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Jurisdiction and Referral to Committee

Section 2 chapter 2 of 2

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Introduction

Committee jurisdiction, for standing committees, is outlined in clause 1 of rule X of the Rules of the House of Representatives. Clause 2 of rule XII requires the Speaker to refer a measure to committee to ensure to the maximum extent feasible that each committee may exercise its jurisdiction (as so outlined in rule X) over such measure. Rule XII gives the Speaker various referral options to enable committees to share jurisdiction over a measure. In exercising her responsibility under rule XII, the Speaker follows the advice of the Parliamentarian of the House, who has intricate knowledge of the various jurisdictional mandates of the House, including rule X, precedents, and memoranda of understanding between or among committees. Jurisdictional precedent is created when a measure is referred to committee. Similar measures, if not introducing any new subject matter, will be referred to the same committee. If such a measure becomes law, amendments to that law (again, if not introducing any new subject matter), also will be referred to the originating committee.

In this packet, Walter Oleszek and Richard S. Beth, Specialists within the Government and Finance Division of the Congressional Research Service, respectively examine how the House resolves jurisdictional disputes among Committees and how Members may secure the discharge of a measure from committee

Resolving House Committee Jurisdictional Disputes: A Survey of Options

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Summary

House committees sometimes clash over their respective jurisdictional prerogatives. Various reasons account for inter-committee disagreements, such as issue overlap among different panels. Any broad subject area (homeland security, energy, health, and so on) can involve the jurisdiction of several panels. Shared policy interests can sometimes spark inter-committee controversies.

Although jurisdictional clashes might stymie action on legislation, there are many ways to minimize or resolve committee disputes. This report discusses several common conflict-resolving techniques that may be employed at different junctures of the lawmaking process, specifically the drafting of legislation, the referral of legislation, the committee stage, and the Rules Committee's issuance of special rules. None of the techniques discussed in this report are guaranteed to minimize or eliminate inter-committee jurisdictional disagreements. It is simply not feasible to construct watertight jurisdictional compartments; too many issues affect the interests and concerns of multiple panels. Moreover, jurisdictional competition between or among committees, if not carried to extremes, can benefit policymaking as each relevant panel brings its expertise to bear in resolving complex issues.

While committee cooperation is the norm on Capitol Hill, jurisdictional disagreements between or among panels do occur. The role of the majority party leaders, especially the Speaker, can be significant in resolving committee disputes and in promoting committee cooperation. They are well-positioned to encourage cooperative behavior among committees at nearly every stage of the lawmaking process.

Introduction

There is an oft-repeated adage on Capitol Hill: "turf is power." Turf refers to the jurisdictional mandates of House committees as stated in House Rule X and in other relevant matter (precedents, "memoranda of understanding" between or among committees, and the like). The Rule X language is often specified in broad rather than programmatic terms, such as "national energy policy generally." Committees clash over their respective jurisdictional prerogatives, in part because they are a "lawmaker's legislative power base. It is no wonder that committee boundaries are hotly contested."²

Various other equally important reasons account for disputes over committee boundaries. For example, one is the matter of issue overlap among committees. Any broad subject area (homeland security, transportation, energy, health, and so on) can involve the jurisdiction of sev-

¹ <http://www.congress.gov/erp/rl/html/RL34293.html>

² David C. King, *Turf Wars: How Congressional Committees Claim Jurisdiction* (Chicago: University of Chicago Press, 1997), p. 12. See [CRS Report 98-175](#), *House Committee Jurisdiction and Referral: Rules and Practice*, by Judy Schneider; [CRS Report RS21643](#), *House Committee System: Jurisdiction and Referral Reform Options*, by Judy Schneider and Paul Rundquist; and [CRS Report RL32661](#), *House Committees: A Framework for Considering Jurisdictional Realignment*, by Michael L. Koempel.

eral panels. Shared policy interests can sometimes spark inter-committee controversies. As one House committee chairman stated, "Nobody in this institution gives up jurisdiction they believe is rightfully theirs."³

Another factor that can trigger "turf wars" is that committees overlap issues. The Energy and Commerce Committee has jurisdiction over "foreign commerce generally;" Foreign Affairs is responsible for "international economic policy;" and Ways and Means is in charge of "reciprocal trade agreements." The lack of "bright lines" separating substantive areas may also trigger disputes among committees. For instance, is the allocation of the radio spectrum to allow first responders to communicate with each other during an emergency a matter for the Homeland Security Committee or the Energy and Commerce Committee (which has jurisdiction under House Rule X for the regulation of interstate communications)?⁴

