopted. Any Member may demand a separate
4 vote in the House on any amendment adopted in the Com-
5 mittee of the Whole to the bill or to the amendment in
6 the nature of a substitute made in order as original text.
7 The previous question shall be considered as ordered on
8 the bill and amendments thereto to final passage without
9 intervening motion except one motion to recommit with
10 or without instructions.

practice when two or more House standing committees have some jurisdiction over provisions of the bill to be debated. Notice also that on pages 19-25 of page 2, the rule authorizes the Chairman of the Committee of the Whole to give priority to amendments printed in the *Record*, but it does not also authorize the Chairman to postpone and cluster record votes on amendments. This merely illustrates that the Rules Committee may pick and choose among various provisions as it constructs a special rule that is best-suited to each bill it proposes to make in order on the floor.

In addition, and the point to be emphasized here, is that the rule provides for consideration of a complete substitute that evidently was not reported when the bill itself, H.R. 2, was reported by either the Rules Committee or the Government Reform and Oversight Committee (now the Government Reform Committee). Instead the text that is to be read for amendment as an original bill is the complete substitute that the Rules Committee had printed in its report to accompany H.Res. 55. Because that proposed new version of the bill is not germane in some respect to H.R. 2, the rule also protects it by waiving any points of order under clause 7 of Rule XVI, which is the germaneness rule.

By including such a provision, the Rules Committee can propose that the Committee of the Whole act on a version of a bill that may be very different from what one or more House committees have debated, marked up, and reported. The Rules Committee may be asked to do so when the majority party leaders of two or more committees have reached a compromise between the amendments to the bill that each committee has reported. Alternatively, the majority party or committee leaders may discover after a bill has been reported from committee that it does not have enough support to pass, and that a new version of the bill must be developed to attract additional votes.

Thus, the ability of the Rules Committee to make a different complete substitute in order on the floor provides a degree of flexibility to the legislative process that can be very useful. On the other hand, there usually is little time for all Members of the House to become familiar with the detailed provisions of this kind of substitute; also, there is no written committee report to explain how the substitute is to be interpreted and implemented.

Two Forms of Closed Rules

Open rules can affect the amending process by specifying what text is to be considered for amendment and how it is to be considered—for example, by making an amendment in the nature of a substitute in order as an original bill, and providing for it to be considered by titles not sections. But open rules do not impose restrictions on what amendments Members can offer; Members are limited only by the prohibitions deriving from the House's standing rules and precedents, such as the germaneness requirement.

At the other extreme, the Rules Committee occasionally reports a closed rule that proposes to foreclose all or almost all floor amendments to a measure. Because of a 1995 amendment to the House's standing rules, the Rules Committee is not authorized to report a completely closed rule for considering a bill or joint resolution; this rules

change concerns recommittal motions and is discussed below. Also, sometimes the Rules Committee has proposed to prohibit all amendments except amendments recommended by the standing committee with jurisdiction over the measure to be considered. So more often than not, even if a resolution is described as a closed rule, it actually may not bar absolutely all amendments.

Closed rules can take two forms, though their practical effect is the same. One provides for a bill to be considered in the House; the other provides for it to be considered in the Committee of the Whole. All the closed rules that the House considered during the 104th Congress were of the first type, which is discussed first and illustrated by Exhibit 5.

When a measure is considered "in the House," it is debated under the one-hour rule. The majority floor manager controls the first hour of debate and yields part of his or her time to other Members "for purposes of debate only." Therefore, no one else can offer an amendment to the bill during that first hour except in the unlikely event that the floor manager agrees to yield for that purpose. During or after the end of the hour, the floor manager then moves the previous question. If a majority of Members vote for this non-debatable motion, the effect is to end all debate on the bill and bring the House immediately to the stage of third reading and engrossment, which precedes the vote on final passage.

A Member can offer an amendment to a bill in the House only if he or she controls the floor. And someone other than the floor manager normally gains control of the floor only if the previous question is not moved or ordered; then the Speaker recognizes a second Member who can offer an amendment during the hour that he or she now controls. In practice, therefore, the House first must defeat the motion for the previous question if it wishes to consider any floor amendment to the bill.

Lines 1-4 of H.Res. 355 make it in order to consider the bill, H.R. 2924, in the House under these procedures, not in Committee of the Whole. The rule also allows for one hour of debate and divides control of the time, rather than leaving this to the discretion of the Chairman of the Ways and Means Committee. This really is not a significant diminution of the chairman's authority because he normally would be expected to yield control of half of the hour to his ranking minority member as a matter of custom and courtesy.

A closed rule in this form does not prohibit amendments in so many words. But H.Res. 355 has precisely that effect by providing that, after the hour for debate, "[t]he previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to recommit." The House does not have the opportunity to vote against ordering the previous question so it may not vote to consider an amendment to the bill. In fact, not even the majority floor manager can propose an amendment during the hour he or she controls because the rule provides for the previous question to be considered as ordered "without intervening motion," including any motion to amend.

However, there is one exception to the prohibition against amendments. This closed rule does explicitly permit one motion to recommit, which may contain

House Calendar No. 183

104TH CONGRESS
2D SESSION

H. RES. 355

[Report No. 104-460]

Providing for the consideration of the bill (H.R. 2924) to guarantee the timely payment of Social Security benefits in March 1996.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1996

Mr. GOSS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 2924) to guarantee the timely payment of Social Security benefits in March 1996.

1 *Resolved*, That upon the adoption of this resolution
2 it shall be in order to consider in the House the bill (H.R.
3 2924) to guarantee the timely payment of Social Security
4 benefits in March 1996. The bill shall be debatable for
5 one hour equally divided and controlled by the chairman
6 and ranking minority member of the Committee on Ways
7 and Means. The previous question shall be considered as

1 ordered on the bill to final passage without intervening
2 motion except one motion to recommit. The motion to re-
3 commit may include instructions only if offered by the mi-
4 nority leader or his designee.

instructions proposing an amendment. A 1995 amendment to what now is House Rule XIII, clause 6(c), prohibits the Rules Committee from reporting a special rule on a bill or joint resolution if that rule would prevent a motion to recommit with instructions from being offered. That clause now protects such a recommittal motion, but only if it is offered by the minority leader of a designee. Consistent with this House rule, H.Res. 355 states that the motion to recommit "may include instructions only if offered by the minority leader or his designee." This last provision is not required; the Rules Committee could have omitted it, in which case any member of the minority party would have been recognized to move to recommit with instructions.

A second form of closed rule, which is used less often, if at all, in current practice, is illustrated by H.Res. 416 of the 103rd Congress (Exhibit 6).

This resolution begins with provisions comparable to those of other open rules that provide for committee substitutes. It makes a bill in order, waives all points of order against its consideration, provides for consideration of a committee substitute, and also waives all points of order against the substitute. Notice, however, that the rule does not provide for the committee substitute to be read or to be considered as an original bill for purpose of amendment. There is no need to read the substitute for amendment because it is not to be amendable at all.

Lines 9-12 on page 2 state that "[n]o amendment to the committee amendment in the nature of a substitute and no other amendment to the bill shall be in order." Members are prohibited from offering any amendments to the committee substitute and, in the unlikely event that the Committee of the Whole should reject that substitute, no other amendments to the bill itself can be offered. Alternatively, this kind of closed rule might prohibit all amendments except any amendments recommended by the committee that had reported the bill. Such a prohibition would apply even to amendments that individual members of that committee might want to offer at their own initiative. To be in order, amendments would have to be proposed on behalf of the committee; for example, the committee might discover an inadvertent error that it needed to correct by a floor amendment.

The remaining provisions of the rule are comparable to those of open rules that provide for consideration of committee substitutes. The resolution provides for the Committee of the Whole to rise and report the bill back to the House. The previous question then is considered as ordered on the bill and the committee substitute, if adopted.

Thus, this rule permits the Committee of the Whole only to accept or reject the reporting committee's substitute for the bill as it was introduced. However, the final provision of the rule does protect a recommittal motion with or without instructions and, therefore, creates an opportunity for the House to consider one non-committee amendment that is included in a motion to recommit with instructions.

Closed rules in either of the forms described here have become rather unusual. The Rules Committee is likely to recommend them only when it believes there is some compelling reason to treat a measure simply as a "yes or no" proposition. Even then, it is important to bear in mind that the committee cannot impose a prohibition on amendments. The House has an opportunity to debate and vote on each special rule,



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House Calendar No. 151

103^D CONGRESS
2^D SESSION**H. RES. 416****[Report No. 103-492]**

Providing for consideration of the bill (H.R. 4296) to make unlawful the transfer or possession of assault weapons.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1994

Mr. DERRICK, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 4296) to make unlawful the transfer or possession of assault weapons.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 4296) to make unlawful the transfer
6 or possession of assault weapons. The first reading of the
7 bill shall be dispensed with. All points of order against
8 consideration of the bill are waived. General debate shall

1 be confined to the bill and shall not exceed two hours
2 equally divided and controlled by the chairman and rank-
3 ing minority member of the Committee on the Judiciary.
4 After general debate the bill shall be considered for
5 amendment under the five-minute rule. The amendment
6 in the nature of a substitute recommended by the Commit-
7 tee on the Judiciary now printed in the bill shall be consid-
8 ered as read. All points of order against the committee
9 amendment in the nature of a substitute are waived. No
10 amendment to the committee amendment in the nature
11 of a substitute and no other amendment to the bill shall
12 be in order. At the conclusion of consideration of the bill
13 for amendment the Committee shall rise and report the
14 bill to the House with such amendment as may have been
15 adopted. The previous question shall be considered as or-
16 dered on the bill and any amendment thereto to final pas-
17 sage without intervening motion except one motion to re-
18 commit with or without instructions.

so Members are always free to decide by majority vote if they wish to accept whatever restraints on their powers and prerogatives the committee may recommend.

Rules Restricting the Amending Process

Until the mid-1970s, the Rules Committee usually granted open rules or closed rules. With rare exceptions, there were no other alternatives. Since then the situation has changed dramatically. In the contemporary House, many special rules have restricted the amending process in one or more ways without foreclosing all floor amendments. It became fair to say that the more important and controversial a bill is, the more likely it was to be considered on the House floor under a restrictive rule.

It is more difficult to generalize about restrictive rules than about open and closed rules because restrictive rules can become as complex as the Rules Committee chooses to make them. In one way or another, it is possible for the committee to draft a rule that creates or prevents virtually any parliamentary situation it desires. In the process, it almost always accommodates the preferences of the majority party leadership and usually satisfies the committee or committees of jurisdiction. The controversy over rules most often arises over whether they sufficiently take account of the preferences and interests of individual Members, and especially Members of the minority party.

There even can be disagreement as to whether a specific rule, or a certain kind of rule, should or should not be considered restrictive. Consider, for example, H.Res. 79, which the Rules Committee reported on February 10, 1995 (Exhibit 7). In all but one respect, this is a fairly conventional open rule that makes a committee substitute in order as original text and authorizes the chairman of the Committee of the Whole to give priority to amendments that were printed in advance in the *Record*. What could make this rule restrictive in the eyes of some Members is the provision on page 2, line 4 for the bill to be considered for amendment under the five-minute rule "for a period for not to exceed ten hours."

This provision does not limit the number of amendments in order or the time available for debating any one of them. However, such a rule could have the effect of precluding consideration of some amendments, depending on the number of them offered and the time they consume. Because the rule provides for the committee substitute to be considered as read, Members could offer their amendments to any part of it in any order. Therefore, the 10-hour cap would not work to the detriment of amendments to later sections of the substitute. However, such a cap could be disadvantageous to Members who normally would not be among the first to be recognized to offer amendments—those who do not submit their amendments for printing in advance in the *Record* and those who do not serve on the committee reporting the bill.

A minimally restrictive rule can permit only those floor amendments that have been printed in advance in the *Congressional Record*. Instead of authorizing the chairman of the Committee of the Whole to give priority to printed amendments, a rule of this kind might require, for example, that the amendments be printed by a specified

House Calendar No. 15

104TH CONGRESS
1ST SESSION**H. RES. 79****[Report No. 104-27]**

Providing for consideration of the bill (H.R. 728) to control crime by providing law enforcement block grants.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1995

Ms. PRYCE, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 728) to control crime by providing law enforcement block grants.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 728) to control crime by providing
6 law enforcement block grants. The first reading of the bill
7 shall be dispensed with. General debate shall be confined
8 to the bill and shall not exceed one hour equally divided

1 and controlled by the chairman and ranking minority
2 member of the Committee on the Judiciary. After general
3 debate the bill shall be considered for amendment under
4 the five-minute rule for a period not to exceed ten hours.
5 It shall be in order to consider as an original bill for the
6 purpose of amendment under the five-minute rule the
7 amendment in the nature of a substitute recommended by
8 the Committee on the Judiciary now printed in the bill.
9 The committee amendment in the nature of a substitute
10 shall be considered as read. During consideration of the
11 bill for amendment, the Chairman of the Committee of
12 the Whole may accord priority in recognition on the basis
13 of whether the Member offering an amendment has caused
14 it to be printed in the portion of the Congressional Record
15 designated for that purpose in clause 6 of rule XXIII.
16 Amendments so printed shall be considered as read. At
17 the conclusion of consideration of the bill for amendment
18 the Committee shall rise and report the bill to the House
19 with such amendments as may have been adopted. Any
20 Member may demand a separate vote in the House on any
21 amendment adopted in the Committee of the Whole to the
22 bill or to the committee amendment in the nature of a
23 substitute. The previous question shall be considered as
24 ordered on the bill and amendments thereto to final pas-

- 1 sage without intervening motion except one motion to re-
- 2 commit with or without instructions.

date, or before the House begins to consider the bill that the rule makes in order, or before the beginning of the amendment process in Committee of the Whole, or at least before each amendment actually is offered on the floor. Any such provision gives Members some assurance that they will be aware in advance of the amendments on which they may be voting.

