

question will be, whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. *Hakew.*, 143, 146.

In the Senate of the United States, the President reports the title of the bill; that this is the second time of reading it; that it is now to be considered as in a Committee of the Whole; and the question will be, whether it shall be read a third time? or that it may be referred to a special committee?

The provisions of this paragraph are to a large extent obsolete so far as the House of Representatives is concerned, the practice under clause 1 of rule XXI now governing.

SEC. XXVI.—BILLS, COMMITMENT.

If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to Committee of the Whole House, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and Clerk is to write him down as of the committee. But the House have a controlling power over the names and number, if a question be moved against any one; and may in any case put in and put out whom they please.

This paragraph is to a large extent obsolete under the rules and practice of the House of Representatives. Bills are referred in the first instance by the Speaker to standing committees as prescribed by the rules (rules X and XXII), and references of reported bills to the proper calendar of the House are also made under direction of the Speaker (clause 2 of rule XIII). Reference of a matter under consideration is made by a motion to refer which specifies the committee and may provide for a select committee

§ 401. Parliamentary law (largely obsolete) as to reference of bills to committees.

of a specified number of persons (IV, 4402). But such committee is appointed only by the Speaker (clause 6(e) of rule X).

Rule XVII provides that the Speaker may entertain a motion to commit to a standing or select committee with or without instructions pending or following the ordering of the previous question.

Those who take exceptions to some particulars in the bill are to be of the committee, but none who speak directly against the body of the bill; for he that would totally destroy will not amend it, *Hakew.*, 146; *Town.*, col., 208; *D'Ewes*, 634, col. 2; *Scob.*, 47; or as is said, 5 *Grey*, 145, the child is not to be put to a nurse that cares not for it, 6 *Grey*, 373. It is therefore a constant rule "that no man is to be employed in any matter who has declared himself against it." And when any member who is against the bill hears himself named of its committee he ought to ask to be excused. Thus, March 7, 1806, Mr. Hadley was, on the question being put, excused from being of a committee, declaring himself to be against the matter itself. *Scob.*, 46.

This provision is entirely inapplicable in the House of Representatives, where the standing committees with majority and minority representation (IV, 4467, 4477, footnote, 4478) consider most of the bills. And in the infrequent occasions when a select committee is appointed the minority party is always represented in the membership.

The Clerk may deliver the bill to any member of the committee, *Town*, col. 138; but it is usual to deliver it to him who is first named.

Following introduction, reference, and numbering, bills are sent to the Government Printing Office for printing. Printed copies of all bills are distributed in accordance with law (44 U.S.C. 706) and copies are made available to the committee to which referred.

§ 404. Obsolete provision for ordering a committee to withdraw and bring back a bill. In some cases the House has ordered a committee to withdraw immediately into the committee chamber and act on and bring back the bill, sitting the House. *Scob., 48.* * * *

This procedure is rarely followed in the House of Representatives, since the order of business does not provide for such a motion unless it is offered by unanimous consent.

§ 405. Committal with directions to report forthwith. When a bill is under consideration, however, the House may on motion commit it with instructions to report “forthwith” with certain specified amendment (V, 5548, 5549), in which case the chairman of the committee reports at once without awaiting action of the committee (V, 5545–5547; VIII, 2730, 2732) and the bill is in order for immediate consideration (V, 5550; VIII, 2735).

§ 406. Discharge of a committee. The motion to discharge a committee from the consideration of an ordinary legislative proposition is not privileged under the rules (IV, 3533, 4693; VIII, 2316), but where a matter involves a question of privilege (III, 2585, 2709; VIII, 2316), or is privileged under the rule relating to resolutions of inquiry (clause 5 of rule XXII; III, 1871; IV, 4695) or is provided privilege under statutes enacted under the rulemaking power of the House (see § 1013, *infra*), the motion to discharge is admitted. The motion is not debatable (III, 1868; IV, 4695), except under clause 3 of rule XXVII, and may be laid on the table (V, 5407; VI, 415), but the question of consideration may not be demanded against it (V, 4977).

* * * **A committee meet when and where they please, if the House has not ordered time and place for them, 6 Grey, 370; but they can only act when together, and not by separate consultation and consent—nothing being the report of the committee but what has been agreed to in committee actually assembled.**

§ 407. Meetings and action of committees.

For discussion of committee procedure generally, see § 704a, *infra*. In the House of Representatives the standing committees usually meet in their committee rooms, but there is no rule requiring them to meet there, and in the absence of direction by the House, committees designate the time and place of their meetings (VIII, 2214).