Further, as new policy topics come forward, it is not always clear which of several panels might receive legislation dealing with these emerging or emergent issues. Given jurisdictionally ambiguous issues, turf wars can be fomented by "policy entrepreneurs staking claims for their committees."⁵ To be sure, committee staff are alert both to repel "border poachers" and to search for opportunities to expand their own panel's substantive reach.⁶

Jurisdictional clashes can sometimes stymie action on legislation. However, there are many ways to minimize or resolve committee disputes. This report identifies several common conflict-resolving techniques that have been employed at several junctures of the lawmaking process, specifically the drafting of measures, the referral of legislation, the committee stage, and the Rules Committee's issuance of special rules. This is an illustrative and not an exhaustive list. For example, the Speaker could name conferees from more than one committee to accommodate another panel's jurisdictional interests. Or potential jurisdictional conflicts on the floor might be avoided by allowing two or more competing committees the opportunity to offer a jointly created substitute amendment.

At each one of the aforementioned lawmaking stages, the Speaker and other top party leaders are strategically positioned to intervene and mediate jurisdictional disagreements between or among committees, especially on party-preferred legislation. The Rules Committee, informally known as "the Speaker's committee," is similarly situated to be a major jurisdictional me-

³ Patrick Yoest and Colby Itkowitz, "Jurisdictional Disputes Could Hinder Quick Conference Action on September 11 Measure," *CQ Today*, July 19, 2007, p. 15. Also see, for example, Adrienne Kroepsch, "Energy Legislation Leads to Turf Spat Between House Committees," *CQ Today*, July 12, 2007, p. 18, and Kate Ackley, "A Turf Battle Starts Over Steroids," *Roll Call*, December 18, 2007, p. 1. An examination of a specific policy domain — homeland security — and its reference among House committees can be found in [CRS Report RL33061](#), *Homeland Security and House Committees: Analysis of 109th Congress Jurisdictional Changes and Their Impact on the Referral of Legislation*, by Michael L. Koempel and Judy Schneider, and [CRS Report RL32711\(pdf\)](#), *Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109th and 110th Congresses Epilogue*, by Michael L. Koempel.

⁴ Jonathan Kaplan, "Dems Jurisdictional Fights Slow 9/11-Related Legislation," *The Hill*, July 13, 2007, p. 3.

⁵ *Ibid.*, p. 13.

⁶ This report focuses on the "legislative," or policy, jurisdiction of the standing committees. (Legislative authority means the right of committees to receive and report bills and resolutions.) These panels also have "oversight" jurisdiction — the authority to review the actions and activities of non-governmental entities and executive branch programs and agencies under their legislative purview. Oversight jurisdiction, compared to legislative jurisdiction, seldom gives rise to inter-committee conflicts. There are simply more overlaps in the conduct of oversight, in part because the rules of the House permit them to occur. For example, House rules grant wide-ranging oversight authority to the Oversight and Government Reform Committee, as well as "special oversight" (House Rule X, clause 3) responsibility to a number of panels. Special oversight grants various committees the right to oversee specific laws, programs, or activities even if they are within another panel's legislative responsibility.

diator in two main ways: (1) its mandate over the rules of the House, and (2) its ability to structure the debate and amendment process on the floor.

At the outset it is important to underscore that none of these techniques are guaranteed to minimize or eliminate inter-committee jurisdictional disagreements. It is simply not feasible to construct watertight jurisdictional compartments; too many issues affect the interests and concerns of multiple panels. Other relevant points are worth brief mention. Disputes between panels might reflect rivalries between chairs rather than true battles over turf. In the judgment of one House committee chair, it is "not so much where the [jurisdictional] lines are drawn that either creates or resolves jurisdictional disputes. What we really need are a greater spirit of civility and cooperation between chairmen and their staffs."⁷ Sometimes jurisdictional conflicts between or among subcommittees of the same standing committee might require the full committee chair to mediate an internal turf war.⁸ Lastly, jurisdictional competition between and among committees, if not carried to extremes, can benefit policymaking as each relevant panel brings its expertise to bear in resolving complex issues.⁹

Drafting Legislation

Artful Phraseology

During the pre-introductory phase of lawmaking, a Member and staff often devote considerable time crafting a bill so it will be referred to a preferred committee. One goal is to avoid having their measure sent to an unsympathetic panel or to two or more committees that might hold opposite views of the bill. Accordingly, lawmakers and their staff may meet privately with the House Parliamentarian (who refers nearly all measures on behalf of the Speaker) to discuss various drafting issues. For example, will the bill be referred to only one committee? If it is multiply-referred (see below), which committee might receive a primary referral and which would receive a secondary referral? On most measures, it is plain where they will be referred. Military measures will be sent to the Armed Services panel or bills dealing with small businesses will go to the Small Business Committee. However, with so many policy interdependencies, the referral of measures might not be self-evident.