An example is H.Res. 189 of the 104th Congress (Exhibit 8), providing for further consideration of an interior appropriations bill. Beginning on line 5 of page 1, the rule prohibits all amendments except those printed in the *Record* before a date certain. The only other motions in order are motions that the Committee of the Whole either rise, if it has not completed work on the bill, or rise and report the bill back to the House for final disposition. The effect of this provision is to exclude *pro forma* amendments to "strike the last word" (unless printed in advance). Instead, the rule provides 10 minutes for debate on each amendment and protects amendments against being amended. Notice, however, that the rule does not protect any of the amendments against points of order. H.Res. 189 is essentially an open rule, except that Members are required to make the text of their amendments available in advance so that everyone, and especially the bill's floor managers, can review them before the amendments are offered.

Alternatively, a restrictive rule may restrict amendments by prohibiting amendments on a certain subject or to a particular provision of the bill. This kind of "modified open" rule has been used, for example, to prevent amendments to tax provisions of a bill that had been reported by both the Ways and Means Committee and one or more other committees. Or it can protect against the possibility that Members might be able to offer germane amendments on a subject that the bill does not address directly. Such "modified open" rules have become quite unusual in recent practice.

More often restrictive rules are "modified closed" rules in that they prohibit all floor amendments except those specifically identified and made in order by the rule. In past Congresses, this kind of rule might identify those amendments in order by referring to their sponsors and by the issues of the daily *Record* in which the amendments had been printed. On some occasions, the texts of the amendments have been included in the text of the rule itself. The committee's more common contemporary practice tends to be to print the amendments that may be offered in the text of its report accompanying the rule. This practice makes the amendments available to Members in a single document and eliminates any possible ambiguity about precisely what amendments are to be in order.

In the process, a restrictive rule may specify the order in which Members may offer their amendments and replace the five-minute rule for debating them by providing a block of time for debating each amendment, that time generally being equally divided and controlled by the sponsor and an opponent. Finally, the rule often limits or prohibits perfecting and substitute amendments to the amendments. When including these provisions, a restrictive rule frequently refers to the accompanying report for information on the sequence in which amendments can be offered, the time for debating them, and the potential amendments to them. This means that Members and staff must consult both the Rules Committee's resolution and its report for full

House Calendar No. 73

104TH CONGRESS
1ST SESSION

H. RES. 189

[Report No. 104-186]

Providing for the further consideration of the bill (H.R. 1977) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1995

Ms. PRYCE, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the further consideration of the bill (H.R. 1977) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

- 1 *Resolved*, That during further consideration of H.R.
- 2 1977 pursuant to House Resolution 187, further consider-
- 3 ation of the bill for amendment in the Committee of the
- 4 Whole House on the state of the Union shall proceed with-
- 5 out intervening motion except: (1) amendments printed in
- 6 the portion of the Congressional Record designated for

1 that purpose in clause 6 of rule XXIII before July 14,
2 1995; (2) motions that the Committee rise offered by the
3 majority leader or his designee; and (3) motions that the
4 Committee rise and report the bill to the House with such
5 amendments as may have been adopted offered as pref-
6 erential under clause 2(d) of rule XXI. Each further
7 amendment to the bill may be offered only by the Member
8 who caused it to be printed, shall be considered as read,
9 shall be debatable for ten minutes equally divided and con-
10 trolled by the proponent and an opponent, shall not be
11 subject to amendment, and shall not be subject to a de-
12 mand for division of the question in the House or in the
13 Committee of the Whole. The Chairman of the Committee
14 of the Whole may postpone until a time during further
15 consideration in the Committee of the Whole a request for
16 a recorded vote on any amendment made in order by this
17 resolution. The Chairman of the Committee of the Whole
18 may reduce to not less than five minutes the time for vot-
19 ing by electronic device on any postponed question that
20 immediately follows another vote by electronic device with-
21 out intervening business: *Provided*, That the time for vot-
22 ing by electronic device on the first in any series of ques-
23 tions shall be not less than fifteen minutes.

information on what a restrictive rule proposes and how the bill will be considered if the House adopts that rule.

Restrictive rules in this form can range from those that are virtually closed to those that are virtually open, depending on the number of amendments each rule makes in order. An example of a highly restrictive rule is H.Res. 204, 104th Congress (Exhibit 9) which permits only one amendment: "an amendment in the nature of a substitute offered by the Minority Leader or his designee." That amendment is debatable for one hour and is not amendable. No other amendment is in order except whatever amendment may be included in a motion to recommit with instructions.

At close to the other extreme is H.Res. 384, also from the 104th Congress (Exhibit 10). This resolution makes a complete substitute in order as original text and modifies it by a self-executing provision. The only other amendments in order are those printed in part 2 of the Rules Committee's report on the resolution (page 3, lines 6-8). Simply by reading this kind of rule, we cannot know how many amendments may be offered and, therefore, exactly how restrictive the rule may be. In this instance, an examination of the Rules Committee's report reveals that a total of 32 amendments were made in order. This hardly seems to be very restrictive but, of course, neither the rule nor the report identifies the even larger number of amendments that Representatives had asked the Rules Committee to allow them to offer.

The report on H.Res. 384 also specifies, among other things, the order in which the amendments can be offered, the Member who may offer each of them, the time for debating each amendment, and whether or not each of them is amendable. Because of the number of amendments and, therefore, the possible number of recorded votes on amendments, the chairman of the Committee of the Whole is authorized to postpone and cluster those votes. Finally, Sec. 2 of the rule also authorizes the chairman of the reporting committee to offer as a single package some of the individual amendments that the rule makes in order. This can be a convenient way to save time when the majority floor manager is prepared to support a number of amendments that Members otherwise would offer individually.

“Queen-of-the-Hill” Rules

The Rules Committee has almost unlimited discretion in devising special rules and it has exercised this discretion in creative ways. It can propose that Members direct their amendments in Committee of the Whole to an alternative text of a bill, most often a committee amendment in the nature of a substitute. It can propose to foreclose almost all amendments or to restrict the amendments that Members can offer and specify the conditions for debating and amending each of the amendments that are in order. It also can recommend waiving points of order against a bill or its provisions or against amendments that will be offered to it.

In recent years, the committee also has developed several innovative techniques for dealing with floor amendments, one of which became known in the 104th

House Calendar No. 80

104TH CONGRESS
1ST SESSION

H. RES. 204

[Report No. 104-213]

Providing for consideration of the bill (S. 21) to terminate the United States arms embargo applicable to the Government of Bosnia and Herzegovina.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1995

Mr. DIAZ-BALART, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (S. 21) to terminate the United States arms embargo applicable to the Government of Bosnia and Herzegovina.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (S. 21) to terminate the United States
6 arms embargo applicable to the Government of Bosnia and
7 Herzegovina. The first reading of the bill shall be dis-

1 pensed with. General debate shall be confined to the bill
2 and shall not exceed three hours equally divided and con-
3 trolled by the chairman and ranking minority member of
4 the Committee on International Relations. After general
5 debate the bill shall be considered for amendment under
6 the five-minute rule. The bill shall be considered as read.
7 No amendment shall be in order except an amendment
8 in the nature of a substitute offered by the Minority Lead-
9 er or his designee. That amendment shall be considered
10 as read, shall be debatable for one hour equally divided
11 and controlled by the proponent and an opponent, and
12 shall not be subject to amendment. At the conclusion of
13 consideration of the bill for amendment the Committee
14 shall rise and report the bill to the House with such
15 amendment as may have been adopted. The previous ques-
16 tion shall be considered as ordered on the bill and any
17 amendment thereto to final passage without intervening
18 motion except one motion to recommit with or without in-
19 structions. The motion to recommit may include instruc-
20 tions only if offered by the minority leader or his designee.

A Practical Guide to Parlaying an Understanding of Congressional Folkways and Dynamics into Successful Advocacy on Capitol Hill

How to Spend
Less and Get More
from Congress:
Candid Advice
for Executives

By Joseph Gibson



Persuading Congress



TheCapitolNet

House Calendar No. 193

104TH CONGRESS
2^D SESSION

H. RES. 384

[Report No. 104-483]

Providing for consideration of the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 1996

Mr. DREIER, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate

legal entries into the United States, and for other purposes.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 2202) to amend the Immigration
6 and Nationality Act to improve deterrence of illegal immi-
7 gration to the United States by increasing border patrol
8 and investigative personnel, by increasing penalties for
9 alien smuggling and for document fraud, by reforming ex-
10 clusion and deportation law and procedures, by improving
11 the verification system for eligibility for employment, and
12 through other measures, to reform the legal immigration
13 system and facilitate legal entries into the United States,
14 and for other purposes. The first reading of the bill shall
15 be dispensed with. All points of order against consider-
16 ation of the bill are waived except those arising under sec-
17 tion 425(a) of the Congressional Budget Act of 1974.
18 General debate shall be confined to the bill and shall not
19 exceed two hours to be equally divided and controlled by
20 the chairman and ranking minority member of the Com-
21 mittee on the Judiciary. After general debate the bill shall
22 be considered for amendment under the five-minute rule.
23 It shall be in order to consider as an original bill for the
24 purpose of amendment under the five-minute rule the

1 amendment in the nature of a substitute recommended by
2 the Committee on the Judiciary now printed in the bill,
3 modified by the amendment printed in part 1 of the report
4 of the Committee on Rules accompanying this resolution.
5 That amendment in the nature of a substitute shall be
6 considered as read. No other amendment shall be in order
7 except the amendments printed in part 2 of the report
8 of the Committee on Rules and amendments en bloc de-
9 scribed in section 2 of this resolution. Each amendment
10 printed in part 2 of the report may be considered only
11 in the order printed, may be offered only by a Member
12 designated in the report, shall be considered as read, shall
13 be debatable for the time specified in the report equally
14 divided and controlled by the proponent and an opponent,
15 shall not be subject to amendment except as specified in
16 the report, and shall not be subject to a demand for divi-
17 sion of the question in the House or in the Committee
18 of the Whole. All points of order against amendments
19 made in order by this resolution are waived except those
20 arising under section 425(a) of the Congressional Budget
21 Act of 1974. The chairman of the Committee of the Whole
22 may postpone until a time during further consideration
23 in the Committee of the Whole a request for a recorded
24 vote on any amendment. The chairman of the Committee
25 of the Whole may reduce to not less than five minutes

1 the time for voting by electronic device on any postponed
2 question that immediately follows another vote by elec-
3 tronic device without intervening business, provided that
4 the time for voting by electronic device on the first in any
5 series of questions shall be not less than fifteen minutes.
6 At the conclusion of consideration of the bill for amend-
7 ment the Committee shall rise and report the bill to the
8 House with such amendments as may have been adopted.
9 Any Member may demand a separate vote in the House
10 on any amendment adopted in the Committee of the Whole
11 to the bill or to the amendment in the nature of a sub-
12 stitute made in order as original text. The previous ques-
13 tion shall be considered as ordered on the bill and amend-
14 ments thereto to final passage without intervening motion
15 except one motion to recommit with or without instruc-
16 tions.

17 SEC. 2. It shall be in order at any time for the chair-
18 man of the Committee on the Judiciary or a designee to
19 offer amendments en bloc consisting of amendments print-
20 ed in the report of the Committee on Rules accompanying
21 this resolution that were not earlier disposed of or ger-
22 mane modifications of any such amendments. Amend-
23 ments en block offered pursuant to this section shall be
24 considered as read (except that modifications shall be re-
25 ported), shall be debatable for twenty minutes equally di-

1 vided and controlled by the chairman and ranking minor-
2 ity member of the Committee on the Judiciary or their
3 designees, shall not be subject to amendment, and shall
4 not be subject to a demand for division of the question
5 in the House or in the Committee of the Whole. For the
6 purpose of inclusion in such amendments en bloc, an
7 amendment printed in the form of a motion to strike may
8 be modified to the form of a germane perfecting amend-
9 ment to the text originally proposed to be stricken. The
10 original proponent of an amendment included in such
11 amendments en bloc may insert a statement in the Con-
12 gressional Record immediately before the disposition of
13 the amendments en bloc.

Congress as the "queen-of-the-hill" procedure. During the several previous Congresses, a variant of this procedure was known instead as "king-of-the-hill." In one form or the other, this procedure has become familiar to Members during consideration of budget resolutions. However, the Rules Committee also has proposed it on other occasions, especially when there have been two or more approaches on which Members wanted the House to vote as it addressed a major bill.

"Queen-of-the-hill" rules are designed to guarantee the House a vote on two or more competing alternatives, even though one of them already has been adopted. This would otherwise be prohibited under the principle well-established in House precedents that it is not in order to offer an amendment that proposes only to amend something that already has been amended. Thus, if the Committee of the Whole has agreed to an amendment to replace the entire text of Section 2 of a bill with a different text, no further amendments to Section 2 are in order because they would propose to re-amend text that already has been fully amended.