Standing committees fix regular weekly, biweekly, or monthly meeting days for the transaction of business (not less infrequently than monthly, under clause 2(b) of rule XI), and additional meetings may be called by the chairman as he may deem necessary or by a majority of the committee in certain circumstances (clause 2(c) of rule XI). Where a committee has a fixed date of meeting, a quorum of the committee may convene on such date without call of the Chairman and transact business regardless of his absence (VIII, 2214). A committee meeting being adjourned by the chairman for lack of a quorum, a majority of the members of the committee may not, without the consent of the chairman, call a meeting of the committee on the same day (VIII, 2213).

The House has adhered to the principle that a report must be authorized by a committee acting together, and a paper signed by a majority of the committee acting separately has been ruled out (IV, 4584; VIII, 2210–2212, 2220; see also clause 2(l)(2)(A) of rule XI). For each rollcall vote in committee on amending or reporting a public measure or matter, the report to the House must disclose the total number of votes cast for and against and the names of those voting for and against (clause 2(l)(2)(B) of rule XI). It is the duty of the chairman of each committee to report or cause to be reported promptly any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote (clause 2(l)(1)(A) of rule XI); and a report must be filed within seven days following the submission of a written request, signed by a majority of the committee members, directing such filing (clause 2(l)(1)(B) of rule XI). A motion in committee directing its Chairman to use all parliamentary means to bring a bill before the House was held to include the right to call up the bill on Calendar Wednesday (VII, 2217). Clause 2(l)(1)(A) of rule XI, requiring the chairman of each committee to report or cause to be reported promptly measures approved by his committee and to take such necessary steps to bring the matter to a vote, is sufficient authority for the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn, Feb. 22, 1950, p. 2161). No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present (clause 2(l)(2)(A) of rule XI). A report is sometimes authorized by less than a majority of the whole committee, some members being silent or absent (II, 985, 986). In a rare instance a majority of a committee agreed to a report, but disagreed on the facts necessary to sustain the report (I, 819). In the situation where a committee finds itself unable to agree to a positive recommendation, being equally divided, it may report the fact to the House (I, 347; IV, 4665, 4666) and may include evidence, majority and minority views (III, 2403), minority views alone (II, 945), or propositions representing the opposing contentions (III, 2497; IV, 4664). It is not essential that the report of a committee be signed (II, 1274; VIII, 2229), but the minority or other separate views are signed by those concurring in them (IV, 4671; VIII, 2229). In a case where a majority of a committee signed a report it was held

valid, although a necessary one of that majority did not concur in all the statements (IV, 4587). If a report is actually sustained by the majority of a committee, it is not impeached by the fact that a lesser number sign it (II, 1091), or by the fact that later by the action of absentees more than a majority of the whole committee are found to have signed minority views (IV, 4585). Objection being made that a report had not been authorized by a committee and there being doubt as to the validity of the authorization, the question as to the reception of the report is submitted to the House (IV, 4588–4591). But where the Speaker is satisfied of the validity or of the invalidity of the authorization he may decide the question (IV, 4584, 4592, 4593; VIII, 2211, 2212, 2222–2224). And in a case wherein it was shown that a majority of a committee had met and authorized a report he did not heed the fact that the meeting was not regularly called (IV, 4594). A bill improperly reported is not entitled to its place on the calendar (IV, 3117); but the validity of a report may not be questioned after the House has voted to consider it (IV, 4598), or after actual consideration has begun (IV, 4599; VIII, 2223, 2225). Where a question was raised regarding a Chairman's alteration of a committee amendment, the Speaker indicated that the proper time to raise a point of order was when the unprivileged report was called up for consideration (or when before the Committee on Rules for a special order) and not when filed in the hopper (May 16, 1989, p. 9356).

§ 409. The quorum of a select or standing committee.

A majority of the committee constitutes a quorum for business.
Elsynge's Method of Passing Bills,
11.

Each Committee may fix the number of its members, but not less than two, to constitute a quorum for taking testimony and receiving evidence; and except for the Committees on Appropriations, the Budget, and Ways and Means, a committee may fix the number of members to constitute a quorum, which shall be not less than one-third of its members, for taking certain other actions (clause 2(h) of rule XI). However, no measure or recommendations shall be reported from any committee or subcommittee unless a majority of the committee were actually present (clauses 2(h) and 2(l) of rule XI); nor shall a committee or subcommittee vote without a majority present to authorize a subpoena under clause 2(m) of rule XI or to close a meeting or hearing under clauses 2(a) and 2(g) of rule XI (except as provided under clause 2(g)(2)(A) with respect to certain hearing procedures).

