RULE XXII

HOUSE AND SENATE RELATIONS

Senate amendments

§ 1069. Motion for conference.

1. A motion to disagree to Senate amendments to a House bill or resolution and to request or agree to a conference with the Senate, or a motion to insist on House amendments to a Senate bill or resolution and to request or agree to a conference with the Senate, shall be privileged in the discretion of the Speaker if offered by direction of the primary committee and of all reporting committees that had initial referral of the bill or resolution.

This provision (proviso in former clause 1 of rule XX), added by the 89th Congress (H. Res. 8, Jan. 4, 1965, p. 21), provides a method whereby bills can be sent to conference by majority vote. As contained in section 126(a) of the Legislative Reorganization Act of 1970 (84 Stat. 1140) and adopted as part of the Rules of the House in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144), this clause included language relating to separate votes on nongermane Senate amendments that was, in the 93d Congress, modified and transferred to former clause 5 of rule XXVIII (current clause 10 of rule XXII) (H. Res. 998, Apr. 9, 1974, pp. 10195–99). Before the House recodified its rules in the 106th Congress, clauses 1 and 3 of this rule occupied a single clause (former clause 1 of rule XX) (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1070. Motion for conference.

The motion to send a bill to conference under this clause is in order notwithstanding the fact that the stage of disagreement has not been reached (Aug. 1, 1972, p. 26153). On a bill that has been initially referred and reported in the House, the motion must be authorized by all committees reporting thereon (Sept. 26, 1978, p. 31623). This clause was recodified in the 106th Congress to reflect this practice (H. Res. 5, Jan. 6, 1999. p. ——). However, a committee receiving sequential referral of a bill or not reporting thereon need not authorize the motion (Oct. 4, 1994, p. 27643). On a Senate bill with a House amendment consisting of the text of two corresponding House bills that were previously reported to the House, the motion must be authorized by the committees reporting those corresponding bills (Oct. 1, 1998, p.——). Where such a motion has been rejected by the House, it may be repeated if the committee having jurisdiction over the subject mat-

ter again authorizes its chairman to make the motion (Oct. 3, 1972, p. 33502; see also Procedure, ch. 32, sec. 5). The motion to send to conference is in order only if the Speaker in his discretion recognized for that purpose, and the Speaker will not recognize for the motion where he has referred a nongermane Senate amendment in question to a House committee with jurisdiction and they have not yet had the opportunity to consider the amendment (June 28, 1984, p. 19770).

§ 1071. Privilege of certain Senate amendments.

2. A motion to dispose of House bills with Senate amendments not requiring consideration in the Committee of the Whole House on the state of the Union shall be privileged.

This provision was adopted in 1890 (IV, 3089) as part of the rule governing disposal of business on the Speaker's table (former clause 2 of rule XXIV). When the House recodified its rules in the 106th Congress, former clause 2 of rule XXIV was transferred to clause 2 of rule XIV, except this provision (H. Res. 5, Jan. 6, 1999, p. ——). For a discussion of referral of Senate amendments at the Speaker's table see § 873, *supra*.

§ 1072. Consideration of Senate amendments in Committee of the Whole.

3. Except as permitted by clause 1, before the stage of disagreement, a Senate amendment to a House bill or resolution shall be subject to the point of order that it must first be considered in the Committee of the Whole House on the state of the Union if, originating in the House, it would be subject to such a point under clause 3 of rule XVIII.

This provision was adopted in 1880 to prevent Senate amendments of the class described from escaping consideration in Committee of the Whole (IV, 4796). Before the House recodified its rules in the 106th Congress, clauses 1 and 3 of this rule occupied a single clause (former clause 1 of rule XX) (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1073. Consideration of Senate amendments in Committee of the Whole.

While a Senate amendment that is merely a modification of a House proposition, like the increase or decrease of the amount of an appropriation, and does not involve new and distinct expenditure, may not be required to be considered in Committee of the Whole (IV, 4797–4806; VIII, 2382–2385), where the question was raised against a Senate amendment which on its face apparently placed a charge upon the Treasury

the Speaker held it devolved upon those opposing the point of order to cite proof to the contrary (VIII, 2387). When in the House an amendment is offered to provide an appropriation for another purpose than that of the Senate amendment, the House goes into Committee of the Whole to consider it (IV, 4795). When an amendment is referred, the entire bill goes to the Committee of the Whole (IV, 4808), but the committee considers only the Senate amendment (V, 6192). It usually considers all the amendments, although they may not all be within the rule requiring such consideration (V, 6195). In Committee of the Whole a Senate amendment, even though it be very long, is considered as an entirety and not by paragraphs or sections (V, 6194). When reported from the Committee of the Whole, Senate amendments are voted on en bloc and only those amendments are voted on severally on which a separate vote is demanded (VIII, 3191). It has been held that each amendment is subject to general debate and amendment under the five-minute rule (V, 6193, 6196). The requirement of this clause that certain Senate amendments be considered in Committee of the Whole applies only before the stage of disagreement has been reached on the Senate amendment, and it is too late to raise a point of order that Senate amendments should have been considered in Committee of the Whole after the House has disagreed thereto and the amendments reported from conference in disagreement (Oct. 20, 1966, p. 28240; Dec. 4, 1975, p. 38714). The Committee on Rules may recommend a special order of business providing that a Senate amendment pending at the Speaker's table and otherwise requiring consideration in Committee of the Whole under this clause be "hereby" adopted, which special order, if adopted, would obviate the requirement of this clause (Deschler's Precedents, vol. 6, ch. 21, sec. 16.11; Feb. 4, 1993, p. 2500).