The same prohibition applies to amendments in the nature of substitutes. Once the Committee of the Whole (or the House) adopts an amendment in the nature of a substitute for the entire text of a bill, that ends the amending process. The bill cannot be amended any further because it already has been completely amended; any further amendment would constitute an attempt to re-amend amended text.

Consider a situation in which two Members have their own amendments in the nature of substitutes for a bill being considered in Committee of the Whole. If the first Member offers a substitute as a first-degree amendment and it is adopted, the other Member cannot propose another substitute because of the prohibition against re-amending. The second Member's recourse is to offer the complete substitute as an amendment to the first amendment in the nature of a substitute before Members vote on it. Then both complete substitutes can be perfected in one degree. (Clause 6 of Rule XVI permits perfecting amendments to a first-degree amendment and to a substitute for that amendment).

The Committee of the Whole eventually chooses between the two versions by voting on the second as a substitute for the first. If the second complete substitute is rejected, Members then vote on the first substitute. But if a majority votes for the second substitute to be offered, no vote ever takes place on the text of the substitute that was offered initially. When Members vote for one complete substitute as an amendment to another, the text of the first completely replaces the text of the second, so there is no vote on the text that has been replaced.

Thus, the House's regular amending procedures do not permit Members to vote for one amendment in the nature of a substitute without thereby also preventing votes on any other versions of the bill. This problem cannot be solved by making one version in order as an original bill for purposes of amendment. The second version then can be offered as a complete substitute for the first. But if the second substitute is agreed to, then again there is no direct vote on the merits of the substitute being considered as an original bill because its text has been fully replaced.

The problem the Rules Committee can confront when it does not propose a "queen-of-the-hill" rule is illustrated by Exhibit 11, H.Res. 144 of the 102nd Congress, providing for consideration of a controversial gun control bill. After intense discussions, the House's attention focused primarily on two versions of the bill, an amendment in the nature of a substitute reported by the Judiciary Committee and another complete substitute proposed by Representative Staggers. As the text of H.Res. 144 indicates, the Rules Committee reported a rule that made the Judiciary Committee substitute in order as original text and then provided for the Staggers amendment as a substitute for the committee-reported version. The rule also prohibited all other amendments to either version.

In effect, therefore, the special rule arranged for a clear and unambiguous choice between the two complete substitutes. The first vote was to be on the Staggers amendment. If it was defeated, the Committee of the Whole was to vote on the Judiciary Committee version. If that also was rejected, the Committee of the Whole was to report the original text of H.R. 7 back to the House without amendment. The Rules Committee could rightly claim that this arrangement simply followed the normal procedures of the House by making a committee substitute in order as original text. By providing for consideration of the Staggers amendment, the rule only acknowledged that the amendment was in order in any event. Notice that the rule did not have to waive any points of order to permit Representative Staggers to offer his amendment. The most significant way in which H.Res. 144 diverged from the House's customary procedures was by prohibiting all other amendments in Committee of the Whole.

Nonetheless, writing a rule in this way can provoke contentions that it gives an advantage to one version over the other, regardless of whether this is the Rules Committee's intention. If the Staggers amendment had won, there would have been no vote on the text of the Judiciary Committee substitute. Members could have had an opportunity to vote on the latter version only if they first had been prepared to reject the former version. Consequently, if a majority of Members had been willing to vote for both versions, they would not have been able to do so and the Staggers substitute would have prevailed. Unfortunately, there is no way to avoid giving this kind of potential advantage to one version or the other so long as the Rules Committee follows the House's conventional amending procedures by making one in order as a substitute for the other.

The "queen-of-the-hill" procedure (and its earlier "king-of-the-hill" variant) was devised to address this problem. It usually is invoked so that Members can vote on two or more amendments in the nature of substitutes to the same bill. The Committee of the Whole debates, perhaps amends, and then votes on the first of them. Then it repeats the same process on the next one and on however many complete substitutes the special rule makes in order. Each amendment in the nature of a substitute is considered as a first degree amendment to the bill, and each can be offered even if another one already has been adopted. In this way, a "queen-of-the-hill" rule sets aside the prohibition against re-amending. And in case a majority votes for more than one version of the bill, the rule further provides that the only one of them to be reported favorably from the Committee of the Whole to the House is the one that received the greatest number of votes.

House Calendar No. 15

102D CONGRESS
1ST SESSION**H. RES. 144**

[Report No. 102-52]

Providing for the consideration of the bill (H.R. 7) to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1991

Mr. MOAKLEY, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the State of the Union for the
5 consideration of the bill (H.R. 7) to amend title 18, United
6 States Code, to require a waiting period before the pur-
7 chase of a handgun, and the first reading of the bill shall
8 be dispensed with. After general debate, which shall be

1 confined to the bill and which shall not exceed one hour,
2 to be equally divided and controlled by the chairman and
3 ranking minority member of the Committee on the Judici-
4 ary, the bill shall be considered for amendment under the
5 five-minute rule. It shall be in order to consider the
6 amendment in the nature of a substitute recommended by
7 the Committee on the Judiciary now printed in the bill
8 as an original bill for the purpose of amendment under
9 the five-minute rule and said substitute shall be considered
10 as having been read. No amendment to said substitute
11 shall be in order except an amendment in the nature of
12 a substitute consisting of the text printed in the report
13 of the Committee on Rules accompanying this resolution,
14 if offered by Representative Staggers of West Virginia or
15 his designee, and said amendment shall be considered as
16 having been read. Said amendment shall be debatable for
17 not to exceed one hour, equally divided and controlled by
18 the proponent and a Member opposed thereto. Said
19 amendment shall not be subject to amendment. At the
20 conclusion of the consideration of the bill for amendment,
21 the Committee shall rise and report the bill to the House,
22 and any Member may demand a separate vote in the
23 House on any amendment adopted in the Committee of
24 the Whole to the bill or to the committee amendment in
25 the nature of a substitute. The previous question shall be

3

- 1 considered as ordered on the bill and amendment thereto
- 2 to final passage without intervening motion except one
- 3 motion to recommit with or without instructions.

An example is Exhibit 12, H.Res. 116 of the 104th Congress for considering H.J.Res. 73, proposing a constitutional amendment with respect to congressional term limits. Through line 11 of page 2, this rule is essentially the same as other rules for considering measures under more conventional procedures. The provisions that follow on lines 11-20 are, with one exception, comparable to those of many other restrictive rules. This rule prohibits all amendments in Committee of the Whole except those printed in the Committee's report on the rule. Those amendments may be offered only in the order, need not be read, may not be amended, and may be debated for one hour each.

What is exceptional is the provision on lines 15-17 that each of the amendments in order "may be considered notwithstanding the adoption of a previous amendment in the nature of a substitute." As this suggests, each of the four amendments that the special rule makes in order is a complete substitute that proposes to strike out all after the resolving clause of the joint resolution and replace the text of H.J.Res. 73 with a different version of the constitutional amendment. The Rules Committee's report, which contains the text of the four substitutes in the order in which their sponsors might offer them, is reprinted here as Exhibit 13.

Under this kind of rule, the Committee of the Whole first debates and votes on the first substitute, without amendment. Then regardless of the outcome, it debates and votes on the second substitute after which, again regardless of the outcome, it debates and votes on the third and then the fourth substitute. If only one of the three substitutes wins, it is that version which the Committee of the Whole reports back to the House. But if more than one of them attracts a majority of votes, the Committee of the Whole reports only the one that the largest number of Members support. The sentence beginning on page 2, line 20, states that "[i]f more than one amendment is adopted, then only the one receiving the greater number of affirmative votes shall be considered as finally adopted."

In this way, Members need not fear that if they vote for one version of the bill, they will not have an opportunity to vote for one or more of the other versions. And regardless of the order in which the substitutes are offered, it is the one that enjoys the greatest support among Members that finally is the one reported favorably back to the House. The Rules Committee also can employ this "queen-of-the-hill" procedure to arrange for the Committee of the Whole to choose among competing alternatives to one provision of a bill, not to choose among different versions of the entire bill.

Before the 104th Congress, the Rules Committee reported a number of rules that provided for a "king-of-the-hill" procedure that also permitted the Committee of the Whole to consider, debate, and vote on a series of amendments in the nature of substitutes (or alternative versions of an important provision in a bill). However, there is one critically important difference between "queen-of-the-hill" and "king-of-the-hill" procedures. In the former case, it is the most popular version that prevails. In the latter, it is the last successful version that prevails. Under a "king-of-the-hill" rule, in other words, a majority of Members could vote for each of the complete substitutes that the rule made in order. However, only the last of them to receive a majority vote would emerge from Committee of the Whole, even if it was not the one that received the largest number of votes.

House Calendar No. 33

104TH CONGRESS
1ST SESSION

H. RES. 116

[Report No. 104-82]

Providing for consideration of the joint resolution (H.J. Res. 73) proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1995

Mr. GOSS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the joint resolution (H.J. Res. 73) proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the joint resolution (H.J. Res. 73) proposing an



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By William N. LaForge

Testifying Before Congress

1 amendment to the Constitution of the United States with
2 respect to the number of terms of office of Members of
3 the Senate and the House of Representatives. The first
4 reading of the joint resolution shall be dispensed with.
5 General debate shall be confined to the joint resolution
6 and shall not exceed three hours equally divided and con-
7 trolled by the chairman and ranking minority member of
8 the Committee on the Judiciary. After general debate the
9 joint resolution shall be considered for amendment under
10 the five-minute rule. The joint resolution shall be consid-
11 ered as read. No amendment shall be in order except those
12 specified in the report of the Committee on Rules accom-
13 panying this resolution. Each amendment may be offered
14 only in the order specified in the report, may be offered
15 only by a Member designated in the report, may be consid-
16 ered notwithstanding the adoption of a previous amend-
17 ment in the nature of a substitute, shall be considered as
18 read, shall be debatable for one hour equally divided and
19 controlled by the proponent and an opponent, and shall
20 not be subject to amendment. If more than one amend-
21 ment is adopted, then only the one receiving the greater
22 number of affirmative votes shall be considered as finally
23 adopted. In the case of a tie for the greater number of
24 affirmative votes, then only the last amendment to receive
25 that number of affirmative votes shall be considered as

1 finally adopted. At the conclusion of consideration of the
2 joint resolution for amendment the Committee shall rise
3 and report the joint resolution to the House with such
4 amendment as may have been finally adopted. The pre-
5 vious question shall be considered as ordered on the joint
6 resolution and any amendment thereto to final passage
7 without intervening motion except one motion to recommit
8 with or without instructions.

Exhibit 13

104TH CONGRESS <i>1st Session</i>	HOUSE OF REPRESENTATIVES	REPORT 104-82
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PROVIDING FOR THE CONSIDERATION OF HOUSE JOINT
RESOLUTION 73, THE TERM LIMITS CONSTITUTIONAL
AMENDMENT

MARCH 15, 1995.—Referred to the House Calendar and ordered to be printed

Mr. GOSS, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 116]

The Committee on Rules, having had under consideration House Resolution 116, by a record vote of 9 to 3, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.J. Res. 73, the Term Limits Constitutional amendment under a modified closed rule. The rule provides three hours of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

The rule makes in order only the amendments in nature of a substitute printed in this report. The amendments are considered as read, may only be considered in the order specified, may only be offered by the Member specified or a designee, are debatable for one hour equally divided between the proponent and an opponent, and may be offered notwithstanding the adoption of a previous amendment. If more than one amendment is adopted, the amendment receiving the most affirmative votes is considered as adopted and reported to the House. In the case of a tie, the last such amendment adopted is reported. Finally, the rule provides one motion to recommit, with or without instructions.

The amendments made in order by the rule, by the Member designated and in the order to be offered, and a summary thereof, are

as follows:¹ (1) Frank (MA) #18 to be offered by Representative Peterson (FL) or Dingell (MI)—Makes term limits retroactive; limits lifetime service of House Members to 6 full terms and Senators to 2 full terms; state law could preempt if the limits were less; does not address partial terms or appointments to fill vacancies; (2) Inglis (SC) #4—Limits lifetime service of House Members to 3 terms and Senators to 2 terms; a term is counted for the term limit if more than 50% of the term is served; contains no preemption language; (3) Hilleary (TN) #22—Limits lifetime service of House Members to 6 full terms and Senators to 2 full terms; state law could preempt if the limits were less; does not address partial terms or appointments to fill vacancies; (4) McCollum (FL) #5—Limits House Members to 6 terms and Senators to 2 terms; a term is counted for the term limit if more than 50% of the term is served; does not address preemption.

COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Rollcall No. 96

Date: March 15, 1995.

Measure: H.J. Res. 73, Term Limits Constitutional Amendment.

Motion By: Mr. Moakley.

Summary of Motion: Provide an open rule.

Results: Rejected, 4 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

Rules Committee Rollcall No. 97

Date: March 15, 1995.

Measure: H.J. Res. 73, Term Limits Constitutional Amendment.

Motion By: Mr. Moakley.

Summary of Motion: Make in order Frank amendment No. 3, providing retroactive term limits, to be offered to the winning amendment in the nature of a substitute.

Results: Rejected, 4 to 9.

Vote by Member: Quillen—Nay; Dreier—Nay; Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; McInnis—Nay; Waldholtz—Nay; Moakley—Yea; Beilenson—Yea; Frost—Yea; Hall—Yea; Solomon—Nay.

Rules Committee Rollcall No. 98

Date: March 15, 1995.