Artful drafting not only can get a bill sent to a preferred committee, but it might also minimize jurisdictional clashes. For example, lawmakers who prefer that a telecommunications bill be sent to the Judiciary Committee could draft it as an amendment to the Sherman Antitrust Act, which is the exclusive jurisdiction of the Judiciary Committee. Conversely, Members who want an Internet bill referred to the Energy and Commerce Committee could draft it as an amendment to the Telecommunications Act of 1996, which is the purview of the Commerce panel. Committees often prefer sole responsibility for a measure because it allows them to control the measure's fate through various lawmaking stages: committee hearings and markups, floor consideration, and conference committee deliberations. A single referral may also enhance lawmakers' opportunities to better serve their constituents and mediate and win the support of outside groups interested in the topic.

Various bill drafting techniques and practices provide some leeway to the Speaker (or the Parliamentarian acting on the Speaker's behalf) in referring bills to one committee rather than to another. For example, the Agriculture Committee received a measure dealing with eminent domain — the seizure of private property for public use — even though the issue is typically handled by the Judiciary Committee. However, the bill connected eminent domain with rural development.

⁷ Quoted in *Committee Structure*, Hearings Before the Joint Committee on the Organization of Congress, S. Hrg. 103-74, 103rd Congress, First Session, (Washington: GPO, 1993), p. 616.

⁸ John Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives* (Stanford, Calif.: Stanford University Press, 2006), p. 213.

⁹ *Committee Structure*, p. 632.

As the House Parliamentarian noted: "The bill involved the Committee on Agriculture's jurisdiction because of the way it defined the term 'federal economic development program'."¹⁰

Referral of Legislation

Multiple Referral

In 1975, on the opening day of the 94th Congress, the House infused flexibility into the bill referral process. A new House rule was adopted that permitted the multiple referral (joint, sequential, or split) of legislation to two or more standing committees. Before that time, House precedents prohibited the reference of bills or resolutions to or among two or more committees. The origin of the multiple referral rule, which has been modified over time, emanated from the 1973-1974 bipartisan House Select Committee on Committees, chaired by Rules member Richard Bolling of Missouri. The vice chair of the panel was David Martin of Nebraska, also a member of the Rules Committee.¹¹

One objective of multiple referrals is to accommodate the prerogatives of the various standing committees that share jurisdiction over a subject matter. Thus, the legitimate jurisdictional claims of committees can be recognized during the referral stage. On measures that are multi-referred upon initial reference, the House Parliamentarian includes the following language: "in each case [of multiple committee reference] for consideration of such provisions as fall within the jurisdiction of the committee concerned." This language can assist committee chairs during markup sessions to rule out of order amendments that trespass on other committees' turf.

Multiple referrals encourage more interactions between and among committees with overlapping responsibilities for policy topics. Informal discussions or negotiations can promote cooperation among panels having competing claims on legislation. One manifestation of the value of inter-committee consultations — commonly undertaken by staff of the concerned committees — is the use of so-called "waiver" letters, which are often published in the *Congressional Record*. For example, the Foreign Affairs Committee reported a bill, the Iran Counter-Proliferation Act of 2007 ([H.R. 1400](#)), which was also referred to several other panels. The head of one of the panels wrote to the Foreign Affairs chair and said:

[I]n order to expedite floor consideration [of [H.R. 1400](#)], I agree to forego further consideration by the Committee on Financial Services. I do so with the understanding that this decision will not prejudice this Committee with respect to its jurisdictional prerogatives on this or similar legislation. I request your support for the appointment of conferees from this Committee should this bill be the subject of a House-Senate conference.¹²

To be sure, multiple referrals may foment jurisdictional conflict as committees assert their right to review provisions in bills that are only tangentially related to their responsibilities. Yet the device gives committees the opportunity to negotiate away their differences. If not, the Speaker has various ways to promote positive action, such as imposing time limits on committee consideration or intervening personally to help forge an agreement among clashing committees. With multiple referrals, "committee members can no longer be certain of maintaining exclusive authority over the legislation referred to their committee, but they can be virtually certain of obtaining all

¹⁰ Michael Sandler, "Not a Job for Judiciary Committee? House Ag Handles Eminent Domain Bill," *CQ Today*, August 8, 2005, p. 7.

¹¹ The multiple referral rule has been changed a number of times since its first adoption. In 1995, for example, the new Republican majority abolished joint referrals (retaining sequential and split references) and added to House rules the requirement that the Speaker shall "designate a committee of primary jurisdiction upon the initial referral of a measure to a committee." See *Congressional Record*, vol. 141, January 4, 1995, p. H36. Eight years later, at the start of the 108th Congress, House rules were amended to allow joint referrals without any designation of a primary committee. See *Congressional Record*, vol. 149, January 7, 2003, p. H11.