§ 1074. Stage of disagreement between Houses.

When the stage of disagreement has been reached on a bill with amendments of the other House, motions to dispose of said amendments are privileged in the House (clause 4 of rule XXII; IV, 3149, 3150; VI, 756; VIII, 3185, 3194). The stage of disagreement between the two Houses is reached after the House in possession of the papers has either disagreed to the amendment(s) of the other House or has insisted on its own amendment to a measure of the other House (Sept. 16, 1976, p. 30868), and not merely where the other House has returned a bill with an amendment (Dec. 7, 1977, p. 38728). Thus, where the House concurred in a Senate amendment to a House bill with an amendment, insisted on the amendment and requested a conference, and the Senate then concurred in the House amendment with a further amendment, the matter was privileged in the House for further disposition since the House had communicated its insistence and request for a conference to the Senate (Speaker Albert, Sept. 16, 1976, p. 30868).

§ 1075. Privilege when stage of disagreement reached.

4. When the stage of disagreement has been reached on a bill or resolution with House or Senate amendments, a motion to dispose of any amendment shall be privileged.

This provision was adopted when the House recodified its rules in the 106th Congress to codify the privilege of a motion to dispose of an amendment after the stage of disagreement has been reached (a practice described in § 1074, *supra*) (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1076. Conferees may not agree to certain Senate amendments.

5. (a) Managers on the part of the House may not agree to a Senate amendment described in paragraph (b) unless specific authority to agree to the amendment first is given by the House by a separate vote with respect thereto. If specific authority is not granted, the Senate amendment shall be reported in disagreement by the conference committee back to the two Houses for disposition by separate motion.

(b) The managers on the part of the House may not agree to a Senate amendment described in paragraph (a) that—

(1) would violate clause 2(a)(1) or (c) of rule XXI if originating in the House; or

(2) proposes an appropriation on a bill other than a general appropriation bill.

This clause was adopted on June 1, 1920 (pp. 8109, 8120). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2 of rule XX. The recodification also extended the rule to Senate amendments containing reappropriations of unexpended balances now referenced in clause 2(c) of rule XXI (H. Res. 5, Jan. 6, 1999, p. ——).

While the rule provides for a motion authorizing the managers on the part of the House to agree to amendments of the Senate in violation of clause 2 of rule XXI, such as a motion to recommit a conference report on a general appropriation bill with instructions to agree to a legislative

Senate amendment (Speaker Albert, Dec. 19, 1973, p. 42565), it does not permit a motion to recommit a conference report on a general appropriation bill to include instructions to add legislation to that contained in a Senate amendment (Nov. 13, 1973, p. 36847). It had been customary after a conference on a general appropriation bill with numbered Senate amendments for the managers to report certain Senate amendments in technical disagreement, and after the partial conference report (consisting of agreement on those Senate amendments not in violation of clause 2 of rule XXI) is disposed of, the remaining amendments are taken up in order and disposed of directly in the House by separate motion. When Senate amendments in disagreement are considered in this fashion, they are not subject to a point of order under this clause (Dec. 4, 1975, p. 38714); and a motion to (recede and) concur in the Senate amendment with a further amendment is also in order, even if the proposed amendment is also legislation on an appropriation bill. The only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement (IV, 3909; VIII, 3188, 3189; Speaker McCormack, Dec. 15, 1970, p. 41504; Aug. 1, 1979, pp. 22007–11; Speaker O'Neill, Dec. 12, 1979, p. 35520; June 30, 1987, p. 18308). In recent years Senate amendments to House-passed general appropriation bills have been in the nature of a substitute, which are not divided for separate disposition in conference.

In the event an appropriation bill with Senate amendments in violation of clause 2 of rule XXI is sent to conference by unanimous consent, such procedure does not thereby prevent a point of order being sustained against the conference report should the managers on the part of the House violate the provisions of this clause (VII, 1574). But where a special rule in the House waives points of order against portions of an appropriation bill that are unauthorized by law, and the bill passes the House with those provisions included therein and goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since the waiver in the House of points of order under this clause carries over to the consideration of the same provisions when the conference report is before the House (Dec. 20, 1969, pp. 40445–48, consideration of conference report; Dec. 9, 1969, p. 37948, adoption of special rule waiving points of order against the bill in the House). The rule is a restriction upon the managers on the part of the House only, and does not provide for a point of order against a Senate amendment when it comes up for action by the House (VII, 1572). Managers may be authorized to agree to an appropriation by a resolution reported from the Committee on Rules (VII, 1577). House managers may include in their report a modification of a Senate amendment that eliminates the appropriation in that amendment (June 8, 1972, p. 20280); and the prohibition in this clause applies only to language in Senate amendments. Thus the conferees may without violating this clause agree to language in a Senate bill which was sent to conference (Speaker Albert, Jan. 25, 1972, pp. 1076, 1077; June 30, 1976, pp. 21632–34) or agree to language in a House bill which was per-

mitted to remain and which constitutes an appropriation on a legislative bill (Speaker Albert, May 1, 1975, p. 12752).