Measure: H.J. Res. 73, Term Limits Constitutional Amendment.

Motion By: Mr. Quillen.

Summary of Motion: Report rule favorably.

Results: Adopted, 9 to 3.

¹ The number designation (#) following the name of each proponent is the number of the substitute filed in the Congressional Record to H.J. Res. 2. The amendments made in order to H.J. Res. 73 are identical in text.

Vote by Member: Quillen—Yea; Dreier—Yea; Goss—Yea; Linder—Yea; Pryce—Yea; Diaz-Balart—Yea; McInnis—Yea; Waldholtz—Yea; Moakley—Nay; Frost—Nay; Hall—Nay; Solomon—Yea.

AMENDMENTS MADE IN ORDER BY THE RULE

1. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERSON OF FLORIDA OR REPRESENTATIVE DINGELL OF MICHIGAN OR THEIR DESIGNEES

Strike all after the resolving clause and insert the following:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. Election as a Senator or Representative before this Article is ratified shall be taken into account for purposes of section 1. Any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1."

-
2. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVES INGLIS OF SOUTH CAROLINA OR A DESIGNEE

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives three times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than two times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article."

3. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE HILLEARY
OF TENNESSEE OR A DESIGNEE

Strike all after the resolving clause and insert the following:
That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. Election as a Senator or Representative before this Article is ratified shall not be taken into account for purposes of section 1, except that any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1."

4. THE AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MCCOLLUM OF FLORIDA OR A DESIGNEE

Strike all after the resolving clause and insert the following:
That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article."

Under the "king-of-the-hill" procedure, it was not the margin of victory that mattered, it was the order of victory. If one complete substitute won by 100 votes and another subsequently won by only one vote, it was the latter that prevailed. Obviously, therefore, the order in which the rule listed the complete substitutes was crucial. The last of them on which the Committee of the Whole voted had a distinct advantage because if it won, it survived, whatever the votes on the versions previously considered. Consequently, a "king-of-the-hill" rule could not be truly even-handed in its treatment of several amendments in the nature of substitutes. However, this approach also did assure that a majority vote for one substitute did not preclude consideration of others.

"Self-Executing" Rules

Another fairly recent innovation that the Rules Committee has devised is what often is called a "self-executing" provision, such as the one contained in H.Res. 234 of the 104th Congress (Exhibit 14).

In most respects, this is a conventional open rule, providing for the bill, H.R. 2405, to be considered for amendment by titles and authorizing the chairman of the Committee of the Whole to give priority to amendments that had been printed in advance in the *Congressional Record*. The rule provides the usual one hour for general debate and ensures that a motion to recommit, if offered, may contain instructions.

The provision that makes this a "self-executing" rule is the sentence on lines 8-11 of page 2: "[a]n amendment striking section 304(b)(3) shall be considered as adopted in the House and in Committee of the Whole." In other words, when the House adopts the rule, it thereby also amends the bill by striking out from its text a portion of Sec. 304. So Members cannot vote separately on this amendment either when the bill is considered for amendment in Committee of the Whole or later in the House after the Committee rises and reports. In addition, an amendment that is brought to the House floor in this way cannot be amended (or in this case, the portion of the bill proposed to be stricken cannot be perfected) because the amendment already has been adopted. In order to vote against the amendment, Members must vote to amend or reject the rule itself. And, of course, if the rule is defeated, the House cannot proceed to consider the bill at all.

Two other examples, also drawn from the 104th Congress, give some idea of the various ways in which the Rules Committee can use self-executing provisions.

H.Res. 69 (Exhibit 15) provides for a Judiciary Committee substitute to be considered as an original bill for the purpose of amendment. However, the rule also provides, on lines 11-12 of page 2, for that substitute to be "modified by the amendment printed in section 2 of this resolution." That amendment, as it appears in Sec. 2 of the rule, strikes Sec. 11 from the committee substitute. By adopting the rule, therefore, the House also agrees to strike that section from the committee substitute that it is about to consider as original text. If H.Res. 69 did not contain this provision, the same result could be achieved by a Member moving, and the House agreeing, to

House Calendar No. 99

104TH CONGRESS
1ST SESSION

H. RES. 234

[Report No. 104-270]

Providing for consideration of the bill (H.R. 2405) to authorize appropriations for fiscal years 1996 and 1997 for civilian science activities of the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1995

Mr. QUILLEN, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 2405) to authorize appropriations for fiscal years 1996 and 1997 for civilian science activities of the Federal Government, and for other purposes.

- 1 *Resolved*, That at any time after the adoption of this
- 2 resolution the Speaker may, pursuant to clause 1(b) of
- 3 rule XXIII, declare the House resolved into the Committee
- 4 of the Whole House on the state of the Union for consider-
- 5 ation of the bill (H.R. 2405) to authorize appropriations
- 6 for fiscal years 1996 and 1997 for civilian science activi-

1 ties of the Federal Government, and for other purposes.
2 The first reading of the bill shall be dispensed with. Gen-
3 eral debate shall be confined to the bill and shall not ex-
4 ceed one hour equally divided and controlled by the chair-
5 man and ranking minority member of the Committee on
6 Science. After general debate the bill shall be considered
7 for amendment under the five-minute rule. The bill shall
8 be considered by title rather than by section. The first sec-
9 tion and each title shall be considered as read. An amend-
10 ment striking section 304(b)(3) shall be considered as
11 adopted in the House and in the Committee of the Whole.
12 During consideration of the bill for amendment, the Chair-
13 man of the Committee of the Whole may accord priority
14 in recognition on the basis of whether the Member offering
15 an amendment has caused it to be printed in the portion
16 of the Congressional Record designated for that purpose
17 in clause 6 of rule XXIII. Amendments so printed shall
18 be considered as read. At the conclusion of consideration
19 of the bill for amendment the Committee shall rise and
20 report the bill to the House with such amendments as may
21 have been adopted. The previous question shall be consid-
22 ered as ordered on the bill and amendments thereto to
23 final passage without intervening motion except one mo-
24 tion to recommit with or without instructions.

House Calendar No. 14

104TH CONGRESS
1ST SESSION

H. RES. 69

[Report No. 104-26]

Providing for the consideration of the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1995

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 668) to control crime by further
6 streamlining deportation of criminal aliens. The first read-
7 ing of the bill shall be dispensed with. Points of order
8 against consideration of the bill for failure to comply with

1 section 302(f) or section 303(a) of the Congressional
2 Budget Act of 1974 are waived. General debate shall be
3 confined to the bill and shall not exceed one hour equally
4 divided and controlled by the chairman and ranking mi-
5 nority member of the Committee on the Judiciary. After
6 general debate the bill shall be considered for amendment
7 under the five-minute rule. It shall be in order to consider
8 as an original bill for the purpose of amendment under
9 the five-minute rule the amendment in the nature of a sub-
10 stitute recommended by the Committee on the Judiciary
11 now printed in the bill, modified by the amendment print-
12 ed in section 2 of this resolution. All points of order
13 against the committee amendment in the nature of a sub-
14 stitute for failure to comply with clause 5(a) of rule XXI
15 are waived. Each section of the committee amendment in
16 the nature of a substitute, as modified, shall be considered
17 as read. During consideration of the bill for amendment,
18 the Chairman of the Committee of the Whole may accord
19 priority in recognition on the basis of whether the Member
20 offering an amendment has caused it to be printed in the
21 portion of the Congressional Record designated for that
22 purpose in clause 6 of rule XXIII. Amendments so printed
23 shall be considered as read. At the conclusion of consider-
24 ation of the bill for amendment the Committee shall rise
25 and report the bill to the House with such amendments

1 as may have been adopted. Any Member may demand a
2 separate vote in the House on any amendment adopted
3 in the Committee of the Whole to the bill or to the commit-
4 tee amendment in the nature of a substitute, as modified.
5 The previous question shall be considered as ordered on
6 the bill and amendments thereto to final passage without
7 intervening motion except one motion to recommit with
8 or without instructions.

9 SEC. 2. The amendment in the nature of a substitute
10 recommended by the Committee on the Judiciary now
11 printed in the bill is modified by the following amendment:
12 “Strike section 11 and redesignate the succeeding sections
13 accordingly.”.

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strike Sec. 11 from the Judiciary Committee's substitute. In that case, however, there would be a separate vote on whether or not to retain Sec. 11. By including what is in effect a self-executing provision, H.Res. 69 precludes such a vote.

H.Res. 251 (Exhibit 16) also provides for a Judiciary Committee substitute. In this case, however, that substitute is not to be treated as original text for purposes of the amendment process. Instead, the rule states that the committee substitute "shall be considered as adopted in the House and in Committee of the Whole."

Consequently, no floor amendments to the bill, H.R. 1833, are to be in order at all, because when the Committee of the Whole agrees to an amendment in the nature of a substitute, it amends the underlying bill in its entirety so any further amendments would be subject to points of order on the ground that they propose to re-amend language that already has been amended. Thus, the effect of the self-executing provision in this resolution is to make it a closed rule that prohibits all amendments except whatever amendment may be included in a motion to recommit with instructions.

Examples of Complex Rules

Special rules cannot all be categorized clearly and simply because they may contain complex combinations of provisions that the Rules Committee designs very carefully to satisfy diverse policy and political interests. In this section, we examine several complex and, in some respects, unusual rules to illustrate how the committee can assemble and arrange different procedures in the same rule and develop unusual procedures to suit equally unusual circumstances.

One such rule is H.Res. 258 of the 104th Congress (Exhibit 17) which waived all points of order against consideration of a bill to increase the debt ceiling. The rule also provided for the bill to be considered in the House with the previous question already considered as ordered. The effect of these latter provisions usually is to preclude all floor amendments except whatever amendment may be included in a recommittal motion. In this case, however, the rule included a self-executing provision by which the House was deemed to have adopted a Ways and Means Committee amendment and four amendments printed in the Rules Committee's report on the rule.

None of these four amendments dealt directly with the subject of the debt ceiling. Instead, they addressed four different policy issues: (1) a commitment to achieve a balanced budget by 2002, using CBO scoring; (2) Medicare coverage of certain drugs for treating prostate and breast cancer; (3) habeas corpus reform provisions taken from a Senate-passed anti-terrorism bill; and (4) abolition of the Department of Commerce. Under the terms of the rule, there would be no vote on these amendments, individually or collectively. If and when the House adopted H.Res. 258, it would thereby agree to these amendments as well. In addition, the rule made in order, and waived all points of order against, an amendment to be offered by Rep. Walker or his designee. It was explained that the Walker amendment would address the issue of regulatory reform. However, the subject of the amendment was not identified in the rule; in effect, the rule authorized Rep. Walker to offer an amendment on any subject

House Calendar No. 109

104TH CONGRESS
1ST SESSION

H. RES. 251

[Report No. 104-301]

Providing for consideration of the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1995

Mrs. WALDHOLTZ, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 1833) to amend title 18, United
6 States Code, to ban partial-birth abortions. The first read-
7 ing of the bill shall be dispensed with. General debate shall

1 be confined to the bill and shall not exceed one hour equal-
2 ly divided and controlled by the chairman and ranking mi-
3 nority member of the Committee on the Judiciary. After
4 general debate the bill shall be considered as read for
5 amendment under the five-minute rule. The amendment
6 in the nature of a substitute recommended by the Commit-
7 tee on the Judiciary now printed in the bill shall be consid-
8 ered as adopted in the House and in the Committee of
9 the Whole. At the conclusion of consideration of the bill
10 for amendment the Committee shall rise and report the
11 bill, as amended, to the House. The previous question shall
12 be considered as ordered on the bill, as amended, to final
13 passage without intervening motion except one motion to
14 recommit with or without instructions.

House Calendar No. 114

104TH CONGRESS
1ST SESSION

H. RES. 258

[Report No. 104-328]

Providing for consideration of the bill (H.R. 2586) to provide for a temporary increase in the public debt limit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1995

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 2586) to provide for a temporary increase in the public debt limit, and for other purposes.

1 *Resolved*, That upon the adoption of this resolution
2 it shall be in order without intervention of any point of
3 order to consider in the House the bill (H.R. 2586) to
4 provide for a temporary increase in the public debt limit,
5 and for other purposes. The following amendments shall
6 be considered as adopted: (1) the amendment rec-
7 ommended by the Committee on Ways and Means now

1 printed in the bill; and (2) the amendments specified in
2 the report of the Committee on Rules accompanying this
3 resolution. The previous question shall be considered as
4 ordered on the bill, as amended, and any amendments
5 thereto to final passage without intervening motion except:
6 (1) one hour of debate on the bill, as amended, which shall
7 be equally divided and controlled by the chairman and
8 ranking minority member of the Committee on Ways and
9 Means; (2) one motion to amend by the chairman of the
10 Committee on Ways and Means or his designee, which
11 shall be considered as read and shall be debatable for
12 twenty minutes equally divided and controlled by the pro-
13 ponent and an opponent; (3) one motion to amend by Rep-
14 resentative Walker of Pennsylvania or his designee, which
15 shall be in order without intervention of any point of
16 order, shall be considered as read, and shall be debatable
17 for forty minutes equally divided and controlled by the
18 proponent and an opponent; and (4) one motion to recom-
19 mit, which may include instructions only if offered by the
20 minority leader or his designee. During consideration of
21 the bill, no question shall be subject to a demand for divi-
22 sion of the question.

and without regard to any rule of the House. Furthermore, all the amendments were protected against being amended.