¹² *Congressional Record*, vol. 153, September 25, 2007, p. H10771.

the legislation to which they have claims."¹³ Of course a short or lengthy deadline for committee consideration of multi-referred measures — which the Speaker has the authority to impose — can influence whether panels have sufficient time to defend their jurisdictional prerogatives.

The Committee System

There are a number of ways at the committee level that inter-committee disagreements might be resolved satisfactorily among the contending parties. There is no guarantee that it will be the case, but the following eight methods are among the practices utilized either to resolve jurisdictional conflicts, promote committee coordination, or clarify committees' policy focus. These methods are: memoranda of understanding, select committees, standing committee creation, jurisdictional transfers, task forces, committee composition, joint hearings, and informal staff consultations.

Memoranda of Understanding

One approach for avoiding or muting jurisdictional disagreements over shared policy areas is for paired committees to prepare a "memorandum of understanding" that clarifies how certain overlapping issues are to be referred. These memoranda are negotiated by the relevant committees, signed by the respective committee chairs, often publicized in the *Congressional Record*, and kept on file and observed by the Parliamentarian in the reference of pertinent legislation. For example, on the opening day (January 4, 2007) of the 110th Congress, a jurisdictional memorandum of understanding between the chairs of the Committees on Transportation and Infrastructure and Homeland Security was published in the *Congressional Record*. It stated in part:

[W]ith regard to the Federal Emergency Management Agency's, FEMA, emergency preparedness and response programs, the Committee on Homeland Security has jurisdiction over the Department of Homeland Security's responsibilities with regard to emergency preparedness and collective response only as they relate to terrorism. However, in light of the federal emergency management reforms that were enacted as title VI of Public Law 109-295, a bill amending FEMA's all-hazards emergency preparedness programs that necessarily addresses FEMA's terrorism preparedness programs would be referred to the Committee on Transportation and Infrastructure; in addition, the Committee on Homeland Security would have a jurisdictional interest in such bill. Nothing in this Memorandum of Understanding affects the jurisdiction of the Committee on Transportation and Infrastructure of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the Federal Fire Prevention and Control Act of 1974.¹⁴

Establish a Select Committee

Select, or special, committees are temporary panels that typically go out of business after the two-year life of the Congress in which they are created. (Some select panels have been recreated for several consecutive Congresses.) Resolutions to establish such panels are introduced and normally referred to the Rules Committee, which may report them to the floor for chamber

¹³ Melissa P. Collie and Joseph Cooper, "Multiple Referral and the 'New' Committee System in the House of Representatives," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered*, 4th ed. (Washington, DC: CQ Press, 1989), p. 254.

¹⁴ *Congressional Record*, vol. 153, January 4, 2007, pp. H15-H16. Worth mention is that the Rules chair reaffirmed the "jurisdiction of the Committee on Small Business over the Small Business Administration and its programs, as well as small business matters related to the Regulatory Flexibility Act and the Paperwork Reduction Act. Its jurisdiction under House Rule X, clause 1(p) also includes other programs and initiatives that address small businesses outside the confines of those Acts." See *Congressional Record*, vol. 153, January 4, 2007, p. H9. The reaffirmation of the panel's authority will allow it, according to the Small Business chair, "to have a voice at the table when legislation is being debated or originated in any other committee that has an impact on small businesses. We will seek limited referral to be able to do this." Quoted in Bill Swindell, "Small Biz Getting Busy," National Journal's *CongressDailyPM*, January 12, 2007, p. 13.

consideration.¹⁵ The House may decide to constitute select panels for various reasons, including to coordinate consideration of issues that overlap the jurisdiction of several standing committees. A recent example occurred at the start of the 108th Congress (2003-2005) when the House set up a Select Committee on Homeland Security with both legislative and oversight jurisdiction.

Scores of House standing committees then and today have jurisdiction over various aspects of homeland security. For example, Agriculture has jurisdiction over animal and plant health; Energy and Commerce over public health; Financial Services over terrorist financing; Judiciary over the Federal Bureau of Investigation (FBI); Science over computer security; Transportation and Infrastructure over the Federal Emergency Management Agency (FEMA); and Ways and Means over the Customs Service. To strengthen supervision of the Department of Homeland Security — formed in 2002 from the merger of 22 agencies with around 180,000 employees — the Speaker and other lawmakers wanted "a single point of oversight for the massive new department."¹⁶ The select committee also had the responsibility under the terms of its authorizing resolution to recommend to the Rules Committee by September 30, 2004, "possible changes in committee jurisdiction with respect to homeland security." Their recommendation contributed to the next example.

