

RULE XXIII.

OF COMMITTEES OF THE WHOLE HOUSE.

1. (a) In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Member as Chairman to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared.

§ 861a. Selection of Chairman of the Committee of the Whole; and his power to preserve order.

This provision, adopted in 1880, was made from two older rules dating from 1789 and modified in 1794 to provide for the appointment of the Chairman instead of the inconvenient method of election by the committee (IV, 4704). It was amended in the 103d Congress to permit Delegates and the Resident Commissioner to preside in the Committee of the Whole (H. Res. 5, Jan. 5, 1993, p. —), but that authority was repealed in the 104th Congress (sec. 212(b), H. Res. 6, Jan. 4, 1995, p. —). Delegates presided in two instances during the 103d Congress (Oct. 6, 1994, p. —; Oct. 7, 1994, p. —).

The Sergeant-at-Arms attends the sittings of the Committee of the Whole and, under direction of the Chairman, maintains order (I, 257). His decisions on questions of order may be appealed; and in stating the appeal, the question is put as in the House: "Shall the decision of the Chair stand as the judgment of the Committee?" and a majority vote sustains the ruling (Aug. 1, 1989, p. 17159). In rare cases wherein the Chairman has been defied or insulted he has directed the committee to rise, left the chair and, on the chair being taken by the Speaker, has reported the facts to the House (II, 1350, 1651, 1653). While the Committee of the Whole does not control the Congressional Record, the Chairman may direct the exclusion of disorderly words spoken by a Member after he has been called to order (V, 6987), but may not determine the privileges of a Member under general "leave to print" (V, 6988). The Chairman decides questions of order arising in the committee independently of the Speaker (V, 6927, 6928), but has declined to consider a question that had arisen in the House just before the committee began to sit (IV, 4725, 4726) or a question that may arise in the House in the future (June 21, 1995, p. —). He recognizes for debate (V, 5003); but like the Speaker is forbidden to recognize for requests to suspend the rule of admission to the floor (V, 7285). He may direct the committee to rise when the hour previously fixed for adjournment of the House arrives, or when the hour previously fixed by the House for consideration of other business arrives, in which

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case he reports in the regular way (IV, 4785; VIII, 2376; Aug. 22, 1974, p. 30077); but if the committee happens to be in session at the hour fixed for the meeting of the House on a new legislative day, it rests with the committee and not with the Chairman to determine whether or not the committee shall rise (V, 6736, 6737).

(b) After the House has adopted a special order of business resolution reported by the Committee on Rules providing for the consideration of a measure in the Committee of the Whole House on the state of the Union, the Speaker may at any time within his discretion, when no question is pending before the House, declare the House resolved into the Committee of the Whole House on the state of the Union for the consideration of that measure without intervening motion, unless the resolution in question provides otherwise.

§ 862. Speaker's declaration into Committee of the Whole pursuant to special order.

Paragraph (b) was added in the 98th Congress (H. Res. 5, Jan. 3, 1983, p. 34).

2. (a) A quorum of a Committee of the Whole shall consist of one hundred Members. The first time that a Committee of the Whole finds itself without a quorum during any day, the Chairman shall invoke the procedure for the call of the roll under clause 5 of rule XV, unless, in his discretion, he orders a call of the Committee to be taken by the procedure set forth in clause 1 or clause 2(b) of rule XV: *Provided*, That the Chairman may in his discretion refuse to entertain a point of order that a quorum is not present during general debate only. If on such call, a quorum shall appear, the Committee shall con-

§ 863. Failure of a quorum in Committee of the Whole.

tinue its business; but if a quorum does not appear, the Committee shall rise and the Chairman shall report the names of the absentees to the House. After the roll has been once called to establish a quorum during such day, the Chairman may not entertain a point of order that a quorum is not present unless the Committee is operating under the five-minute rule and the Chairman has put the pending motion or proposition to a vote; and if the Chairman sustains a point of order that a quorum is not present after putting the question on such a motion or proposition, he may announce that following a regular quorum call conducted pursuant to the previous provisions of this clause, he will reduce to not less than five minutes the period of time within which a recorded vote on the pending question may be taken if such a vote is ordered. If, at any time during the conduct of any quorum call in a Committee of the Whole, the Chairman determines that a quorum is present, he may, in his discretion and subject to his prior announcement, declare that a quorum is constituted. Proceedings under the call shall then be considered as vacated, and the Committee shall not rise but shall continue its sitting and resume its business.

It was the early practice for the Committee of the Whole to rise on finding itself without a quorum (IV, 2977), and it was not until 1847 that a rule was adopted. The rule was amended in 1880, again in 1890 (which included the concept that a quorum in the Committee should be one hundred rather than a quorum of the House (IV, 2966)), and in 1971 (Jan. 22, 1971, p. 144). On October 13, 1972 (H. Res. 1123, p. 36012) the rule was amended to reflect the installation of the electronic voting system in the House Chamber, and on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53–70) clause

2 was substantially changed to allow quorum calls only under the five-minute rule where the Chairman has put the question on a pending proposition, after a quorum of the Committee of the Whole has been once established on that day. The Chairman of the Committee of the Whole must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending (and the fact that a quorum of the Committee has previously been established on another bill on that day is irrelevant during consideration (Sept. 19, 1984, p. 26082). Where a recorded vote on a prior amendment or motion during the five-minute rule on that bill on that day has established a quorum, a subsequent point of no quorum during debate is precluded except by unanimous consent (May 10, 1984, p. 11869; Dec. 17, 1985, p. 37469; June 25, 1986, p. 15551; June 3, 1992, p. —).

The clause was amended again in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to permit the Committee to continue its business following the appearance of a quorum so that the Speaker need not take the chair to receive the Committee's report of absentees as in previous practice, and to enable the Chairman to reduce to five minutes the period for a recorded vote immediately following a regular quorum call. A vote by division is not such intervening business as would preclude a five-minute vote under this clause (July 22, 1994, p. —). In the 97th Congress (H. Res. 5, Jan. 5, 1981, p. 98) the rule was amended to allow the Chairman the discretion whether or not to entertain a point of order of no quorum during general debate only.