In short, H.Res. 258 demonstrates how the Rules Committee can enable the House to circumvent its germaneness requirement when the House wishes to do so. Clause 7 of Rule XVI requires that every House floor amendment must be germane to the text it would amend. Yet H.Res. 258 proposed that the House agree to four important amendments that clearly were not germane to the debt ceiling bill, and that the House consider another amendment that was equally non-germane. In ways such as this, the special rules that the Rules Committee reports can inject a valuable, and perhaps essential, flexibility in the House's floor procedures. It bears emphasizing once again, however, that it is ultimately for the House to decide whether or not to approve whatever divergences from normal House procedures that the Rules Committee may propose.

H.Res. 440 (Exhibit 18), which the Rules Committee reported on May 21, 1996, deals with two bills, H.R. 3448 and H.R. 1227, both to be considered in the House. Sec. 1 of the rule waives all points of order (except under the 1995 Unfunded Mandates Act) against consideration of H.R. 3448 and against the Ways and Means Committee amendment in the nature of a substitute. The previous question is considered as ordered, requiring the House to vote on the committee substitute without amendment. However, the right of the minority to offer a motion to recommit with instructions is protected, as House rules require. The rule also requires a rollcall vote on final passage of the bill and on any conference report that the House may consider at some later date. Finally, the requirement for a three-fifths vote to approve a federal income tax rate increase is waived.

Under Sec. 2 of the rule, the House then may consider the second bill, H.R. 1227, also in the House. In this case, a committee amendment in the nature of a substitute is modified by a self-executing provision to incorporate an amendment that is printed in Sec. 3. The committee substitute as modified in this way "shall be considered as adopted," foreclosing any vote on it in Committee of the Whole. Also, the previous question is considered as ordered, which normally would preclude any amendments to the committee substitute. However, the rule specifically makes two further amendments in order, both of which are printed in the Rules Committee's report. One of the amendments is to be debatable for 90 minutes, the other for an hour; neither is amendable because the previous question is considered as ordered on the bill, as amended by the committee substitute, and on "any further amendment thereto." However, the rule provides for the second amendment to be divided, so that there will be two votes on it: one vote on a single subsection and another on the remainder of the amendment.

Finally, H.Res. 440 provides for the texts of the two bills to be joined after the House passes them. When the House passes a bill, it is engrossed (reprinted in the form in which the House passed it) before being sent to the Senate. Sec. 4 of this rule directs the Clerk of the House not to engross H.R. 3448 until after the House acts on the second bill, H.R. 1227. Then, in engrossing H.R. 3448, the clerk is to add at the end of it the text of H.R. 1227, as passed by the House, so that the version of H.R. 3448 that the Senate receives will be the combined text of both bills. In this way, the

House Calendar No. 230

104TH CONGRESS
2D SESSION

H. RES. 440

[Report No. 104-590]

Providing for consideration of the bill (H.R. 3448) to provide tax relief for small businesses, to protect jobs, to create opportunities, to increase the take home pay of workers, and for other purposes, and for consideration of the bill (H.R. 1227) to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 1996

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 3448) to provide tax relief for small businesses, to protect jobs, to create opportunities, to increase the take home pay of workers, and for other purposes, and for consideration of the bill (H.R. 1227) to amend the Portal-to-Portal Act of 1947 relating to the payment of wages to employees who use employer owned vehicles.

- 1 *Resolved*, That upon the adoption of this resolution
2 it shall be in order without intervention of any point of

1 order (except those arising under section 425(a) of the
2 Congressional Budget Act of 1974) to consider in the
3 House the bill (H.R. 3448) to provide tax relief for small
4 businesses, to protect jobs, to create opportunities, to in-
5 crease the take home pay of workers, and for other pur-
6 poses. The amendment in the nature of a substitute rec-
7 ommended by the Committee on Ways and Means now
8 printed in the bill shall be considered as read. All points
9 of order against the committee amendment (except those
10 arising under section 425(a) of the Congressional Budget
11 Act of 1974) are waived. The bill and the amendment shall
12 be debatable for one hour equally divided and controlled
13 by the chairman and ranking minority member of the
14 Committee on Ways and Means. The previous question
15 shall be considered as ordered on the bill and the amend-
16 ment to final passage without intervening motion except
17 one motion to recommit with or without instructions. The
18 yeas and nays shall be considered as ordered on the ques-
19 tion of passage of the bill and on any conference report
20 thereon. Clause 5(c) of rule XXI shall not apply to the
21 bill, amendments thereto, or conference reports thereon.

22 SEC. 2. After disposition of H.R. 3448 it shall be in
23 order without intervention of any point of order (except
24 those arising under section 425(a) of the Congressional
25 Budget Act of 1974) to consider in the House the bill

1 (H.R. 1227) to amend the Portal-to-Portal Act of 1947
2 relating to the payment of wages to employees who use
3 employer owned vehicles. The amendment in the nature
4 of a substitute recommended by the Committee on Eco-
5 nomic and Educational Opportunities now printed in the
6 bill, modified by the amendment printed in section 3 of
7 this resolution, shall be considered as adopted. The pre-
8 vious question shall be considered as ordered on the bill,
9 as amended, and any further amendment thereto to final
10 passage without intervening motion except: (1) ninety
11 minutes of debate on the bill, which shall be equally di-
12 vided and controlled by the chairman and ranking minor-
13 ity member of the Committee on Economic and Edu-
14 cational Opportunities; (2) the further amendment printed
15 in part 1 of the report of the Committee on Rules accom-
16 panying this resolution, which may be offered only by Rep-
17 resentative Riggs of California or his designee, shall be
18 in order without intervention of any point of order (except
19 those arising under section 425(a) of the Congressional
20 Budget Act of 1974), shall be considered as read, shall
21 be separately debatable for ninety minutes equally divided
22 and controlled by the proponent and an opponent, and
23 shall not be subject to a demand for division of the ques-
24 tion; (3) the further amendment printed in part 2 of the
25 report of the Committee on Rules accompanying this reso-

1 lution, which may be offered only by Representative Good-
2 ling of Pennsylvania or his designee, shall be in order with-
3 out intervention of any point of order (except those arising
4 under section 425(a) of the Congressional Budget Act of
5 1974), shall be considered as read, shall be separately de-
6 batable for one hour equally divided and controlled by the
7 proponent and an opponent, and on which the question
8 shall be divided between the proposed subsection 3(d) and
9 the remainder of the proposed section 3 (and shall not
10 otherwise be subject to a demand for division of the ques-
11 tion); and (4) one motion to recommit with or without in-
12 structions.

13 SEC. 3. The amendment in the nature of a substitute
14 recommended by the Committee on Economic and Edu-
15 cational Opportunities now printed in H.R. 1227 is modi-
16 fied by the following amendment: Immediately after the
17 enacting clause insert the following new section (and re-
18 designate succeeding sections accordingly):

19 “SECTION 1. This Act may be cited as the ‘Employee
20 Commuting Flexibility Act of 1996’.”.

21 SEC. 4. (a) In the engrossment of H.R. 3448, the
22 Clerk shall—

23 (1) await the disposition of H.R. 1227 pursuant
24 to section 2 of this resolution;

1 (2) add the text of H.R. 1227, as passed by the
2 House, as new matter at the end of H.R. 3448;

3 (3) conform the title of H.R. 3448 to reflect the
4 addition of the text of H.R. 1227 to the engross-
5 ment;

6 (4) assign appropriate designations to titles
7 within the engrossment; and

8 (5) conform provisions for short titles within
9 the engrossment.

10 (b) Upon the addition of the text of H.R. 1227 to
11 the engrossment of H.R. 3448, H.R. 1227 shall be laid
12 on the table.

Rules Committee can enable the House to debate and vote separately on two or more bills, but then to consolidate them for purposes of reaching agreement with the Senate.

Whereas H.Res. 258 is a rule for two bills, H.Res. 117 and H.Res. 119 of the 104th Congress (Exhibits 19 and 20) are two rules for a single bill, H.R. 4. The first rule only provides for the bill to be considered in Committee of the Whole, and for a five-hour period of general debate on H.R. 4 and the text of a second bill, H.R. 1214, with the time divided between the leaders of two committees. "After general debate the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House." That "subsequent order of the House" is in the form of the second rule, H.Res. 119, which proceeds to lay out a fairly complex set of procedures for considering amendments to H.R. 4.

First, the text of H.R. 1214, mentioned in the first rule, is considered as adopted, in the House and in Committee of the Whole, as an amendment in the nature of a substitute for H.R. 4. In other words, the rule substitutes the text of one bill for another and prevents any vote on the text of H.R. 1214 either in Committee of the Whole or after the Committee rises and reports H.R. 4 back to the House with the text of H.R. 1214 as an amendment in the nature of a substitute.

Under normal House procedures, no further amendments to H.R. 4 would be in order because its text has been fully amended by the text of H.R. 1214, so any other amendment would propose to re-amend some portion of H.R. 4 that already has been amended. However, the rule goes on to describe various amendments that Members are allowed to propose. First is a series of 31 amendments that are printed in the Rules Committee report on H.Res. 119. As is typical in such cases, the report specifies the order in which the amendments may be offered and who may offer them. The rule also protects each amendment against amendments and points of order, and provides for each to be debatable for 20 minutes plus an additional ten minutes if the chairman and ranking minority member of the Ways and Means Committee each offers a pro forma amendment for that purpose.

Sec. 2 of the rule allows the Ways and Means Committee chairman to offer some of the 31 amendments, or germane modifications of them, en bloc (that is, as a single package). Earlier in this report we encountered such a provision in another restrictive rule that also permitted a large number of amendments to be offered. The primary reason for giving the committee chairman this authority is to enable the Committee of the Whole to act quickly (in this case, after no more than 20 minutes of debate) on a group of amendments that are discovered to be non-controversial.

Next, Sec. 3 provides for consideration of three amendments in the nature of substitutes. Two consist of the texts of other bills; the third comprises the text of H.R. 4 as amended under Secs. 1 and 2, if the chairman of the Ways and Means Committee decides to offer it. These amendments are debatable for an hour each and the last of them can be amended by any of the 31 amendments in the Rules Committee report that have not already been offered. The amendments are to be considered under

House Calendar No. 34

104TH CONGRESS
1ST SESSION

H. RES. 117

[Report No. 104-83]

Providing for the consideration of the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 1995

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 4) to restore the American family,
6 reduce illegitimacy, control welfare spending and reduce
7 welfare dependence. The first reading of the bill shall be

1 dispensed with. General debate shall be confined to the
2 bill and the text of the bill (H.R. 1214) to help children
3 by reforming the Nation's welfare system to promote
4 work, marriage, and personal responsibility, and shall not
5 exceed five hours, with two hours equally divided and con-
6 trolled by the chairman and ranking minority member of
7 the Committee on Ways and Means and three hours equal-
8 ly divided among and controlled by the chairmen and
9 ranking minority members of the Committee on Economic
10 and Educational Opportunities and the Committee on Ag-
11 riculture. After general debate the Committee of the
12 Whole shall rise without motion. No further consideration
13 of the bill shall be in order except pursuant to a subse-
14 quent order of the House.

House Calendar No. 35

104TH CONGRESS
1ST SESSION**H. RES. 119****[Report No. 104-85]**

Providing for further consideration of the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1995

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for further consideration of the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for further
5 consideration of the bill (H.R. 4) to restore the American
6 family, reduce illegitimacy, control welfare spending, and
7 reduce welfare dependence. No further general debate

1 shall be in order. An amendment in the nature of a sub-
2 stitute consisting of the text of H.R. 1214 shall be consid-
3 ered as adopted in the House and in the Committee of
4 the Whole. The bill, as amended, shall be considered as
5 the original bill for the purpose of further amendment
6 under the five-minute rule. The bill, as amended, shall be
7 considered as read. No further amendment shall be in
8 order except the amendments printed in the report of the
9 Committee on Rules accompanying this resolution, amend-
10 ments en bloc described in section 2 of this resolution, and
11 the amendments designated in section 3 of this resolution.
12 Except as specified in section 2, 3, or 4 of this resolution,
13 each amendment made in order by this resolution may be
14 considered only in the order printed in the report, may
15 be offered only by a Member designated in the report,
16 shall be considered as read, shall be debatable for twenty
17 minutes equally divided and controlled by the proponent
18 and an opponent, shall not be subject to amendment (ex-
19 cept that the chairman and ranking minority member of
20 the Committee on Ways and Means, or their designees,
21 each may offer one pro forma amendment to any amend-
22 ment printed in the report for the purpose of debate), and
23 shall not be subject to a demand for division of the ques-
24 tion in the House or in the Committee of the Whole. All

1 points of order against amendments made in order by this
2 resolution are waived.

3 SEC. 2. It shall be in order at any time before the
4 consideration of the amendments designated in section 3
5 of this resolution for the chairman of the Committee on
6 Ways and Means or his designee to offer amendments en
7 bloc consisting of amendments printed in the report of the
8 Committee on Rules accompanying this resolution not ear-
9 lier disposed of or germane modifications of any such
10 amendment. Amendments en bloc offered pursuant to this
11 section shall be considered as read (except that modifica-
12 tions shall be reported) and shall be debatable for twenty
13 minutes equally divided and controlled by the chairman
14 and ranking minority member of the Committee on Ways
15 and Means or their designees. For the purpose of inclusion
16 in such amendments en bloc, an amendment printed in
17 the form of a motion to strike may be modified to the
18 form of a germane perfecting amendment to the text origi-
19 nally proposed to be stricken. The original proponent of
20 an amendment included in such amendments en bloc may
21 insert a statement in the Congressional Record imme-
22 diately before the discussion of the amendments en bloc.