A provision in a Senate amendment included in a conference report on an authorization bill considered after the relevant appropriation has been enacted into law, directing that funds appropriated pursuant to the authorization be obligated and expended on a project not specifically funded in the appropriation, is itself an appropriation and may not be agreed to by House conferees (Nov. 29, 1979, pp. 34113–15); and House conferees were held to have violated this clause when they had agreed to a provision in a Senate amendment not only authorizing appropriations to pay judgments against the United States for the award of attorney fees and other court costs, but also requiring that where such payments were not paid out of appropriated funds, payment be made in the same manner as judgments under 28 U.S.C. 2414 and 2517 (payable directly out of the Treasury pursuant to a direct appropriation previously provided by law in 31 U.S.C. 1304) (Oct. 1, 1980, pp. 28637–40).

6. A Senate amendment carrying a tax or tariff measure in violation of clause 5(a) of rule XXI may not be agreed to.

This provision was adopted when the House recodified its rules in the 106th Congress to reiterate the prohibition found in clause 5(a) of rule XXI against a bill or joint resolution carrying a tax or tariff measure not reported by the Committee on Ways and Means (H. Res. 5, Jan. 6, 1999, p. ——).

Conference reports; amendments reported in disagreement

§ 1077. High privilege of conference reports; and form of accompanying statement.

7. (a) The presentation of a conference report shall be in order at any time except during a reading of the Journal or the conduct of a record vote, a vote by division, or a quorum call.

The practice of giving conference reports privilege dates from 1850, having had its origin in a temporary rule. This practice was continued by rulings of the Chair until this rule was adopted in 1880 (V, 6443–6446, 6454). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(a) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——). For the requirement of a tax complexity analysis in either the joint statement or the Record, see clause 11 of this rule.

Under the language of the rule a conference report may be presented: (1) while a Member is occupying the floor in debate (V, 6451; VIII 3294);

(2) while a bill is being read (V, 6448); (3) after the yeas and nays have been ordered (V, 6457); (4) after a vote by tellers and pending the question of ordering the yeas and nays, although it may not be presented while the House is dividing (V, 6447); (5) after the previous question has been demanded or ordered (V, 6449, 6450); (6) during a call of the House if a quorum be present (V, 6456); and (7) on Calendar Wednesday (VII, 907), but consideration of such reports yields to Calendar Wednesday business (VII, 899). It even takes precedence of: (1) the motion to reconsider (V, 5605); (2) the motion to go into the Committee of the Whole for consideration of general appropriation bills (VIII, 3291); (3) consideration of District of Columbia business on Monday (VIII, 3292); (4) unfinished business (Speaker O'Neill, Oct. 4, 1978, p. 33473); (5) a motion to adjourn (V, 6451–6453), although as soon as the report is presented the motion to adjourn may be put (V, 6451–6453); (6) a report from the Committee on Rules (V, 6449), and has been permitted to intervene when a special order provides that the House shall consider a certain bill "until the same is disposed of" (V, 6454). The consideration of a conference report may be interrupted, even in the midst of the reading of the statement, by the arrival of the hour previously fixed for a recess (V, 6524). Of course, a question of privilege which relates to the integrity of the House as an agency for action may not be required to yield precedence to a matter entitled to priority merely by the rules relating to the order of business (V, 6454).

The question of consideration under clause 3 of rule XVI may be demanded against a conference report before points of order against the report are raised (VIII, 2439; Speaker Albert, Sept. 28, 1976, p. 33019). The motion to lay on the table may not be applied to a conference report (V, 6540). The Chair will not recognize for a unanimous consent request to correct a conference report, including the joint statement of managers, as it is a joint report to the two Houses (Oct. 3, 2000, p. ——).

While the rule provides that the managers of the House asking for conference shall leave the papers with the managers of the other (§§ 555–556, *supra*), if the managers on the part of the House agreeing to a conference surrender the papers to the House asking the conference, the report may be received first by the House asking the conference (VIII, 3330).

For further discussion of conference reports, see provisions of Jefferson's Manual at §§ 527–559, *supra*.

§ 1078. Time for debate on motions to instruct.

(b)(1) Subject to subparagraph (2) the time allotted for debate on a motion to instruct managers on the part of the House shall be equally divided between the majority and minority parties.

(2) If the proponent of a motion to instruct managers on the part of the House and the

Member, Delegate, or Resident Commissioner of the other party identified under subparagraph (1) both support the motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the motion on demand of that Member, Delegate, or Resident Commissioner.

