



BASIC » TRAINING

PARLIAMENTARY PROCESS,
FACTS, AND STRATEGIES

The Basics of Committee Markups

While most Members, committees, and staffers refer to “markups” of legislation—the vernacular used to reference a committee meeting—the House Rules only recognize two broad kinds of official committee events: hearings and meetings.

A meeting is any collegial gathering of the committee to conduct business other than receiving testimony or evidence. Thus, meetings may call for the consideration of legislation referred to the committee, organizational matters, or consideration of other items such as motions to issue subpoenas and committee investigative reports.

In general, process in committees is the least restrictive in the House; a member will have greater freedom to offer amendments while in committee than at any other point in the legislative process.

COMMITTEE RULES AND PRACTICES ARE DIFFERENT

The House Rules only create a basic set of rules for committees. It’s important to know the rules of individual committees and where they differ from the norm contained in the Rules of the House. The Committee on Rules usually publishes a compilation of all committee rules during the first session of each congress.

Just as important as the written rules, however, are committee practices that have developed over time. These practices are sometimes as integral as rules regarding markup notice and handling of amendments.

For purposes of the House Rules, committees operate as “Committee of the Whole as in the House,” meaning that the

general procedures available include those in clause 4 of rule XVI and the nine items described in the box on page 2 of this document. (*See* 9 Motions and Procedures Available in Committee.)

Finally, most committee rules provide that the rules of the full committee also bind the subcommittee to the extent that those rules are applicable.

NOTICE FOR A MEETING

The House Rules require committees to establish **regular meetings days** and meet not less than once per month, although most committee rules give their Chair latitude to waive this requirement.

The most common kind of meeting is an **additional meeting**, which is scheduled by the Chair according to the rules of the

individual committee. In the past, there was no minimum notice period in the House rules for meetings and individual committees were free to set their own notice requirements.

New in the 112th Congress, however, is a minimum three day notice period for committee meetings. The Chair is also required to make the legislative text intended to be the base text for purposes of amendment available to Members and the public at least 24 hours in advance of the markup.

Three or more members may petition the Chair for a **special meeting** of the committee to consider a specific measure or matter. If the Chair does not schedule the meeting within three days (to be held within seven days of the notice), then a majority of the members of the committee can file a notice of the meeting with the clerk of the committee and the committee must meet on that day, at that time.

OPENING STATEMENTS

There is **no requirement that states the chair recognize members for opening statements**, although many committees have a practice of letting members—or at least the Chair and Ranking Minority Member—make short opening statements at the beginning of a markup or meeting.

Committee Markups *continued*



Figure 1. In the House, committee process provides the greatest degree of freedom for individual members to affect legislation. Because there is no ability for the majority to directly restrict the amendment process, members enjoy a virtually unfettered ability to offer amendments and debate legislation.

QUORUM REQUIREMENTS

The House Rules establish minimum quorum requirements for committee proceedings. In general, committees may proceed to consider legislation and amendments with a “**working quorum**,” which consists of $\frac{1}{3}$ of the members of the committee present. To adopt and report any measure or matter, however, a “**full quorum**,” consisting of a majority ($\frac{1}{2} + 1$) of the members of the committee must be present.

STARTING THE MARKUP

Calling up the bill. There are two basic ways in which committees “call up” legislation:

1. The Chair simply announces that consideration of a measure is to begin; or
2. The Chair recognizes another member for a motion to report the bill to the House with a favorable or unfavorable recommendation. Offered amendments technically amend this motion, not the bill.

While most committees utilize the first method, a small number of committees (most notably the Committee on Rules and the Committee on the Judiciary) use the second method. This protocol is more a matter of committee practice and tradition, rather than a strict requirement of House rules.

Reading the bill. If the Chair calls up the bill, the first reading of the bill is in full. For time’s sake, this is usually dispensed with by unanimous consent. If objected to, however, a **motion to dispense with the reading is privileged** if printed or copies of the measure are available. The motion to dispense is not debatable.

READING A BILL FOR AMENDMENT

After the first reading of the bill is dispensed with by unanimous consent (or read in full), the bill is **read for amendment**. Bills are read for amendment by section or paragraph unless the committee agrees to another means by unanimous consent. The typical alternatives to reading the bill section-by-section are:

1. Reading by title; or
2. Considering the bill open for amendment at any point.

The test of germaneness goes to the portion of the bill that is open to amendment.