23 SEC. 3. (a) After disposition of the amendments
24 printed in the report of the Committee on Rules accom-
25 panying this resolution and any amendments en bloc of-

By Bradford Fitch

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ferred pursuant to section 2 of this resolution, it shall be in order to consider the following amendments in the following order—

(1) a further amendment in the nature of a substitute consisting of the text of H.R. 1267, if offered by Representative Deal of Georgia or his designee;

(2) a further amendment in the nature of a substitute consisting of the text of H.R. 1250, if offered by Representative Mink of Hawaii or her designee; and

(3) a further amendment in the nature of a substitute consisting of the text of the bill, as it had been perfected before the consideration of amendments pursuant to this section, if offered by the chairman of the Committee on Ways and Means or his designee.

(b) Each of the amendments designated in subsection (a) of this section shall be debatable for one hour equally divided and controlled by the proponent and an opponent.

(c) The amendment designated in subparagraph (a)(3) of this section shall be subject to amendment by any amendment printed in the report of the Committee on Rules accompanying this resolution that was not earlier disposed of as an amendment to the bill, as amended pur-

1 suant to this resolution, before the consideration of
2 amendments pursuant to this section. Amendments to the
3 amendment designated in subparagraph (a)(3) of this sec-
4 tion shall be considered under the same terms as if offered
5 to the bill, as amended by this resolution, and shall be
6 subject to the last sentence of section 4 of this resolution.

7 (d) If more than one of the amendments designated
8 in subsection (a) of this section is adopted, then only the
9 one receiving the greater number of affirmative votes shall
10 be considered as finally adopted. In the case of a tie for
11 the greater number of affirmative votes, then only the last
12 amendment to receive that number of affirmative votes
13 shall be considered as finally adopted.

14 SEC. 4. The Chairman of the Committee of the Whole
15 may postpone until a time during further consideration
16 in the Committee of the Whole a request for a recorded
17 vote on any amendment made in order by this resolution.
18 The Chairman of the Committee of the Whole may reduce
19 to not less than five minutes the time for voting by elec-
20 tronic device on any postponed question that immediately
21 follows another vote by electronic device without interven-
22 ing business, provided that the time for voting by elec-
23 tronic device on the first in any series of questions shall
24 be not less than fifteen minutes. The Chairman of the
25 Committee of the Whole may recognize for consideration

1 of any amendment printed in the report of the Committee
2 on Rules accompanying this resolution out of the order
3 printed, but not sooner than one hour after the chairman
4 of the Committee on Ways and Means or a designee an-
5 nounces from the floor a request to that effect.

6 SEC. 5. At the conclusion of the bill for amendment
7 the Committee shall rise and report the bill, as amended
8 pursuant to this resolution, to the House with such further
9 amendments as may have been finally adopted. Any Mem-
10 ber may demand a separate vote in the House on any
11 amendment adopted in the Committee of the Whole either
12 to the bill, as amended pursuant to this resolution, or as
13 incorporated in a further amendment in the nature of a
14 substitute designated in section 3(a)(3) of this resolution,
15 unless replaced by a further amendment in the nature of
16 a substitute designated in section 3(a)(1) or 3(a)(2) of
17 this resolution. The previous question shall be considered
18 as ordered on the bill and any amendments thereto to final
19 passage without intervening motion except one motion to
20 recommit with or without instructions.

the "queen-of-the-hill" procedure, meaning that if more than one of the three complete substitutes is adopted, the one receiving the most votes is the only one finally adopted.

Sec. 4 authorizes the chairman of the Committee of the Whole to postpone and cluster record votes on amendments and to change the order in which Members offer the amendments printed in the Rules Committee report, but only with at least one hour's notice in each case. Finally, the rule permits Members to demand separate votes in the House on amendments adopted to the bill or any of the amendments in the nature of substitutes. The House then may consider a final amendment to the bill through a motion to recommit, with or without instructions.

Even these fairly detailed descriptions have not captured all the details and nuances of these complex rules. However, the discussion in this section should demonstrate that the Rules Committee can develop complex and intricate procedures to control if, when, and how Members can amend legislation on the House floor. Sometimes these procedures contribute to an institutional purpose by conserving the time of the House and organizing the floor debate to focus on key policy choices. Sometimes, on the other hand, they serve a policy or political purpose by creating procedural advantages for some amendments and preventing others, especially those favored by minority party members, from being considered at all. But while Members may disagree about the wisdom or fairness of particular rules or, more generally, about the extent to which special rules intrude on the amending process, they all must agree that these resolutions, however complicated and difficult to understand, are critically important in influencing the legislation the House ultimately does pass.

Rules for Considering General Appropriations Bills

General appropriations bills, which are privileged measures, do not need special rules to be called up on the floor. More often than not, however, the Rules Committee does report rules for considering these bills.

Until recently, special rules on appropriations bills usually were reported and adopted only for the purpose of waiving points of order that otherwise could be made against the consideration of a general appropriations bill or against one or more of its provisions, or even against amendments offered to it. These points of order would be based on House Rule XXI, which contains special requirements and prohibitions that govern initial floor consideration of general appropriations bills, in addition the standing rules that apply to all bills or amendments.

Such a resolution is H.Res. 165 of the 102nd Congress (Exhibit 21), waiving points of order during consideration of a defense appropriations bill. Notice that this resolution does not contain all the provisions appearing in various forms in the special rules examined earlier in this report. The only purpose and effect of this rule is to waive points of order. On page 1, it waives the three-day layover requirement of Rule XIII, clause 4(a), that applies to all bills and a special requirement in clause 4(c) of the same rule that the hearings on a general appropriations bill also must be published and available for three days before the bill can be called up on the House floor. Then all of page 2 and the first lines of page 3 are devoted to protecting specific provisions of

House Calendar No. 24

102D CONGRESS
1ST SESSION**H. RES. 165**

[Report No. 102-98]

Waiving certain points of order during consideration of the bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1991

Mr. BEILENSEN, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Waiving certain points of order during consideration of the bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes.

1 *Resolved*, That all points of order against consider-
2 ation of the bill (H.R. 2521) making appropriations for
3 the Department of Defense for the fiscal year ending Sep-
4 tember 30, 1992, and for other purposes, for failure to
5 comply with the provisions of clause 2(1)(6) of rule XI
6 and clause 7 of rule XXI are hereby waived. During con-

1 sideration of the bill, all points of order against the follow-
 2 ing provisions in the bill for failure to comply with clauses
 3 2 and 6 of rule XXI are waived: beginning on page 2,
 4 line 3 through "\$24,526,100,000:" on line 15: beginning
 5 on page 2, line 18 through "1992:" on page 8, line 6;
 6 beginning on page 9, line 10 through "1992:" on line 23;
 7 beginning on page 10, line 18 through "1992:" on page
 8 11, line 1; beginning with "*Provided*" on page 11, line 9
 9 through "\$18,599,037,000," on page 12, line 6; beginning
 10 with "and" on page 12, line 8 through "poses:" on line
 11 13: beginning with "*Provided*" on page 12, line 17
 12 through "1992:" on line 21; beginning with "*Provided*"
 13 on page 13, line 1 through "1994:" on page 22, line 8;
 14 beginning with "*Provided*" on page 22, line 14 through
 15 "\$599,900,000:" on page 26, line 15; beginning on page
 16 26, line 19 through "1996:" on line 22; beginning with
 17 "*Provided*" on page 27, line 8 through "1994:" on page
 18 29, line 23; beginning on page 30, line 7 through "1994,"
 19 on page 31, line 20; beginning with "*Provided,*" on page
 20 31, line 22 through "1993," on page 33, line 11; begin-
 21 ning on page 33, line 16 through "1993:" on line 23; be-
 22 ginning on page 34, line 21 through "1993," on page 35,
 23 line 3; beginning on page 36, line 1 through "1993," on
 24 line 12; beginning on page 37, line 15 through page 39,
 25 line 25; beginning on page 40, line 11 through page 42,

1 line 3; beginning on page 45, line 16 through page 46,
2 line 9, beginning on page 84, line 24 through page 86;
3 line 6; and beginning on page 93, line 3 through page 96,
4 line 16. In any case where this resolution waives points
5 of order against only a portion of a paragraph, a point
6 of order against any other provision in such paragraph
7 may be made only against such provision and not against
8 the entire paragraph.

the bill from points of order under Rule XXI on the grounds (1) that they constitute legislation on a general appropriations bill or (2) that they appropriate without a statutory authorization or (3) that they reappropriate unexpended balances of funds that had been appropriated by an earlier law.

Many, and sometimes most, of the 13 annual general appropriations bills that come to the House floor each year require one or more waivers of this kind. When the Rules Committee has reported rules only for this purpose, such as H.Res. 165, each resolution often has designated precisely what portions of the bill are being protected. Alternatively, however, the Rules Committee simply can propose waiving all points of order against consideration of the bill and against its provisions, without identifying which rules are being violated and which pages and lines of the bill are violating them.

The final provision of H.Res. 165 protects provisions of the appropriations bill from being affected without cause by a point of order. Normally when a point of order is sustained against any language in a paragraph of an appropriations bill, the entire paragraph is deleted from the bill. Lines 4-8 of page 3 ensure that each provision that the rule protects against a point of order does not fall victim to another point of order, not precluded by the rule, that a Member makes against some other provision of the same paragraph.

As this portion of the rule suggests, the Rules Committee does not necessarily protect every provision of an appropriations bill that might provoke a point of order. In some cases, the Appropriations Committee may not request protection against certain points of order; in other cases, the Rules Committee may not grant all the requests for waivers that Appropriations Committee members do request.

More and more often, the Rules Committee has been reporting rules for considering general appropriations bills that are indistinguishable in most respects from the rules it reports for considering non-privileged bills. An example is H.Res. 483 of the 104th Congress (Exhibit 22), for considering an energy and water development appropriations bill.

On lines 7-9 of page 2, this rule waives all points of order against provisions of the bill, without specifying precisely what provisions are being protected. The rule also includes several other provisions we have encountered in special rules for considering other bills. In fact, the only provision that really distinguishes this and other rules on general appropriations bills of the 104th Congress is in the sentence beginning on the last line of page 2. That sentence states that, after the last lines of the bill have been read, further amendments to the bill can be blocked by a motion that the Committee of the Whole rise and report the bill back to the House with the amendments that the Committee already has approved. In the language of the rule, a motion to rise and report "shall have precedence over a motion to amend," if offered at that point in the proceedings by the majority leader or his designee.

House Rule XXI already provides that, after the Committee of the Whole has disposed of all amendments to the last section or paragraph of a general appropriations bill, the majority leader or a designee can offer a preferential motion that the Committee rise and report the bill back to the House with the amendments that it

House Calendar No. 257

104TH CONGRESS
2D SESSION**H. RES. 483****[Report No. 104-688]**

Providing for consideration of the bill (H.R. 3816) making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 1996

Mr. QUILLEN, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 3816) making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 1(b) of
3 rule XXIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 3816) making appropriations for
6 energy and water development for the fiscal year ending

1 September 30, 1997, and for other purposes. The first
2 reading of the bill shall be dispensed with. General debate
3 shall be confined to the bill and shall not exceed one hour
4 equally divided and controlled by the chairman and rank-
5 ing minority member of the Committee on Appropriations.
6 After general debate the bill shall be considered for
7 amendment under the five-minute rule. Points of order
8 against provisions in the bill for failure to comply with
9 clause 2 or 6 of rule XXI are waived. During consideration
10 of the bill for amendment, the Chairman of the Committee
11 of the Whole may accord priority in recognition on the
12 basis of whether the Member offering an amendment has
13 caused it to be printed in the portion of the Congressional
14 Record designated for that purpose in clause 6 of rule
15 XXIII. Amendments so printed shall be considered as
16 read. The Chairman of the Committee of the Whole may
17 postpone until a time during further consideration in the
18 Committee of the Whole a request for a recorded vote on
19 any amendment. The Chairman of the Committee of the
20 Whole may reduce to not less than five minutes the time
21 for voting by electronic device on any postponed question
22 that immediately follows another vote by electronic device
23 without intervening business, provided that the time for
24 voting by electronic device on the first in any series of
25 questions shall be not less than fifteen minutes. After the

1 reading of the final lines of the bill, a motion that the
2 Committee of the Whole rise and report the bill to the
3 House with such amendments as may have been adopted
4 shall, if offered by the majority leader or a designee, have
5 precedence over a motion to amend. At the conclusion of
6 consideration of the bill for amendment the Committee
7 shall rise and report the bill to the House with such
8 amendments as may have been adopted. The previous
9 question shall be considered as ordered on the bill and
10 amendments thereto to final passage without intervening
11 motion except one motion to recommit with or without in-
12 structions.

already has agreed to. The purpose and effect of this motion, if adopted, is to prevent Members from offering limitation amendments to restrict how and why funds in the bill can be spent without changing existing law. However, the motion made under Rule XXI would not have precedence over certain other amendments that Members might offer at the end of the bill—for example, an amendment proposing an across-the-board cut in some or all accounts, or an amendment that sets the funding level for a program or account appearing earlier in the bill, "notwithstanding any other provision of this Act." The effect of the sentence that the Rules Committee included in this and other special rules on general appropriations bills of the 104th Congress was to enable the majority leader to offer a preferential motion that, if adopted, would preclude any such amendment as well as all limitation amendments.