A quorum of a committee may transact business and a majority of the quorum, even though it be a minority of the whole committee, may authorize a report (IV, 4586), but an actual quorum of a committee must be present to make action taken valid (VIII, 2212, 2222), unless the House authorizes less than a quorum to act (IV, 4553, 4554). A quorum of a com-

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mittee must be present when alleged perjurious testimony is given in order to support a charge of perjury (*Christoffel v. United States*, 388 U.S. 84). The absence of a quorum of a committee at the time a witness willfully fails to produce subpoenaed documents is not a valid defense in a prosecution for contempt where the witness failed to raise that objection before the committee (*United States v. Bryan*, 339 U.S. 323; *United States v. Fleischman*, 339 U.S. 349).

Any Member of the House may be present at any select committee, but cannot vote, and must give place to all of the committee, and sit below them.
Elsynge, 12; Scob., 49.

§ 410. Presence of a Member of the House in a select committee.

This phrase must be read in conjunction with the power of a committee of the House to conduct proceedings in executive session (see clauses 2(g)(1) and (2) of rule XI). Thus, a committee may close its doors in executive session meetings to persons not invited or required, including Members of the House who are not members of the committee (III, 1694; IV, 4558-4565; see discussion at IV, 4540). In the 95th Congress, clause 2(g)(2) of rule XI was amended to prohibit the exclusion of noncommittee members from nonparticipatory attendance in any closed hearing, except in the Committee on Standards of Official Conduct, unless the House by majority vote authorizes a committee or subcommittee to close its hearings to noncommittee members (H. Res. 5, 95th Cong., Jan. 4, 1977, pp. 53-70).

The committee have full power over the bill or other paper committed to them, except that they cannot change the title or subject. *8 Grey, 228.*

§ 411. Power of committees over the body and title of a bill.

In the House of Representatives committees may recommend amendments to the body of a bill or to the title but may not otherwise change the text.

The paper before a committee, whether select or of the whole, may be a bill, resolutions, draught of an address, &c., and it may either originate with them or be referred to them. In every case the whole paper is read first by the Clerk, and then by the chairman, by paragraphs, *Scob., 49*, paus-

§ 412. Parliamentary law governing consideration of bills, etc., in committees.

ing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions or distinct subjects, originating with themselves, a question is put on each separately, as amended or unamended, and no final question on the whole, *3 Hats.*, 276; but if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed; but no question on agreeing to the paragraphs separately; this is reserved to the close, when a question is put on the whole, for agreeing to it as amended or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the House, stand, of course, unless altered or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the House without amendments, and there make their opposition.

In the House of Representatives it has generally been held that a select or standing committee may not report a bill unless the subject matter has been referred to it (IV, 4355–4360), except that under the modern practice reports filed from the floor as privileged pursuant to clause 4(a) of rule XI have been permitted on bills and resolutions originating in certain committees and not formally referred thereto. Pursuant to this paragraph some committees have originated drafts of bills for consideration and amendment prior to the introduction and referral of a numbered bill to committee(s). In the older practice the Committee of the Whole originated resolutions and bills (IV, 4705); but the later development of the rules governing the order of business would prevent the offering of a motion

to go into Committee of the Whole for such a purpose, except by unanimous consent.

The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in Parliament, that when a latter part has been amended, you cannot recur back and make an alteration in a former part. *2 Hats., 90.* In numerous assemblies this restraint is doubtless important. But in the Senate of the United States, though in the main we consider and amend the paragraphs in their natural order, yet recurrences are indulged; and they seem, on the whole, in that small body, to produce advantages overweighing their inconveniences.

§ 413. Order of amendment bills in the House.

In the House of Representatives, amendments to House bills are made before the previous question is ordered, pending the engrossment and third reading (IV, 3392; V, 5781; VII, 1051), and to Senate bills before the third reading (IV, 3393). Amendments may be offered to any part of the bill without proceeding consecutively section by section or paragraph by paragraph (IV, 3392). In Committee of the Whole, bills are read section by section or paragraph by paragraph and after a section or paragraph has been passed it is no longer subject to amendment (clause 5 of rule XXIII; § 872, *infra*; July 12, 1961, p. 12405).

To this natural order of beginning at the beginning there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble till the other parts of the bill are gone through. The reason is, that on consideration of the body of the bill such alterations may therein be made as may also occasion the

§ 414. Preamble amended after the body of the bill or resolution has been considered.

alteration of the preamble. *Scob.*, 50; 7 *Grey*, 431.