The last two sentences of the clause, permitting the Chair to vacate proceedings under the call in his discretion when a quorum appears, were added on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99). The Speaker interpreted the last two sentences of this clause to permit the Chairman of the Committee of the Whole to announce in advance, at the time that the absence of a quorum is ascertained, that he will vacate proceedings when a quorum appears, and to convert to a regular quorum call if a quorum does not appear at any time during the call (May 13, 1974, pp. 14148–49).

The Chair need not convert to a regular quorum call precisely at the expiration of 15 minutes if 100 Members have not responded on a "notice" quorum call but may continue to exercise his discretion to vacate proceedings at any time during the entire period permitted for the conduct of the call by clause 5 of rule XV (July 17, 1974, p. 23673).

Under the modern practice, when a Committee of the Whole finds itself without a quorum, the Chairman normally directs that Members record their presence by electronic device. The Chair may however, in his discretion, order that Members respond by the alternative procedures in clause 1 of rule XV (alphabetical call of the roll) or clause 2(b) of rule XV (clerk tellers) (for the use of clerk tellers for a "notice" quorum call in Committee of the Whole, see July 13, 1983, p. 18858).

Before the installation of the electronic system, a quorum in the Committee was established by a call of the roll. At one time the roll was called but once (IV, 2967); but in the later practice it was called twice as on other roll calls (VI, 668). Where the Committee has risen to report the absence of a quorum, it resumes its session by direction of the Speaker on the appearance of a quorum (IV, 2968; VI, 674). The quorum which must appear to permit the committee to continue its business is a quorum of the committee and not of the House (IV, 2970, 2971) but if such quorum fails to appear, a quorum of the House is required (VI, 674). It was formerly held that after the committee has risen and reported its roll call, a motion to adjourn is in order before direction as to resumption of the session (IV, 2969), but under the later practice the committee immediately resumed its session without intervening motion or unanimous consent requests (VI, 672, 673; VIII, 2377, 2379, 2436). The failure of a quorum of the House to answer on this roll call does not interfere with the authority of the Speaker to direct the committee to resume its session (IV, 2969). The Chairman's count of a quorum is not subject to verification by tellers (VIII, 2369, 2436), may not be challenged by an appeal (July 24, 1974, p. 25012), and he may count those present and not voting in determining whether a quorum is present (VI, 641). On a division vote totaling less than 100, the Chair has relied on his immediately prior count on a point of no quorum and on his observation of several Members present but not voting on the division vote in finding the presence of a quorum of the Committee of the Whole (June 29, 1988, p. 16504). No quorum being present when a vote is taken in Committee of the Whole, and the committee having risen before a quorum appeared, such vote is invalid, and the question is put de novo when the committee resumes its business (VI, 676, 677). While an "automatic" roll call (under clause 4 of rule XV) is not in order in Committee of the Whole, a point of order of no quorum may intervene between the announcement of a division vote result and prior to transaction of further business, and a demand for a recorded vote following the quorum call is not thereby precluded (Oct. 9, 1975, p. 32598). Where a recorded vote is refused but the Chair has not announced the result of a voice vote on an amendment, and the demand for a division or teller vote remains possible, the question remains pending and the Chair is obligated to entertain a point of order of no quorum under clause 2(a) of rule XXIII (June 6, 1979, p. 13648).

The presence of a quorum is not necessary for adoption of a motion that the Committee of the Whole rise (IV, 2975, 2976, 4914; clause 6(b) of rule XV; Mar. 5, 1980, pp. 4801-02; Oct. 3, 1985, p. 26096; May 21, 1992, p. —); but when the committee rises without a quorum, it may not report the bills it has acted on (IV, 2972, 2973), and such bills as have been laid aside to be reported remain in the committee until the next occasion, when the committee rises without question as to a quorum (IV, 4913). A simple motion that the Committee of the Whole rise is privileged (VIII,

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2369) and takes precedence over a motion to amend (May 21, 1992, p. —); however the motion cannot interrupt a Member who has the floor (VIII, 2370–2371) and may be ruled out when dilatory (VIII, 2800). For a further discussion of the motion to rise, see § 334, *supra*.

Under clause 6 of rule XV, as added in the 93d Congress (H. Res. 998, Apr. 9, 1974, p. 10199), a point of order of no quorum may not be entertained, on a day on which a quorum has been established, during the period after the Committee of the Whole has risen after completing its consideration of a bill or resolution and before the Chairman of the Committee has reported the bill or resolution back to the House. The fact that the vote whereby the committee rises does not show a quorum (IV, 4914) or that a point of no quorum has been made without an ascertainment thereof (IV, 2974), does not prevent a report of the bills already acted on. The Chairman having announced the absence of a quorum in Committee of the Whole, a motion to rise is in order and if a quorum develops on the vote by which the motion is rejected the roll is not called and the committee proceeds with its business (VIII, 2369). The passage of a bill by the House is not invalidated by the fact that the Committee of the Whole reported it on an erroneous supposition that a record vote had disclosed a quorum (IV, 2972).

**(b) In the Committee of the Whole, the Chair shall order a recorded vote on request supported by at least twenty-five Members.**

This clause was adopted in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16).

**(c) In the Committee of the Whole, the Chairman may, in his discretion, reduce to not less than five minutes the period of time within which a rollcall vote by electronic device may be taken without any intervening business or debate on any or all pending amendments after the vote has been taken on the first pending amendment.**

§ 864a. Five-minute votes on amendments in sequence.

This paragraph was added in the 102d Congress (H. Res. 5, Jan. 3, 1991, p. —). A vote by division is not such intervening business as would preclude a five-minute vote under this clause (July 22, 1994, p. —).