Special Rules for Other Purposes

From time to time the Rules Committee reports rules waiving points of order that Members could make against conference reports, as in the case of H.Res. 121 of the 104th Congress, which is Exhibit 23.

Note that the resolution waives "[a]ll points of order against the conference report and against its consideration." A conference report is most likely to be subject to a point of order under Rule XXII that the conferees violated the limits on their authority by including a provision in their report that (1) exceeds the scope of the differences between the House and Senate positions on some matter in disagreement, or (2) addresses some matter that was not in disagreement between the houses, either because neither house addressed it or because both houses addressed it in the same way. A point of order is most likely to be made against consideration of a conference report for violating another clause of Rule XXII requiring the report to be available for three days before it is considered on the House floor.

The purpose of the layover requirement is to give all Members an opportunity to review a conference report before it comes to the floor. For this reason, the House generally agrees by unanimous consent to waive the reading of the conference report. Alternately, a special rule such as H.Res. 121 can provide for the report to be "considered as read."

The purpose of most special rules is to bring individual measures to the House floor for debate and initial passage. As H.Res. 121 illustrates, however, rules also can affect later stages of the legislative process and facilitate House action on measures that it passed at some earlier time. When the House receives one or more Senate amendments to a bill it already has passed, the House's rules do not authorize any Representative simply to move that the House either accept or amend those amendments. To put it differently, Senate amendments are not privileged until after the House has disagreed to them, which usually leads to appointment of a conference committee. If the House wishes to agree to Senate amendments or propose alternatives to them instead of going to conference, it can do so only by unanimous consent (or suspension of the rules) unless the Rules Committee intervenes.

House Calendar No. 36

104TH CONGRESS
1ST SESSION

H. RES. 121

[Report No. 104-93]

Waiving points of order against the conference report to accompany the bill (H.R. 831) to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1995

Mr. QUILLEN, from the Committee on Rules, reported the following resolution which was referred to the House Calendar and ordered to be printed

RESOLUTION

Waiving points of order against the conference report to accompany the bill (H.R. 831) to amend the Internal Revenue Code of 1986 to permanently extend the deduction for the health insurance costs of self-employed individuals, to repeal the provision permitting nonrecognition of gain on sales and exchanges effectuating policies of the Federal Communications Commission, and for other purposes.

1 *Resolved*, That upon adoption of this resolution it
2 shall be in order to consider the conference report to ac-
3 company the bill (H.R. 831) to amend the Internal Reve-
4 nue Code of 1986 to permanently extend the deduction
5 for the health insurance costs of self-employed individuals,
6 to repeal the provision permitting nonrecognition of gain
7 on sales and exchanges effectuating policies of the Federal
8 Communications Commission, and for other purposes. All
9 points of order against the conference report and against
10 its consideration are waived. The conference report shall
11 be considered as read.

If the committee does become involved, it can report a resolution such as H.Res. 262, 104th Congress, which is Exhibit 24. This rule makes in order a motion to dispose of the Senate amendments, if that motion is made by the majority leader or a designee. By phrasing the rule in this way, the majority leader has the discretion to move that the House agree to the Senate amendments (concur in them), disagree to them, amend them (concur in the Senate amendments with House amendments) or dispose of different Senate amendments in different ways.

H.Res. 262 also provides that the majority leader's motion is to be considered in the House; House rules can require that some motions for this purpose be considered instead in Committee of the Whole. In the House, such a motion normally is debatable for only one hour because the House almost always votes to order the previous question at the end of that hour. Furthermore, the majority floor manager typically yields half of the hour to the minority manager for purposes of debate. The rule makes these actions unnecessary. It divides the time for debate between the majority and minority leaders (or their designees) and provides for the previous question to be considered as ordered. The last provision forecloses any attempt to amend the majority leader's motion or to pre-empt it with a preferential motion.

Instead of a rule like H.Res. 262, the Rules Committee sometimes has reported "self-executing" rules to achieve the same purpose. Instead of making in order a motion to dispose of Senate amendments, such a "self-executing" rule provides that, upon adoption of the resolution, the Senate amendments shall be considered as having been adopted. Thus, the vote on the rule also constitutes a vote on the Senate amendments. The effect of this alternative is to limit debate on the issue to a total of one hour, instead of permitting an hour of debate on the rule to be followed by another hour of debate on the motion the rule makes in order.

H.Res. 336, 104th Congress (Exhibit 25), illustrates this kind of self-executing rule. It also provides an example of another form of special rule that the Rules Committee may propose in unusual circumstances. This might be called a "linkage" rule because it links together floor action on two or more separate measures.

In Sec. 1 of the rule, the House is "considered to have taken" up a House joint resolution and a Senate amendment to it, and "to have concurred in" the Senate amendment with a House amendment that is printed in the Rules Committee's report on H.Res. 336. There is to be no separate debate or vote on the proposed House amendment. When Representatives vote in favor of a rule such as H.Res. 336, they also agree to the House amendment under the rule's self-executing provisions.

Then, in Sec. 2, the rule contains a second self-executing provision by which the House also is deemed to have adopted a concurrent resolution: "House Concurrent Resolution 131 is hereby adopted." Because of the way in which this provision is phrased, a self-executing rule sometimes has been called a "hereby" rule.

So H.Res. 336 links together House action on H.J. Res. 134 and H.Con. Res. 131. However, the rule goes even further in Sec. 3, and addresses concerns of some House Members who were reluctant to agree to H.J. Res. 134 unless they were assured that both houses would agree to the concurrent resolution. For this purpose, Sec. 3 of the rule directed the Clerk of the House not to transmit H.J. Res. 134 to the Senate

House Calendar No. 118

104TH CONGRESS
1ST SESSION**H. RES. 262****[Report No. 104-332]**

Providing for the consideration of Senate amendments to the bill (H.R. 2586) to provide for a temporary increase in the public debt limit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1995

Ms. PRYCE, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the consideration of Senate amendments to the bill (H.R. 2586) to provide for a temporary increase in the public debt limit, and for other purposes.

- 1 *Resolved*, That upon adoption of this resolution it
- 2 shall be in order without intervention of any point of order
- 3 to take from the Speaker's table the bill (H.R. 2586) to
- 4 provide for a temporary increase in the public debt limit,
- 5 and for other purposes, with any Senate amendments
- 6 thereto, and to consider in the House a motion offered
- 7 by the majority leader or his designee to dispose of all

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1 Senate amendments. Any Senate amendments and the
2 motion shall be considered as read. The motion shall be
3 debatable for one hour equally divided and controlled be-
4 tween the majority leader and minority leader or their des-
5 ignees. The previous question shall be considered as or-
6 dered on the motion to final adoption without intervening
7 motion or demand for division of the question except any
8 such demand made by the majority leader or his designee.

House Calendar No. 176

104TH CONGRESS
2^D SESSION

H. RES. 336

[Report No. 104-448]

Providing for the disposition of the Senate amendment to the joint resolution (H.J. Res. 134) making further continuing appropriations for fiscal year 1996, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1996

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for the disposition of the Senate amendment to the joint resolution (H.J. Res. 134) making further continuing appropriations for fiscal year 1996, and for other purposes.

1 *Resolved*, That upon adoption of this resolution the
2 House shall be considered to have taken from the Speak-
3 er's table the joint resolution (H.J. Res. 134) making fur-
4 ther continuing appropriations for the fiscal year 1996,
5 and for other purposes, with the Senate amendment there-
6 to, and to have concurred in the Senate amendment with

1 an amendment consisting of the text printed in the report
2 of the Committee on Rules accompanying this resolution.

3 SEC. 2. House Concurrent Resolution 131 is hereby
4 adopted.

5 SEC. 3. The Clerk shall not transmit to the Senate
6 a message regarding House Joint Resolution 134 until the
7 House has received a message that the Senate has agreed
8 to House Concurrent Resolution 131 as adopted by the
9 House.

after the House passed it until the Senate notified the House that it had agreed to H.Con.Res. 134. The Senate would have to act on the concurrent resolution before it could receive and act on the joint resolution. Put differently, if the Senate failed to agree to the concurrent resolution, the Senate would not receive the joint resolution so it never could become law.

H.Res. 44 of the 104th Congress, which is Exhibit 26, offers another example of a rule that linked two or more measures. Before the House took up a constitutional amendment to require a balanced budget, some Members expressed concern that, if the amendment were to be ratified, it might have an adverse impact on the Social Security program. To allay any such concerns, H.Res. 44 first provided for the House to consider H.Con.Res. 17 in the House under a closed rule. That resolution (see Exhibit 27) directed the appropriate House and Senate committees to develop legislation to implement the balanced budget amendment in a way that would protect Social Security. Then, after acting on this concurrent resolution, the House could take up the balanced budget amendment itself. By this arrangement, Members were enabled to vote on the constitutional amendment after having already cast a vote to demonstrate their commitment to preserving the Social Security program. With respect to the amendment itself, H.Res. 44 provided for it to be considered under "queen-of-the-hill" procedures that permitted Members to debate and to vote without amendment on a committee substitute and then on five other amendments in the nature of substitutes designated in the third section of the rule.

Finally, and especially toward the end of a congressional session, the Rules Committee sometimes reports special rules for purposes other than the floor consideration of individual bills. These rules might be called "scheduling" rules in that they affect if and when the House may transact other kinds of business.

Under clause 6(a) of House Rule XIII, each special rule that the Rules Committee reports is required to lay over for one calendar day before it may be considered on the floor, unless the House agrees by a two-thirds vote to consider a special rule on the same day it is reported. If the committee wants to recommend waiving this rule, it can report a rule such as H.Res. 342, 104th Congress (Exhibit 28). Note that this resolution proposes to waive the two-thirds vote requirement for any rule reported before a certain date but only if the rule relates to certain kinds of measures: a general appropriations bill, a continuing resolution, or a debt ceiling bill. Alternatively, such a special rule could waive the two-thirds requirement with respect to the rule for considering a specifically identified bill, or the rule could waive the requirement as it otherwise would apply to all rules called up for floor action during a certain period of time.

Another type of rule for a similar purpose is H.Res. 275 of the 104th Congress (Exhibit 29), making in order motions to suspend the rules on a certain Saturday when those motions otherwise could not be made. House rules usually permit suspension motions only on Mondays and Tuesdays. To make sure that motions on this Saturday would not take Members by surprise, H.Res. 275 also requires that the House be given at least one hour's notice before any such motion is offered and that the minority party leadership be consulted.

House Calendar No. 3

104TH CONGRESS
1ST SESSION**H. RES. 44****[Report No. 104-4]**

Providing for consideration of the concurrent resolution (H. Con. Res. 17) relating to the treatment of Social Security under any constitutional amendment requiring a balanced budget and providing for consideration of the joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1995

Mr. SOLOMON, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the concurrent resolution (H. Con. Res. 17) relating to the treatment of Social Security under any constitutional amendment requiring a balanced budget and providing for consideration of the joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

- 1 *Resolved*, That at any time after the adoption of this
- 2 resolution it shall be in order to consider in the House
- 3 the concurrent resolution (H. Con. Res. 17) relating to

1 the treatment of Social Security under any constitutional
2 amendment requiring a balanced budget, if called up by
3 the majority leader or his designee. The concurrent resolu-
4 tion shall be debatable for one hour equally divided and
5 controlled by the majority leader and the minority leader
6 or their designees. The previous question shall be consid-
7 ered as ordered on the concurrent resolution to final adop-
8 tion without intervening motion.

9 SEC. 2. At any time after the disposition of the con-
10 current resolution made in order by the first section of
11 this resolution, the Speaker may, pursuant to clause 1(b)
12 of rule XXIII, declare the House resolved into the Com-
13 mittee of the Whole House on the state of the Union for
14 consideration of the joint resolution (H.J. Res. 1) propos-
15 ing a balanced budget amendment to the Constitution of
16 the United States. The first reading of the joint resolution
17 shall be dispensed with. Points of order against consider-
18 ation of the joint resolution for failure to comply with
19 clause 2(g)(3) of rule XI are waived. General debate shall
20 be confined to the joint resolution and shall not exceed
21 three hours equally divided and controlled by the chairman
22 and ranking minority member of the Committee on the
23 Judiciary. After general debate the joint resolution shall
24 be considered for amendment under the five-minute rule.
25 The amendment in the nature of a substitute rec-

1 ommended by the Committee on the Judiciary now printed
2 in the joint resolution shall be considered as read, shall
3 be debatable for one hour equally divided and controlled
4 by Representative Barton of Texas and an opponent, and
5 shall not be subject to amendment while pending. No fur-
6 ther amendment shall be in order except those designated
7 in section 3 of this resolution. Each amendment may be
8 offered only in the order designated, may be offered only
9 by the named proponent or a designee, may be considered
10 notwithstanding the adoption of a previous amendment in
11 the nature of a substitute, shall be considered as read,
12 shall be debatable for one hour equally divided and con-
13 trolled by the proponent and an opponent, and shall not
14 be subject to amendment. If more than one amendment
15 is adopted, then only the one receiving the greater number
16 of affirmative votes shall be considered as finally adopted.
17 In the case of a tie for the greater number of affirmative
18 votes, then only the last amendment to receive that num-
19 ber of affirmative votes shall be considered as finally
20 adopted, except that if the amendment in the nature of
21 a substitute recommended by the Committee on the Judi-
22 ciary is one of the amendments receiving the greater num-
23 ber of votes then it shall be the amendment considered
24 as finally adopted. At the conclusion of consideration of
25 the joint resolution for amendment the Committee shall

1 rise and report the joint resolution to the House with such
2 amendment as may have been finally adopted. The pre-
3 vious question shall be considered as ordered on the joint
4 resolution and any amendment thereto to final passage
5 without intervening motion except one motion to recommit
6 with or without instructions.