Create a Standing Committee

To create a new standing committee in the House is no easy assignment. Similarly, it is often difficult to eliminate a standing committee. A compelling reason that helps to explain both cases is that Members and staff of the various committees, and their allied outside groups and entities, are reluctant to lose any of their jurisdictional responsibilities. Yet to create a new standing committee inevitably means shifting some jurisdiction from existing committees to the proposed new permanent panel.

Despite the many obstacles involved in revamping committee jurisdictions, these initiatives sometimes occur to promote policy and oversight coherency for a subject area that is fragmented and divided among numerous standing committees. The House's establishment in the 109th Congress (2005-2007) of a new standing Committee on Homeland Security — as recommended by the aforementioned Select Homeland Security Committee — is a recent illustration of this approach. On January 4, 2005, on the opening day of the new Congress, the House adopted a package of rules changes that included formation of a new standing Committee on Homeland Security. As the chair of the Rules Committee explained:

[T]he House will do what the Speaker and the 9/11 Commission as well as the President has asked us to do, consolidate jurisdiction of the House into one committee. This committee will be dedicated to setting national homeland security policy and to effectively overseeing that the Department of Homeland Security carries out its mission.¹⁷

¹⁵ House rules (Rule XII, clause 2c) also authorize the Speaker to refer a matter "to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon." Resolutions creating such ad hoc panels need not be referred to the Rules Committee. House precedents state that resolutions creating these select panels "are privileged when offered from the floor at the Speaker's request."

¹⁶ Martin Kady, "Select Homeland Security," *CQ Weekly*, January 11, 2003, p. 95. See also [CRS Report RS21243\(pdf\)](#), *Ad Hoc Select Committees: Use in the House of Representatives*, by Judy Schneider.

¹⁷ *Congressional Record*, vol. 151, January 4, 2005, p. H14. The 9/11 Commission recommended that "Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff." See also *The 9/11 Commission Report, Final Report of the National Commission On Terrorist Attacks Upon the United States* (New York: W.W. Norton & Company, 2004), p. 419.

This change to House Rule X created "a primary committee for homeland security while recognizing the other legitimate oversight roles of existing committees."¹⁸ Because homeland security overlaps many committees and involves scores of federal agencies, the Rules chair included in the *Congressional Record* a legislative history detailing and clarifying the continuing jurisdictional authority of 10 other standing committees over parts of this policy area. For example, the Committee on Financial Services "shall retain its jurisdiction over the anti-money laundering, terrorist financing, and anti-counterfeiting activities within the Department of the Treasury and the financial regulators."¹⁹ An objective of this jurisdictional arrangement, said the Rules chair, is to assure the American people that lawmakers are "working to prevent anything from falling through the cracks."²⁰

Jurisdictional Transfers

Sometimes specific jurisdictional changes will be made between or among committees both to minimize inter-committee disagreements and promote integrated policymaking. These discrete changes may also be employed creatively to avoid intra-party clashes. For example, two influential GOP lawmakers wanted to head the Commerce Committee. Under the six-year term limit provision stated in House rules, the chairmanship of that panel was vacant because the former chair had reached the six-year limit. To avoid a potentially heated contest for the Energy post that could produce hard feelings within the GOP Conference, the Speaker endorsed a plan to rename Commerce the Energy and Commerce Committee, abolish the Banking Committee and rename it the Financial Services Committee, and grant it jurisdiction over securities and insurance previously in the old Commerce Committee. The jurisdictional shifts occurred, according to the chairman of the Rules Committee, "to increase market confidence in the [House's] ability to comprehend the increasingly integrated nature of the financial services market."²¹

The Speaker's intervention prevented an intra-party battle and allowed each of the Members to chair an important committee. The House supported the changes when it adopted a rules package on the opening day of the 107th Congress. The Energy and Financial Services chairs soon disagreed over which panel had authority over certain financial issues involved in the jurisdictional transfer. The Speaker mediated this conflict over turf, which ended with the two chairs signing a memorandum of understanding to settle their differences over jurisdiction.²²

Committee Composition

House members serve, on average, on about a half-dozen committees and subcommittee. The point is that Members who serve on two committees with shared policy interests are sometimes able to smooth jurisdictional relations between the two. It is unclear whether the party assignment panels consider the "jurisdictional liaison" role as a criterion in placing their Members on committees. Yet overlapping committee memberships may at times promote inter-committee cooperation over shared policy issues. As a senior staffer on the International Relations Committee (now titled the Foreign Affairs Committee) said about having two long-time GOP members — who each also chaired another standing committee — serve on the panel:

The chairman of the Judiciary Committee is Henry Hyde [R-IL]. He's one of the more senior members of our committee. The chairman of the Banking Committee is Jim Leach [R-IA] who's one of the more senior members of our committee. I think that one result of that is that we tend never to have problems with those

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. H25.