CHAIRMAN’S MARKS AND MANAGER’S AMENDMENTS

Often, the Chairman will have a package of amendments to an introduced bill. Colloquially referred to as a “chairman’s mark” or “manager’s amendments” they take two primary forms:



MOTIONS & PROCEDURES AVAILABLE WHILE IN COMMITTEE

» **DISPENSING** with the first reading of the bill if printed copies are available;

» **LIMITING** debate on an amendment under the 5-minute rule;

» **MOVING** the previous question;

» **REFERRING** the bill to a subcommittee;

» **VOTING** by the yeas and nays;

» **TABLING** an amendment or the bill (tabling an amendment also tables the bill);

» **RECONSIDERATION** of a vote;

» **APPEALING** the decision of the Chair; and,

» **ADJOURNMENT**, or recess.



1. An **amendment in the nature of a substitute** is offered as entirely new text of the bill; it is offered read as the first section. At any point while an amendment in the nature of a substitute is pending, it is open to amendment.
2. A series of **amendments offered en bloc** making a number of “cut and bite” amendments throughout the text. Portions of the bill amended by the en bloc amendments are not subject to further amendment, unless surrounding text is also amended, known commonly as the “bigger bite” theory.

OFFERING AND DEBATING AN AMENDMENT

Preparing an amendment. An amendment must be reduced to writing on demand. Therefore, it is best to have the amendment written prior to its offering. While there is no requirement to have an amendment drafted by the House Office of Legislative Counsel (HOLC), it is highly recommended. Utilizing the drafting services of the Office of Legislative Counsel carries two main benefits:

1. The attorneys employed by the office are policy and statutory experts who can provide important advice regarding drafting and procedural concerns; and
2. Should the amendment be adopted by the committee, if the amendment was originally drafted by HOLC, it can speed the process of producing the documents necessary to report the measure to the House.

If HOLC is unable to assist with a particular drafting request, staff should look to their website for forms of commonly used amendment types.

Offering an amendment. At the proper point in the bill, a member seeks recognition from the Chair and states:

“Mr. Chairman, I have an amendment at the desk.”

Amendments must be read in full; only unanimous consent can dispense with the reading. Members may **reserve a point of order** against any amendment when it is offered (either immediately before or immediately after the reading). A reservation of a point of order enables the Member making the reservation to evaluate the amendment for any potential violations of the rules without violating the timeliness requirement.

Limitations on amendments. When offering an amendment, it is important to remember that the amendment—

1. Must be **germane** to the portion of the bill open to amendment (clause 7 of rule XVI);
2. Must not **amend language already amended** (though amendments that amend a larger portion of the bill are allowed);
3. Must not be in the **“third degree”** (See The Amendment Tree);
4. Must only amend the bill in the portion of the bill open to amendment, unless offered as **amendments en bloc** by unanimous consent; and,
5. Are subject to a demand for the **division of the question** if they are substantively and grammatically divisible.

Debating an amendment in committee. Amendments are **debated under the 5-minute rule**, which allows for a member supporting the amendment to be recognized for five minutes, as well as a member opposed for five minutes. After that point, members may be recognized for a **pro forma amendment** (i.e. “striking the last word”) and be permitted to speak for five minutes as well. Debate continues until the previous question is ordered on the amendment, usually by unanimous consent.

VOTING ON AMENDMENTS IN COMMITTEE

Votes may be taken in the usual ways:

- » voice vote;
- » a record (or roll call) vote; or
- » the yeas and nays.

There is a **prohibition on proxy voting** in committee, although committees can adopt a rule authorizing the Chair to postpone votes on amendments. Additionally, in the case of a record vote, it is traditional for the committee Chair to vote