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When the 103d Congress enabled voting by the Delegates and the Resident Commissioner in the Committee of the Whole, it also added a paragraph (d) to clause 2 of rule XXIII to provide for immediate reconsideration in the House of questions resolved in the Committee of the Whole House on the state of the Union by a margin within which the votes of Delegates and the Resident Commissioner have been decisive (H. Res. 5, Jan. 5, 1993, p. —). When the 104th Congress repealed the authority for the Delegates and the Resident Commissioner to vote in the Committee of the Whole, it also repealed clause 2(d) (sec. 212(c), H. Res. 6, Jan. 4, 1995, p. —).

Under the former paragraph (d), whether the votes cast by the delegates were decisive was determined by a “but for” test, the question being whether the result would have been different if their votes were not counted (May 19, 1993, p. —). An amendment adopted by immediate proceedings de novo in the House under the former paragraph (d) did not disturb the sequence of a “king-of-the-hill” procedure established by a special rule waiving all points of order against subsequent amendments (Mar. 17, 1994, p. —).

**3. All motions or propositions involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of money, or property, or requiring such appropriation to be made, or authorizing payments out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of a bill has commenced.**

§ 865. Subjects requiring consideration in Committee of the Whole.

The first form of this rule was adopted in 1794, and it has been perfected by amendments in 1874 and 1896 (IV, 4792).

To require consideration in Committee of the Whole, a bill must show on its face that it falls within the requirements of the rule (IV, 4811-4817; VIII, 2391), but where the expenditure is a mere matter of speculation (IV, 4818-4821; VIII, 2388), or where the bill might involve a charge, but does not necessarily do so (IV, 4809, 4810), the rule does not apply. In passing upon the question as to whether a proposition involves a charge upon the Treasury, the Speaker is confined to the provisions of the text and may not take into consideration personal knowledge not directly deducible therefrom (VIII, 2386, 2391). Resolutions reported by the Committee on House Administration (now House Oversight) appropriating from the contingent fund of the House are considered in the House (VIII, 2415, 2416). Authorizations of expenditures from the contingent fund, under the later ruling (IV, 4862-4867) do not fall within the specifications of the rule (IV, 4868). A bill providing for an expenditure which is to be borne otherwise than by the Government (IV, 4831; VIII, 2400), or relating to money in the Treasury in trust (IV, 4835, 4836, 4853; VIII, 2413), is not governed by the rule. But where a bill sets in motion a train of circumstances destined ultimately to involve certain expenditures, it must be considered in Committee of the Whole (IV, 4827; VIII, 2399), as must also bills ultimately authorizing officials in certain contingencies to part with property belonging to the United States (VIII, 2399). The requirements of the rule apply to amendments as well as to bills (IV, 4793, 4794; VIII, 2331), and also to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill's main purpose (IV, 4825). Under the later practice general (as well as private and special) bills providing for the adjudication and payment of claims are held to be within the requirements of the rule (IV, 4856-4859).

The House may consider in Committee of the Whole subjects not specified in the rule (IV, 4822); for example, major amendments to the rules of the House have been considered in Committee of the Whole pursuant to special orders (H. Res. 988, Committee Reform Amendments of 1974, considered in Committee of the Whole pursuant to H. Res. 1395, Sept. 30, 1974, p. 32953; H.R. 17654, Legislative Reorganization Act of 1970, considered in Committee of the Whole pursuant to H. Res. 1093, July 13, 1970, p. 23901). While conference reports were formerly considered in Committee of the Whole, they may not be sent there on the suggestion of the point of order that they contain matter ordinarily requiring consideration therein (V, 6559-6561). When a bill is made a special order (IV, 3216-3224), or when unanimous consent is given for its consideration (IV, 4823; VIII, 2393), the effect is to discharge the Committee of the Whole and bring the bill before the House itself for its consideration (IV, 3216; VII, 788), and in such event the bill is considered "in the House as in the Committee of the Whole" (VIII, 2393). When a bill once considered in Committee of the Whole is recommitted, it is not, when again reported,



necessarily subject to the point of order that it must be considered in Committee of the Whole (IV, 4828, 4829; V, 5545, 5546, 5591).

Provisions placing liability jointly on the United States and the District of Columbia (IV, 4833), granting an easement on public lands or in streets belonging to the United States (IV, 4840-4842), dedicating public land to be forever used as a public park (IV, 4837, 4838), providing site for statue (VIII, 2405), confirming grants of public lands (IV, 4843) and creating new offices (IV, 4824, 4846), have been held to require consideration in Committee of the Whole. Indian lands have not been considered "property" of the Government within the meaning of the rule (IV, 4844, 4845; VIII, 2413). And while a bill removing the rate of postage has been held to be within the rule as "involving a tax or charge" (IV, 4861), taxes on bank circulation have not been so considered (IV, 4854, 4855).

The mere making of a unanimous consent request to dispense with the reading of an amendment and to revise and extend remarks thereon is not such intervening business as would render a point of order untimely, where the Member making the point of order is on his feet seeking recognition (July 16, 1991, p. —; see Procedure, ch. 31, sec. 5.7).

**4. In Committees of the Whole House business on their calendars may be taken up in regular order, or in such order as the committee may determine, unless the bill to be considered was determined by the House at the time of going into committee, but bills for raising revenue, general appropriation bills, and bills for the improvement of rivers and harbors shall have precedence.**

§ 869. Order of business in Committee of the Whole.

This rule applies to the two committees of the whole which have been established by the practice of the House (IV, 4705), the Committee of the Whole House on the state of the Union, which considers public bills, and the Committee of the Whole House, which considers private business (IV, 3115). The early practice left the order of taking up bills to be determined entirely by the committee, but in 1844 the House began by rule to regulate the order, and in 1880 adopted the present rule (IV, 4729). The latter portion of the rule is rarely used, since the ordinary practice is to consider general appropriation bills under clause 9 of rule XVI, which gives privilege to motions to go into committee to consider a designated bill of this class (IV, 3072).