²⁰ *Ibid.*, p. H14.

²¹ *Congressional Record*, vol. 147, January 3, 2001, p. H9. The Rules chairman also made clear that the insurance jurisdiction of other committees, such as the Agriculture Committee's authority for crop insurance, would not be affected by the transfer of insurance jurisdiction to the Financial Services Committee.

²² *Congressional Record*, vol. 147, January 30, 2001, p. H103.

committees because they've all served together on this committee for almost two decades.²³

There are also two committees — Budget and Permanent Select Intelligence — that by House rules are required to have Members drawn from other standing committees. For example, the Permanent Select Intelligence Committee is to have at least one Member selected from four committees with pertinent intelligence jurisdiction. The four panels are Appropriations, Armed Services, Foreign Affairs, and Judiciary.

Joint Hearings

Another method that committees might use to accommodate their mutual jurisdictional interests is to hold joint hearings. These types of hearings occur often on Capitol Hill and might be employed to reduce or eliminate the potential for jurisdictional conflicts. For example, the House Armed Services and Foreign Affairs Committees held a joint hearing on two reports (one issued by the Government Accountability Office and the other by a commission of military experts) "assessing political and military conditions in Iraq."²⁴ Plainly, the reports addressed concerns in both panels, and the joint hearing device protected the jurisdictional interests of the two committees and avoided a battle over turf.

Informal Staff Consultation

It is common for the staff of committees with shared policy mandates to communicate with each other. Sometimes the discussion involves the staff aides of one panel informing their counterparts on other committees that they may have a jurisdictional interest in pending legislation. Inter-committee comity is promoted by this approach, which can lead to an amicable resolution of turf issues. On other occasions, the staffs of two or more committees with overlapping jurisdiction may work together in crafting legislation. In the case of an agriculture census bill, for instance, the chair of the Government Reform Committee (now called Oversight and Government Reform) "observed that prior negotiations between the staffs of his panel and the Agriculture Committee helped draft the language of the bill, permitting him to waive jurisdiction shortly after Agriculture reported it."²⁵

The Rules Committee

The Rules Committee reports special rules (procedural simple resolutions, H. Res.) that grant "privilege" to measures that may lack a right-of-way to the floor. The panel sets the conditions for debating legislation and determining whether amendments will be in order to various measures. Special rules come in various versions, and they are called by different names. One easy-to-understand typology is the following: open (germane amendments from the floor may be offered to the pending measure); closed (floor amendments are not in order); modified or structured (a limited and specified number of floor amendments are in order); and waivers (points of order are set aside against all or specified parts of a bill or against specific amendments). Waivers may be included in open, closed, or structured rules, as well as in the array of other special rules granted by the panel — for example, structured, reconciling, self-executing, and bifurcated, which are discussed below. The Rules Committee may also refuse to grant special rules to committees bickering over jurisdictional issues unless and until they have resolved their differences.

Like its rule-granting authority, Rules' jurisdiction over the formal rules of the House enables it to play a large role in mediating jurisdictional disputes. The Rules Committee may also report changes to House rules that are designed to minimize jurisdictional controversy and protect a panel's policy prerogatives. Tax or tariff measures or amendments, for example, are not in

²³ Quoted in John Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives* (Stanford, CA: Stanford University Press, 2006), p. 138.

²⁴ Karen DeYoung, "House to Hold Hearings on Two New Reports on Iraq," *The Washington Post*, August 28, 2007, p. A8.

²⁵ Baughman, *Common Ground*, p. 141.

order unless they have been reported by the Committee on Ways and Means (House Rule XII, clause 5). Below is a brief review of different types of procedural resolutions that might be employed to minimize committee conflicts.

Structured Rules

A structured rule limits the number of amendments that may be offered to a measure made in order by the procedural resolution. On major bills that overlap the jurisdiction of several panels, it is not unusual for the Rules Committee, perhaps in coordination with the majority leadership, to craft a rule designed to prevent a bill's unraveling on the floor through the adoption of so-called "poison pill" amendments. For example, on a major energy bill — parts of which were considered by five standing committees — the Rules Committee reported a rule, "that severely limited the number and range of amendments that could be offered, which insured that debate could not drag on..., that it would be structured, and that it would focus on the key features of the [administration's] program and the major alternatives."²⁶ The energy package was agreed to by the House, in part because of the design of the rule.