On this head the following case occurred in the Senate, March 6, 1800: A resolution which had no preamble having been already amended by the House so that a few words only of the original remained in it, a motion was made to prefix a preamble, which having an aspect very different from the resolution, the mover intimated that he should afterwards propose a correspondent amendment in the body of the resolution. It was objected that a preamble could not be taken up till the body of the resolution is done with; but the preamble was received, because we are in fact through the body of the resolution; we have amended that as far as amendments have been offered, and, indeed, till little of the original is left. It is the proper time, therefore, to consider a preamble; and whether the one offered be consistent with the resolution is for the House to determine. The mover, indeed, has intimated that he shall offer a subsequent proposition for the body of the resolution; but the House is not in possession of it; it remains in his breast, and may be withheld. The rules of the House can only operate on what is before them. The practice of the Senate, too, allows recurrences backward and forward for the purpose of amendment, not permitting amendments in a subsequent to preclude those in a prior part, or *e converso*.

In the practice of the House of Representatives the preamble of a joint resolution is amended after the engrossment and before the third reading

(IV, 3414; V, 5469, 5470; VII, 1064), but the preamble is not voted on separately in the later practice even if amended, since the question on passage covers the preamble as well as the resolving clause (Oct. 29, 1975, p. 34283). After an amendment to the preamble has been considered it is too late to propose amendments to the text of the bill (VII, 1065). In Committee of the Whole, amendments to the preamble of a joint resolution are considered following disposition of any amendments to the resolving clause (Mar. 9, 1967, pp. 6032–34; Mar. 22, 1967, pp. 7679–83; May 25, 1993, p. —). On the passage of a joint resolution a separate vote may not be demanded on the preamble (V, 6147, 6148); but where a simple resolution of the House has a preamble, the preamble may be laid on the table without affecting the status of the accompanying resolution (V, 5430). Amendments to the preamble of a concurrent or simple resolution are considered in the House following the adoption of the resolution (Dec. 4, 1973, p. 39337; June 8, 1970, pp. 18668–71). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendment to the text and pending third reading (May 25, 1993, p. —).

When the committee is through the whole, a Member moves that the committee may rise, and the chairman report the paper to the House, with or without amendments, as the case may be. 2 Hats., 289, 292; Scob., 53; 2 Hats., 290; 8 Scob., 50.

§ 415. Directions of a committee for making of its report.

Clause 2(l)(1)(A) of rule XI provides that it shall be the duty of the Chairman of each committee to report or cause to be reported promptly any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote; and in any event, the report of a committee must be filed within seven calendar days (exclusive of days when the House is not in session) after a majority of the committee has invoked the procedures of clause 2(l)(1)(B) of rule XI. In the House of Representatives, a committee may order its report to be made by the chairman (IV, 4669), or by any other member of the committee (IV, 4526), even though he be a member of the minority party (IV, 4672, 4673; VIII, 2314). A committee report may be filed by a Delegate (July 1, 1958, p. 12870). Only the chairman makes a report for the Committee of the Whole (V, 6987).

When a vote is once passed in a committee it cannot be altered but by the House, their votes being binding on themselves. 1607, June 4.

§ 416. As to reconsideration of a vote in committee.

This provision of the parliamentary law has been held to prevent the use of the motion to reconsider in Committee of the Whole (IV, 4716-4718; VIII, 2324, 2325) but it is in order in the House as in the Committee of the Whole (VIII, 2793). The early practice seems to have inclined against the use of the motion in a standing or select committee (IV, 4570, 4596), but there is a precedent which authorized the use of the motion (IV, 4570, 4596), and on June 1, 1922, the Committee on Rules rescinded previous action taken by the committee authorizing a report. In the later practice the motion to reconsider is in order in committee so long as the measure remains in possession of the committee and the motion is not prevented by subsequent actions of the committee on the measure, and may be entered on the same day as action to be reconsidered or on the next day on which the committee convenes with a quorum present to consider the same class of business (VIII, 2213), but a session adjourned without having secured a quorum is a dies non and not to be counted in determining the admissibility of a motion to reconsider (VIII, 2213). This provision does not prevent a committee from reporting a bill similar to one previously reported by such committee (VIII, 2311).

The committee may not erase, interline, or blot the bill itself; but must, in a paper by itself set down the amendments, stating the words which are to be inserted or omitted, *Scob.*, 50, and where, by references to page, line, and word of the bill. *Scob.*, 50.

§ 417. Method of noting amendments to a bill in committee.

This practice is still in force as to Senate bills of which the engrossed copies cannot be in any way interlined or altered by House committees. Original copies of House bills are not referred to committees but are maintained indefinitely by the Clerk. Both House and Senate bills are now printed as referred, and committees may thus report either with proposed amendments. In the "official papers" (signed engrossed copies), the engrossed House amendments to a Senate bill would still be shown as a separate message attached to the Senate engrossed bill when returned to the Senate.