The power of the committee to determine the order of considering bills on its calendar is construed to authorize a motion to establish an order

(IV, 4730) or a motion to take up a specified bill out of its order (IV, 4731, 4732; VIII, 2333). Except in cases wherein the rules make specific provisions therefor a motion is not in order in the House to fix the order in which business on the calendars of the Committee of the Whole shall be taken up (IV, 4733). The Committee of the Whole having voted to consider a particular bill, and consideration having begun, a motion to reconsider or change that vote is not in order (IV, 4765). When there is unfinished business in Committee of the Whole, it is usually first in order (IV, 4735; VIII, 2334).

5. (a) When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment; and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the committee. Upon the offering of any amendment by a Member, when the House is meeting in the Committee of the Whole, the Clerk shall promptly transmit to the majority committee table five copies of the amendment and five copies to the minority committee table. Further, the Clerk shall deliver at least one copy of the amendment to the majority cloak room and at least one copy to the minority cloak room.

§ 870. General debate and amendment under the five-minute rule in Committee of the Whole.

A rule of 1789 provided that bills should be read and debated in Committee of the Whole and in the House by clauses. Although that rule has disappeared, the practice continues in Committee of the Whole, although not in the House. Originally there was unlimited debate in Committee

of the Whole both as to the bill generally and also as to any amendment; but in 1841 the rule that no Member should speak more than an hour was applied both to the Committee of the Whole and the House. At the same time another rule was adopted to prevent indefinite prolongation of debate in Committee of the Whole by permitting the House by majority vote to order the discharge of the Committee of the Whole from the consideration of a bill after acting, without debate, on pending amendments and any other amendments that might be offered. The effect of this was to empower the House to close general debate at any time after it had actually begun in the committee; and thereby to require amendments to be voted on without debate. In 1847 a rule provided that any Member proposing an amendment should have five minutes in which to explain it, and in 1850 an amendment to the rule permitted also five minutes in opposition and guarded against abuse by forbidding the withdrawal of an amendment when once offered (V, 5221). In the 104th Congress the Speaker announced his intention to strictly enforce time limitations on debate (Jan. 4, 1995, p. —). The last two sentences of this clause, placing upon the Clerk the responsibility for providing copies of amendments, was part of the Legislative Reorganization Act of 1970 (sec. 124; 84 Stat. 1140) and was added to the rule in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The fact that copies of an amendment have not been made available as required in this clause is not grounds for a point of order against the amendment (June 21, 1974, p. 20609; Mar. 25, 1976, p. 7997).

The motion to close general debate in Committee of the Whole, successor in the practice to the motion to discharge provided by the rule of 1841, is made in the House pending the motion that the House resolve itself into committee, and not after the House has voted to go into committee (V, 5208); and though not debatable, the previous question is sometimes ordered on it to prevent amendment (V, 5203); and in case the previous question is ordered, the 40 minutes debate under clause 2 of rule XXVII is not allowed (VIII, 2555, 2690). General debate must have already begun in Committee of the Whole before the motion to limit it is in order in the House (V, 5204–5206). The motion may not apply to a series of bills (V, 5209) and the motion in the House to limit debate on a bill in the Committee of the Whole must apply to the whole and not to a part of a bill (V, 5207). A proposition for a division of time may not be made as a part of it (V, 5210, 5211). The motion may not be made in Committee of the Whole (V, 5217; VIII, 2548); but in absence of an order by the House the Committee of the Whole may be unanimous consent determine as to general debate (V, 5232; VIII, 2553). Where the House has fixed the time the committee may not, even by unanimous consent, extend it (V, 5212–5216; VIII, 2321, 2550; Mar. 27, 1984, p. 6599). The general debate must close before amendments may be offered (IV, 4744; V, 5221); and it is closed by the fact that no Member desires to participate further (IV, 4745). Where no member of a committee designated to control

time is present at the appropriate time during general debate in Committee of the Whole, the Chair may presume the time to have been yielded back (June 11, 1984, p. 15744). Motions for disposition of the bill are not in order before general debate is closed (IV, 4778); nor may a Member, in time yielded to him for general debate, move that the Committee rise (May 25, 1967, p. 14121) or yield to another for such motion (Feb. 22, 1950, p. 2178).

The reading of the bill for amendment is not specifically required by the present form of the rule; but is done under a practice which was originally instituted by the rule of 1789 and has continued, although the rule was eliminated, undoubtedly by inadvertence, in the codification of 1880

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(V, 5221). Revenue, general appropriation, lighthouse, and river and harbor bills are generally read by paragraphs; other bills by sections (IV, 4738, 4740); and while the matter is very largely in the discretion of the Chair (VIII, 2341, 2344, 2346), the Committee of the Whole has overruled his decision (VIII, 2347). A bill (or the remainder of a bill) may be considered as having been read and open to amendment by unanimous consent but not by motion (June 18, 1976, p. 19296). A Senate amendment, however, is read in entirety, and not by either paragraphs or sections (V, 6194) and an amendment in the nature of a substitute offered from the floor must also be read in its entirety and is then open to amendment at any point, and a unanimous consent request in Committee of the Whole that it be read by sections for amendment is not in order (Mar. 25, 1975, p. 8490). The Committee of the Whole may not, even by unanimous consent, prohibit the offering of an amendment otherwise in order under the five-minute rule (July 31, 1984, p. 21701; Mar. 7, 1995, p. —). When a paragraph or section has been passed it is not in order to return thereto (IV, 4742, 4743) except by unanimous consent (IV, 4746, 4747; Deschler's Precedents, vol. 8, ch. 26, sec. 2.26) or when, the reading of the bill being concluded and a motion to rise being decided in the negative, the committee on motion votes to return (IV, 4748). Where a bill is considered as read and open to amendment at any point, adoption of an amendment adding a new section at the end of the bill does not preclude subsequent amendments to previous sections of the bill (Apr. 17, 1986, p. 7861). But the chairman may direct a return to a section whereon, by error, no action was had on a pending amendment (IV, 4750). Points of order against a paragraph should be made before the next paragraph is read (V, 6931; VIII, 2351). The paragraph or section having been read, and an amendment offered, the right to explain or oppose that amendment has precedence of a motion to amend it (IV, 4751). In this debate recognitions are governed by the conditions of the pending question rather than by the general relations of majority and minority (V, 5223). The Member recognized may not yield time (V, 5035–5037; May 8, 1987, p. 11832; Dec. 10, 1987, p. 34686) and must confine himself to the subject (V, 5240–5256; VIII, 2591). Where debate on an amendment is limited or allocated by special order to a pro-