This paragraph was added in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72). Before the House recodified its rules in the 106th Congress, it was found in former clause 1(b) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——). The division of debate time specified in this clause does not apply to an amendment to a motion after defeat of the previous question thereon, and the proponent of such an amendment is recognized for one hour under clause 2 of rule XVII (former clause 2 of rule XIV) (Oct. 3, 1989, p. 22863; July 14, 1993, p. 15668; Aug. 1, 1994, p. 18868). The proponent of a motion to instruct conferees has the right to close debate (July 28, 1994, p. 18405; July 26, 1996, p. 19450).

§ 1079. Motions privileged after 20 calendar days of conference.

(c)(1) A motion to instruct managers on the part of the House, or a motion to discharge all managers on the part of the House and to appoint new conferees, shall be privileged after a conference committee has been appointed for 20 calendar days without making a report, but only on the day after the calendar day on which the Member, Delegate, or Resident Commissioner offering the motion announces to the House his intention to do so and the form of the motion.

(2) The Speaker may designate a time in the legislative schedule on that legislative day for consideration of a motion described in subparagraph (1).

(3) During the last six days of a session of Congress, the period of time specified in subparagraph (1)(A) shall be 36 hours.

(d) Instructions to conferees in a motion to instruct or in a motion to recommit to conference may not include argument.

Paragraph (c) (former clause 1(c) of rule XXVIII) was adopted December 8, 1931 (VIII, 3225). The notice requirement was added on January 3, 1989 (H. Res. 5, 101st Cong., p. 72), and amended on January 5, 1993 (H. Res. 5, 103d Cong., p. 49) to clarify that both the motion to discharge conferees and appoint new conferees and the motion to instruct conferees after 20 days in conference are subject to one day's notice, and to authorize the Speaker to designate a time in that day's legislative schedule for the consideration of a noticed motion to discharge or instruct conferees. Before the House recodified its rules in the 106th Congress, paragraph (c) was found in former clause 1(c) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——). Recodification resulted in certain unintended changes to paragraph (c), and the paragraph was restored to its original intent in the 107th Congress (sec. 2(r), H. Res. 5, Jan. 3, 2001, p. ——). Paragraph (d) was added in the 107th Congress (sec. 2(r), H. Res. 5, Jan. 3, 2001, p. ——).

The motion to instruct conferees under this clause may be repeated notwithstanding prior disposition of an identical motion to instruct, since any number of proper motions to instruct are in order after conferees have not reported within 20 days (Speaker Albert, July 22, 1974, p. 24448; July 10, 1985, p. 18440), and the motion remains available when a conference report, filed after 20 or more days in conference, is recommitted by the first House to act thereon, since the conferees are not discharged and the original conference remains in being (June 28, 1990, p. 16156). A motion under this clause may instruct House conferees to insist on holding conference sessions under just and fair conditions, and in executive session if desirable (Aug. 1, 1935, p. 12272), and may instruct House conferees to meet with Senate conferees (May 2, 1984, p. 10732). The motion to instruct conferees under this clause is of equal privilege with the motion to suspend the rules on a suspension day (Mar. 1, 1988, pp. 2749, 2751, 2754). The motion to adjourn is in order while a motion to instruct under this paragraph is pending (Sept. 30, 1997, p. ——), and, if such a motion to adjourn is adopted, the motion to instruct is rendered unfinished business on the next day without need for further notice under this paragraph (Oct. 1, 1997, p. ——). Under clause 8(a)(2)(C) of rule XX, proceedings may not resume on a postponed question of agreeing to a 20-day motion to instruct conferees after the managers have filed a conference report in the House (Oct. 19, 1999, p. ——).

§ 1080. The statement accompanying a conference report.

(e) Each conference report to the House shall be printed as a report of the House. Each such report shall be accompanied by a joint explanatory state-

ment prepared jointly by the managers on the part of the House and the managers on the part of the Senate. The joint explanatory statement shall be sufficiently detailed and explicit to inform the House of the effects of the report on the matters committed to conference.

The original rule requiring the submission of a statement was adopted in 1880 (V, 6443) and remained in effect through the 91st Congress. The precedents carried in this annotation are in interpretation of that earlier rule, which required only that the statement be signed by a majority of the House managers (V, 6505, 6506) and did not anticipate a statement jointly prepared by the managers on the part of the House and those on the part of the Senate. The rule was revised in the Legislative Reorganization Act of 1970 (sec. 125(b); 84 Stat. 1140) and made a part of the standing Rules of the House in its present form in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 1(d) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——).

The Speaker may require the statement to be in proper form (V, 6513), but it is for the House and not the Speaker to determine whether or not it conforms to the rule in other respects (V, 6511, 6512). A report may not be received without the accompanying statement (V, 6504, 6514, 6515). A quorum among the managers on the part of the House at a committee of conference is established by their signatures on the conference report and joint explanatory statement (Oct. 4, 1994, p. 27662). When the House by unanimous consent permitted the chairman of a House committee to insert in the Record extraneous material to supplement a joint statement of managers, the Chair announced that the insertion did not constitute a revised joint statement of managers (Oct. 10, 1998, p. ——).

§ 1081. Unfunded mandates.