Reconciling Rules

When measures are multiply referred to several committees, as noted above, it is not uncommon for two or more committees to report conflicting recommendations to the same bill. It falls to the Rules Committee to develop a special rule that identifies the base text to be made in order for floor consideration and that also allows the House to choose between or among competing policy alternatives. As two scholars wrote:

In drafting the rule for a multiply referred bill, the Rules Committee is more likely than in other cases to have plausible alternative arrangements from which to choose as it selects the text to be amended on the floor, allocates control of the time for general debate, arranges for votes on the committees' recommendations, and disposes of germaneness and other procedural problems that multiple referrals can provoke.²⁷

Relatedly, as a precondition for a special rule, the Rules Committee may urge several competing committees to agree on the vehicle — one of the committee's reported bills or a consensus product, for example — for floor debate and amendment. This practice can limit floor fights among rival committees and expedite floor decision making.

Self-Executing Rules

This type of rule embodies a two-for-one procedure — that is, when the House adopts a rule it also automatically agrees to dispose of a separate matter, which is specified in the rule itself. Self-executing language in a special rule often states something like the following: "The amendment printed in [section 2 of this resolution or in part 1 of the report of the Committee on Rules accompanying this resolution] shall be considered as adopted in the House and in the Committee of the Whole." Thus, a self-executing rule may stipulate that a discrete policy proposal is deemed to have passed the House and been incorporated in the bill to be taken up. The effect is that neither in the House nor in the Committee of the Whole will lawmakers have an opportunity to amend or to vote separately on the self-executed provision. For example, a policy recommended by one of two or more competing committees could automatically be incorporated in the text of the bill made in order for floor consideration, thus avoiding the potential for inter-committee disputes on the floor. Members who oppose the self-executed provision(s) may vote either to amend or reject the rule.

²⁶ Bruce I. Oppenheimer, "Policy Effects of U.S. House Reform: Decentralization and the Capacity To Resolve Energy Issues," *Legislative Studies Quarterly*, February 1980, p. 24.

²⁷ Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives: Adaptation and Innovation in Special Rules* (Washington, D.C.: The Brookings Institution, 1988), p. 22.

Bifurcated Rules

Bifurcated rules make at least two separate bills in order for back-to-back consideration in the chamber. Under a bifurcated rule, the House first debates, amends, and passes one bill, and then proceeds to consider another related but different bill. These actions can occur on separate days. Once the House agrees to the second measure, the rule provides that the two bills will be combined into one measure and sent to the Senate. A separate vote is not taken on the combined legislation. This form of special rule can help to mobilize winning majorities for party priorities, in part by joining the work product of different, and sometimes competing, committees into one legislative measure. Consultation and communication between the relevant panels is typically necessary to ensure that the combined measure achieves its political and policy purposes. Party leaders and Rules Committee members may be actively involved in facilitating substantive coordination between the pertinent committees.

Concluding Observations

Jurisdictional claims and counterclaims for legislation are commonplace among committees. Various factors account for this reality. For example, committees commonly share responsibility for overseeing and legislating for the same agencies and departments, and their policy and oversight preferences may diverge one from the other. Committee jurisdictions, too, cannot keep pace with rapid social, economic, or technological developments. One result is that scores of issues today involve the jurisdictional expertise of numerous committees. When multiple committees bring their divergent perspectives to a topic, disagreements may emerge among them. These disagreements, it is worth noting, may result more from serious policy differences than from battles over "turf." Although committee cooperation is the norm on Capitol Hill, disputes among committees occur quite often. Various conflict-resolving techniques are utilized both to reduce committee conflicts and promote cooperative relationships.

In today's House, one technique merits emphasis and specific mention: the role of majority party leaders, especially the Speaker. They are positioned to encourage cooperative behavior among committees because of their special resources and responsibilities. As one congressional scholar recounted:

[H]ouse leaders are well positioned to exert formal and informal pressure on committees at nearly every stage of the process, from the referral of bills through the naming of conference committees. The tools of the leadership [have] the effect of raising the costs of hostile action, for example in the setting of time limits on referrals and limiting amendments with special rules. They could also make accommodation more attractive, such as by acting as a guarantor for agreements between committees struck under the direct supervision of the [majority] leadership [The Speaker] can implement the [inter-committee] agreements directly in new legislative language via his floor prerogatives and influence over the Rules Committee. In this way, turf wars are contingent on the patience of leaders and on the latitude they grant.²⁸

In short, party leaders often act to facilitate committee cooperation across numerous policy domains, and they have various ways to ensure productive committee action on priority legislation. It is reasonable to suggest that many other factors beside leadership involvement are important in promoting committee cooperation, such as regular staff contacts between and among committees, overlapping committee memberships, and recognition by committees that constant jurisdictional bickering can be counter-productive to lawmaking. Committees have their own incentives for cooperating — or fighting — with other panels. However, if jurisdictional fights threaten chamber action on party-preferred legislation, then the central leadership seems certain to intervene to resolve the differences among the contending committees.