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ponent and an opponent, the five-minute rule is abrogated and the Members controlling the debate may yield and reserve time; whereas debate time on amendments under the five-minute rule cannot be reserved (Aug. 1, 1990, p. —). A Member recognized under the five-minute rule may not yield to another Member to offer an amendment (Dec. 12, 14, 1973, pp. 41171, 41716; Sept. 8, 1976, p. 29243; Mar. 7, 1995, p. —).

Where the Chair recognizes the proponent of an amendment to propound a unanimous consent request to modify the text of the amendment before commencing debate thereon, the Chair does not charge time consumed under a reservation of objection against the proponent's time for debate on the amendment (Feb. 3, 1993, p. —; May 27, 1993, p. —).

The pro forma amendment to "strike out the last word" has long been used for purposes of debate or explanation where an actual amendment is not contemplated (V, 5778; VIII, 2591); but a pro forma amendment must be voted on unless withdrawn (VIII, 2874). A Member who has occupied five minutes on a pro forma amendment may not lengthen this time by making another pro forma amendment (V, 5222; VIII, 2560), nor may he then extend this time by offering a substantive amendment while other Members are seeking recognition (July 28, 1965, p. 18631). A Member recognized to offer a pro forma amendment under the five-minute rule may not during that time offer a substantive amendment but must be separately recognized for that purpose by the Chair (Nov. 19, 1987, p. 32880). A Member may speak in opposition to a pending amendment and subsequently offer a pro forma amendment and debate that (June 30, 1955, p. 9614); a Member may offer a pro forma amendment to debate a second degree amendment and then offer another pro forma amendment to debate the underlying first degree amendment (June 28, 1995, p. —); and a Member who has debated a substantive amendment may thereafter rise in opposition to a pro forma amendment thereto (July 20, 1951, p. 8566). A Member who has offered a substantive amendment and then debated it for five minutes may not extend his time by offering a pro forma amendment, as it is not in order for the offeror of an amendment to amend his own amendment except by unanimous consent (Oct. 14, 1987, p. 27898). A pro forma amendment may be offered after a substitute has been adopted and before the vote on the amendment, as amended, by unanimous consent only, since the amendment has been amended in its entirety and no further amendments, including pro forma amendments, are in order (Oct. 18, 1983, p. 28185; June 28, 1995, p. —). A Member recognized on a pro forma amendment may not allocate or reserve time, though he may in yielding indicate to the Chair when he intends to reclaim his time (May 19, 1987, p. 12811; July 13, 1994, p. —). The Chair endeavors to alternate recognition to offer pro forma amendments between majority and minority Members (giving priority to committee members) rather than between sides of the question (Mar. 21, 1994, p. —).

(b) It shall be in order to move in the Committee of the Whole to dispense with the reading of an amendment if the amendment has been printed in the bill as reported from a committee, or if any Member shall have caused the amendment to be printed in the Congressional Record, and to be submitted to the clerk, or to any responsible staff member designated by the Chairman, of the reporting committee or committees, at least one day prior to floor consideration, and said motion shall be decided without debate.

§ 873b. Motion to dispense with reading.

Paragraph (b) was added in the 97th Congress (H. Res. 5, Jan. 5, 1981, pp. 98-113) to permit a motion to dispense with the reading of certain amendments in the Committee of the Whole.

(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 424(a)(1) of the Unfunded Mandate[s] Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.

§ 873c. Unfunded mandates.

Paragraph (c) was added by the Unfunded Mandates Reform Act of 1995 (sec. 107(a), P.L. 104-4; 109 Stat. 63), to be effective on January 1, 1996, or 90 days after appropriations are made available to the Congressional Budget Office pursuant to that Act, whichever is earlier. The section 424(a)(1) cited in the rule is actually in part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658c(a)(1)), as added by the Unfunded Mandates Reform Act of 1995 (sec. 101, P.L. 104-4; 109 Stat. 50-60).

6. The committee may, by the vote of a majority of the Members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate. However, if debate is closed on any section or paragraph under this clause before there has been debate on any amendment which any Member shall have caused to be printed in the Congressional Record after the reporting of the bill by the committee but at least one day prior to floor consideration of such amendment, the Member who caused such amendment to be printed in the Record shall be given five minutes in which to explain such amendment, after which the first person to obtain the floor shall be given five minutes in opposition to it, and there shall be no further debate thereon; but such time for debate shall not be allowed when the offering of such amendment is dilatory. Material placed in the Record pursuant to this provision shall indicate the full text of the proposed amendment, the name of the proponent Member, the number of the bill to which it will be offered and the point in the bill or amendment thereto where the amendment is intended to be offered, and shall appear in a portion of the Record designated for that purpose. All amendments to a specified measure submit-

§ 874. Closing the five-minute debate in Committee of the Whole.

ted for printing in that portion of the Record shall be given numerical designations in the order printed.

This clause was adopted in 1860, with amendment in 1880 and 1885 (V, 5221, 5224). The second sentence of this clause, permitting ten minutes debate on an amendment which has been printed in the Record even though debate has been closed by the Committee of the Whole, was inserted in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144) following the enactment of an identical provision in section 119 of the Legislative Reorganization Act of 1970 (84 Stat. 1140).