The Unfunded Mandates Reform Act of 1995 (P.L. 104–4; 109 Stat. 48) added a new part B to title IV of the Congressional Budget Act of 1974 (2 U.S.C. 658–658g) that requires a committee of conference to ensure that the Director of that Office prepares a statement with respect to unfunded costs of any additional Federal mandate contained in the conference agreement. See § 1127, *infra*.

§ 1082. Layover requirements.

8. (a)(1) Except as specified in subparagraph (2), it shall not be in order to consider a conference report until—

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when

the House is in session on such a day) on which the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the conference report and the accompanying joint explanatory statement have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

The original rule (former clause 2(a) of rule XXVIII) requiring that conference reports be printed in the Record was adopted in 1902 (V, 6516). The three-day layover requirement, as well as the provisions relating to the availability of copies of the conference report and the division of time for debate, were added by section 125(b) of the Legislative Reorganization Act of 1970 and made part of the rules in the 92d Congress (H. Res. 5, Jan. 22, 1971, p. 144). The paragraph was amended again the next year to clarify the manner of counting the three days for the layover period (H. Res. 1153, Oct. 13, 1972, p. 36023). In the 104th Congress it was amended once more to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). The paragraph was amended in the 94th Congress (Feb. 26, 1976, p. 4625) to require copies of conference reports to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement (clause 8(e)). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(a) of rule XXVIII. At that time the portion of clause 2(a) permitting immediate consideration of a resolution reported by the Rules Committee only waiving the layover requirement was tranferred to clause 8(e) and the portion of clause 2(a) addressing debate was transferred to clause 8(d) (H. Res. 5, Jan. 6, 1999, p. ——).

For an example of a resolution reported by the Committee on Rules only waiving the availability requirement of this clause and called up the same day reported without a two-thirds vote, see Aug. 10, 1984 (p. 23978). When managers report that they have been unable to agree, the report is not acted on by the House (V, 6562; VIII, 3329; Aug. 23, 1957, p. 15816).

§ 1083. Consideration of amendments in disagreement.

(b)(1) Except as specified in subparagraph (2), it shall not be in order to consider a motion to dispose of a Senate amendment reported in disagreement by a conference committee until—

(A) the third calendar day (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day) on which the report in disagreement and any accompanying statement have been available to Members, Delegates, and the Resident Commissioner in the Congressional Record; and

(B) copies of the report in disagreement and any accompanying statement, together with the text of the Senate amendment, have been available to Members, Delegates, and the Resident Commissioner for at least two hours.

(2) Subparagraph (1)(A) does not apply during the last six days of a session of Congress.

This provision (former clause 2(b)(1) of rule XXVIII), relating to the consideration of amendments reported from conference in disagreement, was added in 1972 (H. Res. 1153, Oct. 13, 1972, p. 36023) and became effective at the end of the 92d Congress. In the 94th Congress the provision was amended to require copies of amendments reported from conference in disagreement to be available for two hours before consideration and to allow for the immediate consideration of a resolution from the Committee on Rules waiving that requirement (H. Res. 868, Feb. 26, 1976, p. 4625). In the 104th Congress the provision was amended to count as a "calendar day" any day on which the House is in session (H. Res. 254, Nov. 30, 1995, p. 35077). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b)(1) of rule XXVIII. At that time the portion of clause 2(b)(1) addressing debate was transferred to clause 8(d) of rule XXII, and the portion of clause 2(b)(1) permitting immediate consideration of a resolution reported by the Rules Committee only waiving the layover requirement was transferred to clause 8(e) of this rule (H. Res. 5, Jan. 6, 1999, p. ——).

Until the adoption of paragraph (b), a report in total disagreement was not printed in the Record before the amendment in disagreement was again taken up in the House (VIII, 3299, 3332).

§ 1084. Certain motions to insist as preferential.

(3) During consideration of a Senate amendment reported in disagreement by a conference committee on a general appropriation bill, a motion to insist on disagreement to the Senate amendment shall be preferential to any other motion to dispose of that amendment if the original motion offered by the floor manager proposes to change existing law and the motion to insist is offered before debate on the original motion by the chairman of the committee having jurisdiction of the subject matter of the amendment or a designee. Such a preferential motion shall be separately debatable for one hour equally divided between its proponent and the proponent of the original motion. The previous question shall be considered as ordered on the preferential motion to its adoption without intervening motion.

This provision was added in the 103d Congress (H. Res. 5, Jan. 5, 1993, p. 49) to make preferential and separately debatable a motion to insist on disagreement to a Senate amendment to a general appropriation bill, if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a committee of jurisdiction or a designee. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(b)(2) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——). The Committee on Post Office and Civil Service (now Government Reform) has jurisdiction under clause 1 of rule X over the subject of a Senate legislative amendment entitling Forest Service employees to separation pay, enabling the chairman of that committee to offer a preferential motion to insist under this clause (Oct. 20, 1993, p. 25589).

§ 1085. Certain conference reports considered as read.

(c) A conference report or a Senate amendment reported in disagreement by a conference committee that has been available as provided in paragraph (a) or (b) shall be considered as read when called up.

Paragraph (c) was added in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 2(c) of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1086. Debate.