7 SEC. 3. The further amendments that may be offered
8 after disposition of the amendment in the nature of a sub-
9 stitute recommended by the Committee on the Judiciary
10 are those printed in the portion of the Congressional
11 Record designated for that purpose in clause 6 of rule
12 XXIII with the following designations: (a) the amendment
13 numbered 4 by Representative Owens of New York; (b)
14 the amendment numbered 1 by Representative Wise of
15 West Virginia; (c) the amendment numbered 25 by Rep-
16 resentative Conyers of Michigan; (d) the amendment num-
17 bered 29 by Representative Gephardt of Missouri; and (e)
18 the amendment numbered 39 by Representative Schaefer
19 of Colorado.

Exhibit 27

104TH CONGRESS
1ST SESSION**H. CON. RES. 17**

CONCURRENT RESOLUTION

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That, for the purposes of any constitutional
3 amendment requiring a balanced budget, the appropriate
4 committees of the House and the Senate shall report to
5 their respective Houses implementing legislation to
6 achieve a balanced budget without increasing the receipts
7 or reducing the disbursements of the Federal Old-Age and
8 Survivors Insurance Trust Fund and the Federal Disabil-
9 ity Insurance Trust Fund to achieve that goal.

Passed the House of Representatives January 25,
1995.

Attest:

Clerk.

House Calendar No. 179

104TH CONGRESS
2D SESSION**H. RES. 342****[Report No. 104-453]**

Waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolutions reported from the Committee on Rules.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1996

Mr. McINNIS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolutions reported from the Committee on Rules.

- 1 *Resolved*, That the requirement of clause 4(b) of rule
- 2 XI for a two-thirds vote to consider a report from the
- 3 Committee on Rules on the same day it is presented to
- 4 the House is waived with respect to any resolution re-
- 5 ported from that committee before March 16, 1996, and
- 6 providing for consideration or disposition of any of the fol-
- 7 lowing measures:

1 (1) A bill making general appropriations for the
2 fiscal year ending September 30, 1996, any amend-
3 ment thereto, any conference report thereon, or any
4 amendment reported in disagreement from a con-
5 ference thereon.

6 (2) A bill or joint resolution that includes provi-
7 sions making further continuing appropriations for
8 the fiscal year 1996, any amendment thereto, any
9 conference report thereon, or any amendment re-
10 ported in disagreement from a conference thereon.

11 (3) A bill or joint resolution that includes provi-
12 sions increasing or waiving (for a temporary period
13 or otherwise) the public debt limit under section
14 3101(b) of title 31, United States Code, any amend-
15 ment thereto, any conference report thereon, or any
16 amendment reported in disagreement from a con-
17 ference thereon.

House Calendar No. 129

104TH CONGRESS
1ST SESSION**H. RES. 275****[Report No. 104-351]**

Providing for consideration of motions to suspend the rules.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1995

Mr. McINNIS, from the Committee on Rules, reported the following resolution;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of motions to suspend the rules.

1 *Resolved*, That it shall be in order at any time on
2 the legislative day of Saturday, November 18, 1995, for
3 the Speaker to entertain motions that the House suspend
4 the rules: *Provided*, That the object of any motion to sus-
5 pend the rules is announced from the House floor at least
6 one hour prior to its consideration. The Speaker or his
7 designee shall consult with the minority leader or his des-
8 ignee on any matter designated for consideration under
9 this resolution.

The committee and the House may agree to a similar motion shortly before the House adjourns sine die to end the first or second session of a Congress. The House's standing rules permit suspension motions on the last six days of each session. However, the date when these last six days begin is not known until the House and Senate agree to a concurrent resolution setting the date for adjournment. And in current practice, the two houses often do not adopt this resolution until a few days, or even a few hours, before adjournment takes place. In effect, therefore, a resolution such as H.Res. 275 does not diverge from the standing rules so much as it enables the House to act in accordance with the intent of its rules.

Granting Special Rules in Committee

The importance of special rules requires Members to concern themselves with how they are drafted, reported, debated, and approved. This section and the next discuss the consideration of rules in the Rules Committee and then by the House.

When a standing committee favorably reports a non-privileged bill, it evaluates three primary ways for bringing it to the House floor and having it considered. If the bill is likely to be virtually unopposed, the committee chairman may bring it up by unanimous consent at some time when the House's floor schedule permits. If the bill enjoys very widespread support, the chairman may request that the Speaker permit it to be brought up under suspension of the rules. This procedure limits debate on the bill to 40 minutes and precludes all floor amendments but requires a two-thirds vote for passage. (Of course, other considerations may affect these decisions.)

If neither of these alternatives is plausible, the chairman is most likely to write a letter to the chairman of the Rules Committee requesting that the latter schedule a hearing on the bill and a rule for considering it. If the bill is significant, the Committee is likely to do so, but at a time of its choosing. If the Committee refuses to schedule a hearing, the fate of the bill is in very serious jeopardy because it remains without privilege to be called up for floor consideration.

The Rules Committee's agenda reflects the actions of the other standing committees and the preferences and priorities of the majority party leadership with which the committee is now closely allied. But this has not always been the case. From the mid-1930s until the 1960s, a coalition of committee Republicans and conservative Democrats could block important bills from coming to the floor by refusing to grant rules for considering them. Although the committee did not do this very often, it could jeopardize key elements of the majority party program. In reaction, the House voted in 1961 to increase the size of the committee. In recent years, the majority party, whether Democrat or Republican, has ensured itself more than a two-to-one majority on the Rules Committee. In addition, the Speaker nominates the Committee's majority party members and the minority leader has been given comparable authority by the members of his party. So except in the most unusual circumstances, both party delegations on the committee now can be expected to work closely with their party leaders in the House.

When the Rules Committee holds a hearing on a bill, only Members of the House are allowed to testify. These witnesses usually include the leaders and sometimes other

members of the committee that reported the measure, though other interested Representatives also may appear. At the hearing, the committee considers the content and merits of the bill, but it also discusses the procedures by which the House should debate and amend it. At the time a standing committee requests the hearing, its chairman usually expresses a preference for the kind of special rule he or she wishes the Rules Committee to report. The committee is not bound by these preferences, of course, but it always weighs them very seriously and accommodates them unless there is some compelling reason not to do so.

The Rules Committee usually does not take the initiative to grant a rule to send a bill to the floor; it responds to requests it receives from the other standing committees. However, the committee may issue a rule on a bill that has not yet been reported from the committee or committees to which it was referred; this is known as the Rules Committee's power of "extraction." Naturally, the committee does not exercise this power very often. The committee also expects the Members appearing at its hearing to request any needed waivers to protect the bill or amendments to it against potential points of order. In the case of points of order involving the budget process, the committee often consults with the Budget Committee and welcomes its recommendations about granting requested waivers.

After completing its hearing on a bill, the committee often proceeds immediately to mark up and vote on reporting a special rule on that bill. As this practice suggests, the committee members usually have thought about how the bill should be considered on the floor even before the hearing begins. The Democratic and Republican members may meet separately before the hearing to discuss what kind of rule should be granted. The conclusions they reach may change during the hearing, but sometimes the committee's hearing and mark up may only confirm decisions that the committee majority already had made.

The high percentage of restrictive rules that the committee has reported in recent years makes its deliberations increasingly important to Members who want to offer floor amendments to bills. Even if a Member's proposed amendment is germane and meets the other requirements of the amending process in Committee of the Whole, that Member cannot assume that he or she will be able to offer the amendment at the appropriate time because the Rules Committee may report a restrictive rule that does not include that amendment among those to be in order. This very real possibility makes it important for Members and their staff to pay attention to the Rules Committee's schedule, to discuss their amendments with the committee's members, and to testify before the committee to request that the rule not preclude their amendments. Of course, it is essential for Members to approach the committee whenever their amendments require waivers of points of order.

It is equally important for the Rules Committee to know what floor amendments Members wish to offer. Especially when developing a restrictive rule, the committee does not want to exclude certain amendments from consideration inadvertently. When a restrictive rule is possible or anticipated, therefore, the committee is likely to give notice through a floor statement or a "Dear Colleague" letter or both, asking Members to submit their amendments to the committee in writing by a time certain, so that the committee can take their desires into account when crafting its rule.

Considering Special Rules on the Floor

Because a special rule is privileged, it may be called up on the House floor at any time that another measure is not being considered. The Speaker consults with the committee chairman, the leaders of the standing committee that reported the bill at issue, and other members of the majority party leadership in deciding when a rule will be considered. Special rules are not subject to the three-day layover requirement that applies to other bills and resolutions. Instead, they are required by clause 6(a) of Rule XIII to lay over for one calendar day. This means that if the committee files its report before the House adjourns, the rule is eligible for consideration on the following calendar day, even if 24 hours have not elapsed. The House can waive this layover requirement by two-thirds vote if it wishes to consider a special rule on the same day it is reported.

The committee's chairman and ranking minority member designate themselves or other committee members to act as the majority and minority floor managers for each rule. At the time set aside for considering a rule, the majority floor manager calls it up "at the direction of the Committee on Rules." The clerk then reads the rule in full. Whereas the reading of most bills and amendments is dispensed with by unanimous consent, all rules are read from beginning to end for the information of Members who may have had little opportunity to study the committee's proposal in advance.

A special rule is considered in the House, under the hour rule, with the majority floor manager being recognized to control the first hour (and usually the only hour) of debate. Before beginning his opening statement, he yields control of 30 minutes to the minority floor manager, but "for purposes of debate only." During this hour, no one except the majority floor manager is able to offer an amendment to the rule, except in the very unlikely event that he or she yields for that purpose.

Each floor manager makes an opening statement that usually discusses the measure briefly but concentrates on the provisions of the rule for considering it. The two managers then yield periods of time to other Members who want to speak for or against the rule. If the rule itself is not controversial, Members may use this time to comment on the bill. At the end of the hour or when the managers have no further requests for time, the majority floor manager moves the previous question. If a majority supports this motion, which is not debatable, the House normally proceeds to an immediate vote on adopting the rule.

In order to amend a rule, the House first must vote against ordering the previous question. If the previous question is not ordered, the Speaker recognizes another Member to control a second hour of debate, during which he or she can offer an amendment to the resolution. After debate, that Member then moves the previous question "on the resolution and the amendment thereto." Once the House adopts this motion, it votes on the amendment and finally on the resolution as amended. If an amendment to a rule is offered, there is little doubt that it will be adopted; the House would not vote against ordering the previous question if it were not prepared to support the amendment that defeating the previous question would make in order.

Generally speaking, when Members oppose a bill, they urge defeat of the rule for considering it. When they do not oppose considering the bill but find fault with the special rule proposed for considering it, they urge defeat of the previous question so that the rule can be amended. Members wishing to amend a rule must make their case for doing so during the first hour of debate; they must convince a majority of the House to oppose ordering the previous question. If they are successful, the Speaker normally recognizes the minority floor manager to control the second hour and offer the amendment because he or she usually is the one to lead the fight against the rule as reported by the Rules Committee.

Attempts to amend special rules are rarely successful. On ordering the previous question, Members are somewhat more likely to support the position of their party leaders than on substantive policy amendments. When an amendment to a special rule is offered after defeat of the previous question, the amendment almost always takes the form of an amendment in the nature of a substitute. Like any other amendment, an amendment to a rule must be germane.

After the House agrees to a special rule, it may consider the measure to which the rule relates. More often than not, the House takes up that bill immediately, but the majority party and committee leaders may decide to delay its consideration until later that day or until a subsequent day. In fact, the House occasionally has adopted special rules for considering certain bills but then never acted on those bills.

Selected References

This report can be read in conjunction with other complementary CRS reports, all of which are updated periodically. These reports include:

- The Legislative Process on the House Floor: An Introduction.* Library of Congress, CRS Report 95-563.
- How Measures Are Brought to the House Floor: A Brief Introduction.* Library of Congress, CRS Report RS20067.
- Legislative Procedures and the Legislative Agenda in the House of Representatives.* Library of Congress, CRS Report 98-996.
- Committee of the Whole: An Introduction.* Library of Congress, CRS Report RS20147.
- Suspension of the Rules in the House of Representatives.* Library of Congress, CRS Report 98-796.
- The Amending Process in the House of Representatives.* Library of Congress, CRS Report 98-995.
- The Motion to Recommit in the House: The Minority's Motion.* Library of Congress, CRS Report 97-647.
- Conference Committee and Related Procedures: An Introduction.* Library of Congress, CRS Report 96-708.
- Resolving Legislative Differences in Congress: Conference Committees and Amendments Between the Houses.* Library of Congress, CRS Report 98-696.
- Parliamentary Reference Sources: House of Representatives.* Library of Congress, CRS Report RL30787.

The history and responsibilities of the Rules Committee are discussed in its own publication: *A History of the Committee on Rules*, Committee Print, 97th Congress, 2nd Session, 1983.

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