The penultimate sentence of the clause, relating to the procedure for submitting and the printing of amendments under the clause, was added in the 93d Congress (H. Res. 1387, Nov. 25, 1974, p. 37270). The last sentence, relating to the numbering of printed amendments, was added in the 104th Congress (sec. 217, H. Res. 6, Jan. 4, 1995, p. —).

The Speaker announced that amendments to be printed in the Record pursuant to this clause must be deposited in a separate box at the Rostrum or with the Official Reporters of Debates within 15 minutes following adjournment, and must bear the Member's original signature (Nov. 25, 1974, p. 37270). Printing an amendment in the Record under this clause permits debate notwithstanding a limitation of debate only if the amendment has been properly offered, and does not permit the offering of an amendment not otherwise in order under the rules (Apr. 23, 1975, p. 11491); and the guaranteed five minutes may be claimed only if the offeror of the amendment is the Member who caused it to be printed under the rule (June 1, 1976, p. 16044; June 29, 1989, p. 13928; June 19, 1991, p. —). The guaranteed time applies to an amendment offered as a substitute for another amendment, rather than as a primary amendment, if offered in the precise form printed (June 26, 1979, p. 16682), but where such a substitute amendment has not been printed in the Record it may not be debated unless time is yielded within the original 10 minutes (Dec. 10, 1987, p. 34710). Where a special order requires amendments to be printed in the Record to qualify during the consideration of a bill under the five-minute rule, but makes no designation concerning offerors, any printed amendment may be offered by any Member (Mar. 22, 1990, p. 5017); but only the Member causing the amendment to be printed is entitled to the time for debate guaranteed by this clause.

The motion to close debate is not in order until such debate has begun (V, 5225; VIII, 2567), which means after one speech of five minutes (V, 5226; VIII, 2573). The motion to strike the enacting clause under clause 7 of this rule is preferential to the motion to close debate (June 28, 1995, p. —; July 13, 1995, p. —). Although any Member may move, or request unanimous consent, to limit debate under the five-minute rule, the manager of the bill has the prior right to recognition for such purpose (June 19, 1984, p. 17055). The House, as well as the Committee of the Whole,



may close the five-minute debate after it has begun (V, 5229, 5231), but rarely exercises this right. The motion to close debate, while not debatable (Apr. 23, 1975, p. 11534; June 5, 1975, p. 17187), may be amended (V, 5227; VIII, 2578). The closing of debate on the last section of a bill does not preclude debate on a substitute for the whole text (V, 5228). Where there is a time limitation on debate on a pending amendment in the nature of a substitute and all amendments thereto, but not on the underlying original text, debate on perfecting amendments to the original text proceeds under the five-minute rule absent another time limitation (Apr. 13, 1983, p. 8402). The motion may be ruled out when dilatory (V, 5734). Where five-minute debate has been limited to a certain number of minutes of debate without reference to a time certain, the time consumed by reading of amendments, quorum calls, points of order and votes is not taken from that remaining for debate (Oct. 3, 1969, pp. 28459–60; Nov. 9, 1971, pp. 40060–61); but where debate has been limited to a time certain, such time comes out of the time remaining under the limitation and reduces the time which may be allocated to Members wishing to speak (May 6, 1970, p. 14452; Oct. 7, 1976, pp. 26305–06). Where debate under the five-minute rule has been limited and equally divided, a Member allocated time may reserve a portion of his time or yield his time to another Member only by unanimous consent (Mar. 2, 1976, p. 4992; May 11, 1976, p. 13416; June 14, 1977, p. 18833). A motion to limit debate on a pending amendment may neither allocate the time proposed to remain nor vary the order of recognition to close debate, though the Committee of the Whole may separately do either by unanimous consent (July 12, 1988, p. 17767). Under a limitation on debate the Chair may, in his discretion, either permit continued debate under the five-minute rule, or divide the remaining time among all those desiring to speak, or divide the remaining time between a proponent and an opponent to be yielded by them to other Members (May 25, 1982, p. 11672). Except as indicated in § 762, *supra*, the manager of the bill, and not the proponent of the pending amendment, has the right to close debate on an amendment on which debate has been limited and allocated under the five-minute rule (July 16, 1981, p. 16043), even where he is also the proponent of a pending amendment to the amendment subject to the limitation (Mar. 16, 1983, p. 5792). The Chair may also in his discretion give priority of recognition under a limitation to those Members seeking to offer amendments, over other Members standing at the time the limitation was agreed to (May 26, 1977, pp. 16950–52). Where the Committee of the Whole has limited debate time on a bill and all amendments thereto to a time certain several hours away, the Chair may in his discretion continue to proceed under the five-minute rule until he desires to allocate remaining time on possible amendments, and may then divide that time among proponents of anticipated amendments, and committee members opposing those amendments (July 16, 1981, p. 16044). The Chair has discretion to reallocate time originally allocated by unanimous consent in the Committee of the Whole (Mar. 16, 1995, p. —). The Committee

of the Whole may, by motion, limit debate on a pending committee amendment in the nature of a substitute (considered as having been read as original text) and on all amendments thereto to a time certain, and may then, by subsequent unanimous consent requests or motions, separately limit debate on each perfecting amendment after it has been offered (Mar. 16, 1983, p. 5794). A time limitation imposed by the Committee of the Whole under this clause may be rescinded or modified only by unanimous consent (Sept. 17, 1975, p. 28904). While ordinarily the expiration of time for debate on a bill and all amendments thereto precludes debate on amendments offered thereafter (July 18, 1968, p. 22110), debate on an amendment printed in the Record may nevertheless proceed for 10 minutes under this clause (Aug. 2, 1973, p. 27715). While the Committee of the Whole may limit debate on amendments, it may not restrict the offering of amendments in contravention of a special order adopted by the House (June 25, 1985, p. 17201).

**7. A motion to strike out the enacting words of a bill shall have precedence of a motion to amend, and, if carried, shall be considered equivalent to its rejection. Whenever a bill is reported from a Committee of the Whole with an adverse recommendation and such recommendation is disagreed to by the House, the bill shall stand re-committed to the said committee without further action by the House, but before the question of concurrence is submitted it is in order to entertain a motion to refer the bill to any committee, with or without instructions, and when the same is again reported to the House it shall be referred to the Committee of the Whole without debate.**

§ 875. The motion to strike out the enacting words of a bill.