(d)(1) Subject to subparagraph (2), the time allotted for debate on a conference report or on a motion to dispose of a Senate amendment reported in disagreement by a conference committee shall be equally divided between the majority and minority parties.

(2) If the floor manager for the majority and the floor manager for the minority both support the conference report or motion, one-third of the time for debate thereon shall be allotted to a Member, Delegate, or Resident Commissioner who opposes the conference report or motion on demand of that Member, Delegate, or Resident Commissioner.

This provision was adopted in the 99th Congress as former clauses 2(a) and 2(b)(1) of rule XXVIII (H. Res. 7, Jan. 3, 1985, p. 393). When the House recodified its rules in the 106th Congress, those provisions addressing debate in clause 2(a) and 2(b)(1) were consolidated into this provision (H. Res. 5, Jan. 6, 1999, p. ——).

Recognition of one Member in opposition does not depend upon party affiliation and is within the discretion of the Speaker (Dec. 11, 1985, p. 36069; Dec. 16, 1985, p. 36716; Oct. 15, 1986, p. 31631), who accords priority in recognition to a member of the conference committee (Speaker Wright, Dec. 21, 1987, pp. 37093, 37516). The Chair will assume that the minority manager supports a conference report if the manager signed the report and is not immediately present to claim the contrary (Oct. 12, 1995, p. 27795). Where the time is divided three ways, the right to close debate

falls to the majority manager calling up the conference report, preceded by the minority manager, preceded in turn by the Member in opposition—*i.e.,* the reverse order of the recognition to begin debate (Aug. 4, 1989, p. 19301).

Following rejection of a conference report on a point of order, debate on a motion to dispose of the Senate amendment remaining in disagreement is evenly divided between the majority and minority under the rationale contained in this provision (Speaker Albert, Sept. 30, 1976, pp. 34074–34100).

The custom has developed, however, of equally dividing between majority and minority parties the time on all motions to dispose of amendments emerging from conference in disagreement, whether reported in disagreement or before the House upon rejection of a conference report by a vote or on a point of order (Speaker Albert, Sept. 27, 1976, pp. 32719–26; Sept. 30, 1976, pp. 34074–34100), upon rejection of an initial motion to dispose of the amendment (July 2, 1980, pp. 18357–59; Aug. 6, 1993, p. 19582), on a motion to concur in a new Senate amendment where the Senate had receded with an amendment from one of its amendments reported from conference in disagreement (Mar. 24, 1983, p. 7301), or on a motion to dispose of a further stage of amendment which is subsequently before the House (Aug. 1, 1985, p. 22561; Dec. 19, 1985, p. 38360). A Member offering a preferential motion does not thereby control one-half of the time, as all debate is allotted under the original motion (May 14, 1975, p. 14385). The minority Member in charge controls 30 minutes for debate only and can only yield to other Members for debate (Dec. 4, 1975, p. 38716). Where time for debate on such a motion is equally divided, the previous question may not be moved by the Member first recognized so as to prevent the Member from the other party from controlling half the debate and from offering a proper preferential motion to dispose of the Senate amendment (July 2, 1980, p. 18360). The right to close the debate on a motion to dispose of an amendment where the time is divided three ways falls to the manager offering the motion (Nov. 21, 1989, p. 30814).

The division of time for debate on a motion to dispose of a Senate amendment reported from conference in disagreement under this provision does not extend to separate debate on an amendment thereto, which is governed by the general hour rule in the House (clause 2 of rule XVII) (Sept. 17, 1992, p. 25437).

§ 1087. Waiver.

(e) Under clause 6(a)(2) of rule XIII, a resolution proposing only to waive a requirement of this clause concerning the availability of reports to Members, Delegates, and the Resident Commissioner may be

considered by the House on the same day it is reported by the Committee on Rules.

This provision was adopted in the 94th Congress to former clauses 2(a) and 2(b)(1) of rule XXVIII (Feb. 26, 1976, p. 4625). When the House recodified its rules in the 106th Congress, those provisions in former clauses 2(a) and 2(b)(1) permitting immediate consideration of a resolution from the Committee on Rules only waiving the layover requirement were consolidated into this provision (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1088. Conferees may report germane modification of amendment in nature of substitute within scope of differences.

9. Whenever a disagreement to an amendment has been committed to a conference committee, the managers on the part of the House may propose a substitute that is a germane modification of the matter in disagreement. The introduction of any language presenting specific additional matter not committed to the conference committee by either House does not constitute a germane modification of the matter in disagreement. Moreover, a conference report may not include matter not committed to the conference committee by either House and may not include a modification of specific matter committed to the conference committee by either or both Houses if that modification is beyond the scope of that specific matter as committed to the conference committee.