²⁸ Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives*, p. 174.

Discharge Procedure in the House

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The House “discharge rule” (Rule XV, clause 2) provides a means for Members to bring to the floor for consideration a bill or resolution that has been referred to committee but not reported. Discharge is generally the only procedure by which Members can secure consideration of a measure without cooperation from the committee of referral, the majority-party leadership, or the Committee on Rules. For this reason, discharge is designed to be difficult to accomplish and has infrequently been used with success. See www.crs.gov/products/guides/guidehome.shtml for more information on legislative process.

Basic Discharge Procedure

Discharge may be attempted only on a measure that has been referred to committee for at least 30 legislative days (usually equal to days in session). A Member initiates a discharge attempt by submitting a discharge petition to the Clerk of the House (who provides forms for this purpose). The Clerk then makes the petition available at the rostrum during sessions of the House for Members to sign, and publishes the names of signers, weekly in the last House edition of the Congressional Record, and cumulatively on the Clerk’s website at [<http://clerkweb.house.gov>].

Members may add or remove their names until the petition has 218 signatures, when the list is frozen and printed in the Record. The discharge motion may then be offered on the floor, but only on a second or fourth Monday that falls at least seven legislative days after the petition is filled. (The day is sometimes altered by unanimous consent.) The motion may not be offered during the last six days of a session. If, before the motion is offered, the committee reports the measure (with or without amendment), the discharge process becomes moot, and the measure can be considered only under other procedures.

The motion to discharge must be offered by a Member who signed the petition, usually its initiator. Typically, this Member makes essential motions and controls debate time in favor of the measure, and the chair of the pertinent committee controls time in opposition. From this point on, all questions are decided by an ordinary majority of Members voting. The motion to discharge is debatable for 20 minutes equally divided; if it is adopted, it is in order to move that the House consider the measure. No committee amendments having been reported, the measure will be considered in the form introduced.

Consideration After Discharge

If the measure in question is a “money measure” (including authorization, appropriation, and revenue measures), the motion in order is that the House resolve into Committee of the Whole to consider it. If this motion is adopted, the measure is considered as if under an open rule: when each section is read for amendment, germane amendments to it are in order and are debated under the five minute rule. Time for general debate may be placed under the control of managers by unanimous consent. If the measure is not a “money measure,” the motion in order is that the House consider it. If the motion is adopted, the measure is considered under the one hour rule in the House, not in Committee of the Whole. The Member calling up the measure controls one hour for debate, and then may move the previous question. If the previous question is ordered, the House will be unable to consider any amendments.

²⁹ <http://www.congress.gov/erp/rs/pdf/98-394.pdf>

Discharge and Special Rules

Alternatively, Members may petition for discharge not on the unreported measure itself, but on a rule for considering it. Supporters must first draft and submit a rule (1) providing that the measure be considered although unreported, (2) setting terms for its debate and amendment, normally in Committee of the Whole, and (3) stipulating that consideration continue until final disposition. Under Rule XV, clause 2, this rule may not permit non-germane amendments, or provide for consideration of more than one measure. After seven legislative days, if the rule has not been reported, supporters may file a petition to discharge the Committee on Rules from considering it.

If this process is successful, and the House adopts the motion to discharge, it automatically proceeds to consider the rule in the usual way, under the one-hour rule. If the rule is adopted, the House proceeds to execute its terms by considering the measure it makes in order. This procedure permits supporters of the underlying measure to prescribe appropriate terms to regulate its consideration.

Under this procedure, if the measure is reported, the rule, and the discharge attempt, remain valid. If the Committee on Rules reports the rule, the discharge petition becomes moot, but in that case, after seven legislative days any member of the Committee on Rules may still call up the rule. If the committee reports the rule adversely, any Member may call it up on a discharge day (Rule XIII, clause 6(e); Rule XV, clause 3).

In practice, when a discharge petition receives the required 218 signatures, the Committee on Rules often reports its own rule for considering the measure (or an alternative), and also laying the discharge motion on the table. The committee normally calls up this rule before the discharge motion can be offered on the floor. If the House adopts the rule, it can consider the measure, but under the terms proposed by the Committee on Rules, not those prescribed by the discharge process. If supporters of the measure are dissatisfied with the terms of the committee's rule, they may attempt to defeat it, and thereby retain the capacity to offer the discharge motion on the next discharge day.

Discharge of Rule for Reported Measure

If a committee reports a measure, and the Committee on Rules declines to grant a rule for considering it, Members may submit their own rule, and then may attempt to discharge the Committee on Rules from considering that rule. In this case, the object of discharge is not the committee holding the underlying measure, but the Committee on Rules. Since 1967, only four measures subjected to such efforts reached the House floor.