The practice of rejecting a bill by striking out the enacting words dates from a time as early as 1812, but the first rule on the subject was not adopted until 1822. By amendments in 1860, 1870, and 1880 the rule has been brought into its present form (V, 5326). The rule before 1880 applied in the House as well as in Committee of the Whole. In the revision of 1880 for the first time it was classified among the rules relating to the Committee of the Whole, but there is nothing to indicate that this change was intended to limit the scope of the motion. It was probably a recognition

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merely of the fact that the motion was used most frequently in Committee of the Whole (V, 5326, 5332). The motion must be in writing and in the proper form (July 24, 1986, p. 17641; Aug. 15, 1986, p. 22071; Sept. 12, 1986, p. 23178).

The motion may not be made until the first section of the bill has been read (V, 5327; VIII, 2619). Having precedence of a motion to amend, it may be offered while an amendment is pending (V, 5328–5331; VIII, 2622, 2624, 2627). The motion takes precedence over the motion to amend and therefore over the motion to rise and report at the end of the reading of a general appropriation bill for amendment under clause 2(d) of rule XXI (July 24, 1986, p. 17641). The motion also takes precedence over a motion to limit debate on pending amendments (June 28, 1995, p. —; July 13, 1995). Where a special order provides that a bill shall be open to amendment in Committee of the Whole, a motion to strike out the enacting words is in order (VII, 787); contra (IV, 3215), but after the stage of amendment has been passed the motion to strike out the enacting words is not in order (IV, 4782; VIII, 2368). Where a bill is being considered under a special order which permits only committee amendments and no amendments thereto, a motion that the committee rise and report with the recommendation that the enacting clause be stricken is not in order where no committee amendments are in fact offered (Apr. 16, 1970, p. 12092).

The motion is debatable as to the merits of the bill, but may not go beyond its provisions (V, 5336). The debate on the motion is, in Committee of the Whole, governed by the five-minute rule (V, 5333–5335; VIII, 2618, 2628–2631); only two five-minute speeches are in order (V, 5335; VIII, 2629), and time may not be reserved (May 22, 1991, p. —); thus where a Member recognized for five minutes in opposition to the motion yields back his time another Member may not claim the unused portion thereof (Mar. 3, 1988, p. 3241). Members of the committee managing the bill have priority in recognition for debate in opposition to the motion (May 5, 1988, p. 9955; June 26, 1991, p. —). The motion is not debatable after the expiration of time for debate on the pending bill and all amendments thereto (July 9, 1965, p. 16280; July 19, 1973, p. 24961; June 19, 1975, p. 19785), but it is debatable where the limitation is only on an amendment in the nature of a substitute being read as an original bill for the purpose of amendment under a special order (June 20, 1975, p. 19966). For more concerning debate on the motion, see Deschler's Precedents, vol. 5, ch. 19, sec. 12.

A second motion on the same legislative day to strike out the enacting clause is not entertained in the absence of any material modification of the bill (VIII, 2636), but the motion may be repeated on a subsequent legislative day without change in the bill (May 6, 1950, p. 6571). The rejection of a proposed amendment to the bill does not qualify as a modification of the bill (June 21, 1962, p. 11369), nor does the adoption of an amendment

to a proposed amendment to the bill. But where a committee amendment in the nature of a substitute is being read for amendment as an original bill, pursuant to a special order, the adoption of amendments to the amendment in the nature of a substitute allows the re-offering of the motion (June 20, 1975, p. 19970). A point of order against the motion should be made before debate thereon has begun (V, 6902; VIII, 3442; May 6, 1950, p. 6571), and when challenged the Member offering the motion must qualify as being opposed to the bill (Mar. 13, 1942, p. 2439; May 6, 1950, p. 6571; June 14, 1979, p. 14995; Jan. 26, 1995, p. —). When a bill is reported from the Committee of the Whole with the recommendation that the enacting words be stricken out, the motion to strike out is debatable (V, 5337–5340), but a motion to lay on the table is not in order (V, 5337). The previous question may be moved on the motion to concur without applying to further action on the bill (V, 5342). When the House disagrees to the action of the committee in striking out the enacting words and does not refer it under the provisions of the rule, it goes back to the Committee of the Whole, where it becomes unfinished business (V, 5326, 5345, 5346; VIII, 2633). Notwithstanding that consideration of the pending bill was governed by a “modified closed rule” permitting only specified amendments, pending the concurrence of the House with a recommendation of the Committee of the Whole that the enacting clause be stricken, the House could by instructions in a motion to refer under this clause direct the Committee of the Whole to consider additional germane amendments (Apr. 14, 1994, p. —). When the enacting words of a bill are stricken out the bill is rejected (V, 5326); and when the enacting clause of a Senate measure is stricken, the bill is rejected (V, 5326), and the Senate is so informed (IV, 3423; VIII, 2638; June 20, 1946, p. 7211; Oct. 4, 1972, p. 33787).

When, on Calendar Wednesday, the House disagrees to the recommendation of the Committee of the Whole that the enacting words be stricken out, the House automatically resolves itself into Committee of the Whole for its further consideration (VII, 943). When the bill is thus again taken up in Committee of the Whole it is taken up as unfinished business and is open to amendment, and the motion to strike out the enacting words may be again offered (VIII, 2633).

**8. At the conclusion of general debate in a Committee of the Whole on any concurrent resolution on the budget pursuant to section 305(a) of the Congressional Budget Act of 1974, the concurrent resolution shall be considered as having been read for amendment. It shall not be in order in the House or in a Committee of the**

§ 876b. Reading  
concurrent resolution  
on budget for  
amendment.