This provision (former clause 3 of rule XXVIII) is derived from section 135(a) of the Legislative Reorganization Act of 1946 (60 Stat. 812) and originally was made a part of the standing rules on January 3, 1953 (p. 24). The clause was revised on January 22, 1971 (p. 144) following the passage of the Legislative Reorganization Act of 1970 (84 Stat. 1140) which carried a similar provision in section 125(b). Before the House recodified its rules in the 106th Congress, this provision was found in former clause 3 of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——). Where one House strikes out of a bill of the other all after the enacting clause and inserts a new text, House managers, under the restrictions of this clause, may not agree to the deletion of certain language committed to conference if the effect

of such deletion results in broadening the scope of the matter in disagreement (Dec. 14, 1971, p. 46779). Where one House authorizes certain funds for a fiscal year and the other House authorizes a lesser amount for that year as well as additional funds for the subsequent year, and neither version contains an overall amount, House managers do not exceed their authority under this rule by including in the report the amount authorized by one House for the first year and the other House for the subsequent year, even though the total authorization resulting from this compromise exceeds that possible under either version (June 8, 1972, p. 20281). Where a House version authorized endowment payments for certain colleges and the Senate version conferred land-grant college status on those institutions and contained a higher endowment figure, House conferees remained within their authority under this clause by accepting the Senate provision on land-grant status and the lower House figure for endowment payments (Speaker Albert, June 8, 1972, p. 20280). Where the House version of a bill contained provisions for local funding of merit schools, but neither version contained a provision for State funding, a motion to recommit to conference with instructions to provide State funding for merit schools was held to exceed the scope of the differences committed to conference (Sept. 30, 1992, p. 29126).

While the scope of differences committed to conference—where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject—may properly be measured between those issues presented in the amending language and comparable provisions of existing law, the inclusion in a conference report of new matter not specifically contained in the amending version and not demonstrably contained in existing law may be ruled out as an additional issue not committed to conference in violation of this clause (Speaker Albert, Dec. 20, 1974, p. 41849). Thus where one House has amended an existing law and the other House has implicitly taken the position of existing law by only authorizing sums for the purpose of existing law, the scope of differences committed to conference may be measured between issues presented in the amending language and relevant provisions of the existing law; but the inclusion in a conference report of requirements and issues incorporated into existing law which were not contained in either version and which are not repetitive of existing law may be ruled out in violation of this paragraph (Speaker O'Neill, Oct. 14, 1977, pp. 33770–73).

A mere change in phraseology in a conference report (from language in either the House or Senate version) may be permitted to achieve legislative consistency where it is not shown that its effect is to broaden the scope of the language beyond the differences committed to conference, as where the report waives provisions of law for all programs in the bill and the House version waives those provisions for one section of the bill only (the Senate having no comparable provision) but the scope of programs covered by the report was coextensive with those in the designated section

of the House version (Speaker Albert, May 1, 1975, p. 12752). The conferees may include language clarifying and limiting the duties imposed on an official by one House's version where that modification does not expand the authority conferred in that version or contained in existing law (the position of the other House) (Speaker Albert, July 29, 1975, p. 25515) and may confer broader authority on an official than that contained in one House's version if such authority is coextensive with the authority contained in existing law which the other House has retained (Apr. 13, 1976, p. 10803). Where the Senate version authorized citizen suits to enforce existing law except where Federal officials were pursuing enforcement proceedings and the House version, with no comparable provision, retained existing law which did not permit such suits, the conferees exceeded the scope of the differences by further prohibiting citizen suits where State officials were pursuing enforcement proceedings—a new exception allowing State preemption of citizen suits (Sept. 27, 1976, p. 33019). A point of order was sustained against a motion to instruct conferees since directing the conferees to agree to matter violating this clause: the House bill created an energy trust fund composed of certain revenues to be distributed by subsequent legislation; the Senate amendment created a similar trust fund with suggested but not mandated distribution, and the motion directed House conferees to insist on a mandatory allocation of revenues in question among specified purposes, some of which were not addressed in the Senate amendment (Feb. 28, 1980, p. 4304).

Prior to the 1971 revision of this clause, where one House struck out of a bill of the other all after the enacting clause and inserted a new text, conferees could discard language occurring both in the bill and substitute (VIII, 3266) and exercise broad discretion in incorporating germane amendments (VIII, 3263–3265), even to the extent of reporting a new bill germane to the subject (V, 6421, 6423, 6424; VIII, 3248). However, the present language of the rule prohibits the inclusion in a conference report or in a motion to instruct House conferees of additional topics not committed to conference by either House or beyond the scope of the differences committed to conference; and the precedents predating the adoption of this clause in 1971 must be read in light of the explicit restrictions now contained in the clause (Sept. 27, 1976, p. 32719). As such, a conference report may not include a new topic or issue that, although germane, was not committed to conference by either House (Mar. 25, 1992, p. 6843; Apr. 9, 1992, p. 9022). For example, a motion to instruct conferees on a general appropriation bill may not instruct the conferees to include a funding limitation not contained in the House bill or Senate amendment (Sept. 13, 1994, p. 24402). Similarly, a motion to recommit a conference report may not instruct conferees to expand definitions to include classes not covered under the House bill or Senate amendment (Sept. 29, 1994, p. 26781) or to include provisions not contained in the House bill or Senate amendment (Dec. 21, 1995, p. 38138). A waiver of all points of order against a conference report to accompany a measure and against its consideration does not inure

to instructions contained in a motion to recommit such measure to conference (Sept. 29, 1994, p. 26781). Some latitude does remain to House managers to eliminate specific words or phrases contained in either version and add words or phrases not included in either version so long as they remain within the scope of the differences committed to conference and do not incorporate additional topics, issues, or propositions not committed to conference (Speaker Albert, Sept. 28, 1976, pp. 33020–23).