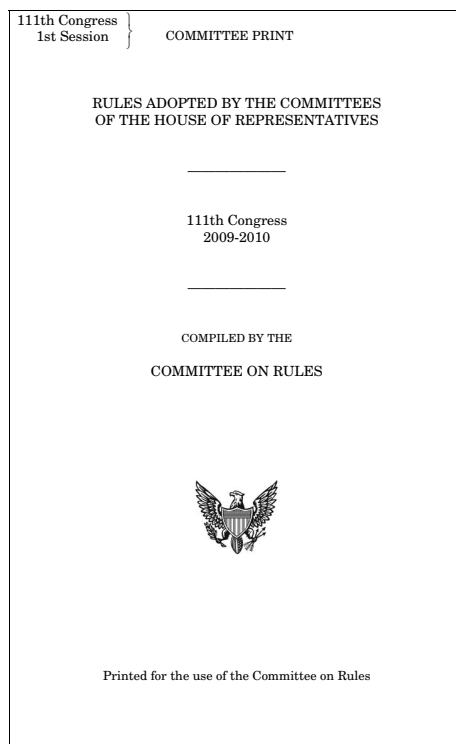


Figure 2. During the first session of each congress, the Committee on Rules publishes a compilation of the rules of each House and joint committee.

THE CLASSIC AMENDMENT TREE

A common metaphor used to describe the various kinds of amendatory forms available during consideration of bills in the House or in committee is the amendment “tree.”

Assuming that the base text (either the bill itself or an amendment in the nature of a substitute considered as base text by unanimous consent) is the “trunk,” the various amendatory forms can be viewed as “branches.”

The most common form, the perfecting amendment, is an amendment to the base text.

That amendment can be further perfected, at which point the amendment is in the “second degree”. The rules of the House prohibit consideration of amendments beyond the second degree.

A first degree is also subject to amend-

ment by a complete substitute amendment. A substitute amendment is distinguishable from an amendment in the nature of a substitute by the object of the amendment and the amendatory instructions.

An amendment in the nature of a substitute amends a bill, and contains the amendatory instruction “Strike all after the enacting clause and insert the following:”.

In contrast, a substitute amendment amends a pending amendment in the first degree with a complete replacement for the text, and generally can only be distinguished by its caption, “Substitute Amendment to the Amendment by M. _____.”

A pending substitute amendment can also

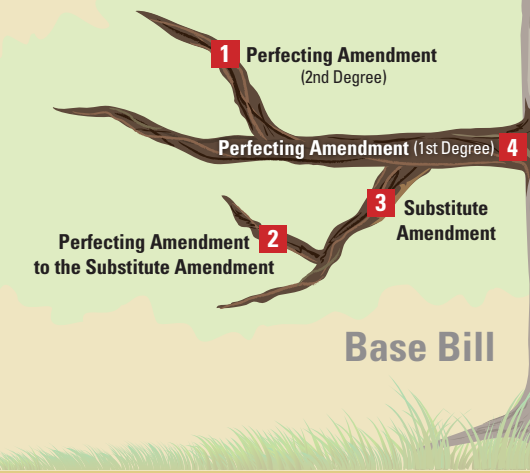


Figure 3. The classic, single-branch amendment “tree”. Numbers in red squares indicate voting order.

be further perfected.

All of these forms of amendment may be pending at the same time. In figure 3, the numbered red squares indicate the order in which the Chair puts the question on each amendment.

last in order to preserve his or her ability to engage in parliamentary maneuvers in the case of a close vote.

REPORTING THE BILL TO THE HOUSE

After the consideration of all amendments, the Chair will close debate by moving the **previous question**, usually by unanimous consent. If an amendment in the nature of a substitute is pending, the vote immediately occurs on that amendment (as it may have been amended).

If an amendment in the nature of a substitute is adopted, the committee immediately moves to the question of reporting the bill to the House. If it fails, the committee continues reading the bill for amendment from the point where the amendment was offered. The quorum requirement for reporting a bill to the House is a **majority of the Members of the Committee actually present**.

The Committee’s recommendation. When a committee reports a measure to the House, it has not actually made any changes

to the bill; rather, it is reporting its recommendation as to the disposition of the measure. Committees report bills with a **“favorable” or “unfavorable” recommendation** that the bill pass or not, or sometimes explicitly with no recommendation at all.

The Rules Committee usually provides that the committee’s recommended amendment (if any) be the base text of the bill during consideration on the House floor.

THE “MUMBLES” AND REQUESTING VIEWS

At the end of a bill’s consideration, the Chair will usually request that (1) the staff be authorized to make “technical and conforming” changes to the bill as amended; and that (2) the Chair be authorized to make motions to go to conference. These requests may be objected to.

A member wishing to add supplemental, Minority, or additional views must make the request immediately after the measure is ordered reported and before the committee adjourns. The minimum time for filing views is two days after the day the bill is ordered reported.