Whole to consider an amendment to a concurrent resolution on the budget, or any amendment to an amendment thereto, unless the concurrent resolution as amended by such amendment or amendments (a) would be mathematically consistent (except to the extent that the amendment involved is limited by the third sentence of this clause); and (b) would contain all the matter set forth in paragraphs (1) through (5) of section 301(a) of the Congressional Budget Act of 1974. It shall not be in order in the House or in a Committee of the Whole to consider an amendment to a concurrent resolution on the budget, or any amendment to an amendment thereto, which changes the amount of the appropriate level of the public debt set forth in the concurrent resolution as reported; except that the amendments to achieve mathematical consistency which are permitted under section 305(a)(6) of the Congressional Budget Act of 1974 may include an amendment, offered by or at the direction of the Committee on the Budget, to adjust the amount of such level to reflect any changes made in the other figures contained in the resolution.

The first sentence of this clause was added to the rules on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53-70). The second sentence was adopted in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7-16). In the 96th Congress the second sentence was amended further and the third sentence added by Public Law 96-78 (93 Stat. 589) and was originally intended to apply to concurrent resolutions on the budget for fiscal years beginning on or after October 1, 1980 (fiscal 1980). However, in the 96th Congress the provisions of that public law amending the rules of the House were made applicable to the third concurrent resolution on the budget for fiscal year 1980 as well as the first concurrent resolution on the budget for fiscal year 1981 (H. Res. 642, Apr. 23, 1980, pp. 8789-90).

**9. The rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable.**

**§ 877. Application of rules of the House to the Committee of the Whole.**

This clause was adopted in 1789 (IV, 4737).

**§ 877a. Modification of special orders.** Unanimous consent requests may not be entertained in the Committee of the Whole by the Chair if their effect is to materially modify procedures required by a special rule or order adopted by the House. For example, the Chair has refused to entertain unanimous consent requests:

(1) to permit a perfecting amendment to be offered to the underlying bill where a special rule permitted its consideration only as a perfecting amendment to a committee amendment (Aug. 2, 1977, p. 26161); (2) to permit a substitute to be read by sections for amendment where the special rule did not so provide (Dec. 12, 1973, p. 41153); (3) to extend the time limitation for consideration of amendments beyond that set by a special order requiring the Chair to put the question on the pending amendments at the expiration of certain hours of consideration (Apr. 10, 1986, p. 7079; Oct. 30, 1991, p. —); (4) to modify the terms of a special order permitting consideration of certain amendments only en bloc, in order to permit separate consideration of one of the amendments (Sept. 11, 1986, p. 22871); (5) to change the control (Oct. 9, 1986, p. 29984) or duration (Aug. 1, 1989, p. 17143; Mar. 12, 1991, p. —; Mar. 17, 1993, p. —) of general debate specified by the House; (6) to reduce below 15 minutes the minimum time for recorded votes in the Committee of the Whole (June 18, 1987, p. 16764), or to postpone certain recorded votes where a special order authorized the Chair to postpone requests for recorded votes on amendments (June 4, 1992, p. —); (7) to alter the terms of a special rule providing that an amendment not be subject to amendment, by permitting a perfecting amendment thereto or a subsequent amendment changing an amendment already adopted (Nov. 18, 1987, p. 32643; July 26, 1989, p. 16411); (8) to permit consideration of an amendment out of the order specified in a special rule (May 25, 1988, p. 12275; Oct. 31, 1991, p. —; Nov. 19, 1993, p. —); (9) to vary the terms of a “modified closed” rule to permit consideration of an additional amendment (July 28, 1988, p. 19491); (10) to permit another to offer an amendment vested in a specified Member by the special order (May 1, 1990, p. —).

By unanimous consent the House has altered the terms of a special order, for example: (1) to make an additional amendment in order in the Committee of the Whole under a “modified closed” rule and to authorize a supplemental report from the Committee on Rules in lieu of the original report referred to in the special order (Speaker Wright, Aug. 11, 1988, p. 22105), or to change the specified order of amendments in Committee (Oct. 3, 1990, p. —); and (2) to establish a preprinting requirement for certain amend-

ments to be considered in the Committee of the Whole and to restrict “en bloc” authority granted in a rule (June 21, 1989, p. 12744).

Unanimous consent requests have been entertained in Committee of the Whole: (1) to permit the modification of a designated amendment made in order by a special rule, once offered (Sept. 1, 1976, p. 28877; Nov. 19, 1993, p. —); (2) to permit a page reference to be included in a designated amendment made in order as printed where the printed amendment did not include that reference (Apr. 1, 1976, p. 9091); (3) to permit a supporter of an amendment to claim debate time allocated by special order to an opponent, where no opponent seeks recognition (May 23, 1990, p. 11988); (4) to shorten the time set by special order for debate on a particular amendment (Aug. 1, 1990, p. —; Mar. 29, 1995, p. —); (5) to lengthen such time under terms of control congruent with those set by the order of the House (May 11, 1988, p. 10495; May 21, 1991, p. —; Mar. 22, 1995, p. —; June 27, 1995, p. —); (6) to permit en bloc consideration of several amendments under a “modified closed” special order providing for the sequential consideration of designated separate amendments (Aug. 10, 1994, p. —); or (7) to permit one of two committees controlling time for general debate pursuant to a special order to yield control of its time to the other (Aug. 18, 1994, p. —).

By unanimous consent the House may delegate to the Committee of the Whole authority to entertain unanimous consent requests to change procedures contained in an adopted special order (Aug. 11, 1986, p. 20633).

## RULE XXIV.

### ORDER OF BUSINESS.

1. The daily order of business shall be as follows:

- First. Prayer by the Chaplain.
- Second. Reading and approval of the Journal, unless postponed pursuant to the provisions of clause 5(b)(1) of rule I.
- Third. The Pledge of Allegiance to the Flag.
- Fourth. Correction of reference of public bills.
- Fifth. Disposal of business on the Speaker’s table.
- Sixth. Unfinished business.

§ 878. The rule for the order of business in the House.