§ 1089. Nongermane matter in conference agreements and amendments in disagreement.

10. (a)(1) A Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in subparagraph (2), before the commencement of debate on—

(A) a conference report;

(B) a motion that the House recede from its disagreement to a Senate amendment reported in disagreement by a conference committee and concur therein, with or without amendment; or

(C) a motion that the House recede from its disagreement to a Senate amendment on which the stage of disagreement has been reached and concur therein, with or without amendment.

(2) A point of order against nongermane matter is one asserting that a proposition described in subparagraph (1) contains specified matter that would violate clause 7 of rule XVI if it were offered in the House as an amendment to the underlying measure in the form it was passed by the House.

(b) If a point of order under paragraph (a) is sustained, a motion that the House reject the nongermane matter identified by the point of order shall be privileged. Such a motion is de-

batable for 40 minutes, one-half in favor of the motion and one-half in opposition thereto.

(c) After disposition of a point of order under paragraph (a) or a motion to reject under paragraph (b), any further points of order under paragraph (a) not covered by a previous point of order, and any consequent motions to reject under paragraph (b), shall be likewise disposed of.

(d)(1) If a motion to reject under paragraph (b) is adopted, then after disposition of all points of order under paragraph (a) and any consequent motions to reject under paragraph (b), the conference report or motion, as the case may be, shall be considered as rejected and the matter remaining in disagreement shall be disposed of under subparagraph (2) or (3), as the case may be.

(2) After the House has adopted one or more motions to reject nongermane matter contained in a conference report under the preceding provisions of this clause—

(A) if the conference report accompanied a House measure amended by the Senate, the pending question shall be whether the House shall recede and concur in the Senate amendment with an amendment consisting of so much of the conference report as was not rejected; and

(B) if the conference report accompanied a Senate measure amended by the House, the pending question shall be whether the House shall insist further on the House amendment.

(3) After the House has adopted one or more motions to reject nongermane matter contained in a motion that the House recede and concur in a Senate amendment, with or without amendment, the following motions shall be privileged and shall have precedence in the order stated:

(A) A motion that the House recede and concur in the Senate amendment with an amendment in writing then available on the floor.

(B) A motion that the House insist on its disagreement to the Senate amendment and request a further conference with the Senate.

(C) A motion that the House insist on its disagreement to the Senate amendment.

(e) If, on a division of the question on a motion described in paragraph (a)(1)(B) or (C), the House agrees to recede, then a Member, Delegate, or Resident Commissioner may raise a point of order against nongermane matter, as specified in paragraph (a)(2), before the commencement of debate on concurring in the Senate amendment, with or without amendment. A point of order under this paragraph shall be disposed of according to the preceding provisions of this clause in the same manner as a point of order under paragraph (a).

This provision (former clause 4 of rule XXVIII addressing nongermane matter in conference reports) was included as part of the revision of former rules XX and XXVIII that took place effective at the end of the 92d Congress (H. Res. 1153, Oct. 13, 1972, p. 36023). The same resolution repealed the former clause 3 of rule XX, which had been enacted as part of the Legislative Reorganization Act of 1970 to restrict the authority of House conferees to agree without prior permission of the House to Senate amendments that would violate clause 7 of rule XVI if offered in the House. This provision (former clause 5 of rule XXVIII addressing nongermane matter in

amendments in disagreement) was added on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99) which deleted from clause 1 of rule XX and transferred to former clause 5 of rule XXVIII the procedures concerning disposition of Senate nongermane amendments. The provision was amended on April 9, 1974 (H. Res. 998, 93d Cong., pp. 10195–99) in order to make this clause applicable to provisions originally contained in Senate bills sent to conference, and not merely to Senate amendments to House bills in conference. The provision was further amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under this rule, a point of order under this clause must be made immediately upon consideration of the conference report. When the House recodified its rules, it consolidated former clauses 4 and 5 of rule XXVIII under this clause (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1090. Nongermane matter in conference agreements.

The procedure provided in this clause for addressing nongermane matter in conference reports was first utilized on September 11, 1973 (pp. 29243–46), when the Chair sustained two points of order against portions of a conference report which were modifications of portions of a Senate amendment in the nature of a substitute not germane to a House bill. If any motion to reject is adopted under this clause and the matter then pending before the House consists of numbered Senate amendments in disagreement, the pending question is whether to dispose of each Senate amendment not rejected as recommended in the conference report and to insist on disagreement to those amendments which have been rejected.

Where a point of order against a portion of a conference report has been sustained under this clause, the Speaker will not entertain another point of order against the report or against another portion thereof until a motion to reject the portion held nongermane (if made) has been disposed of (Speaker Albert, Dec. 15, 1975, p. 40671). The Member representing the conference committee in opposition to a motion to reject under this clause, and not the proponent of the motion, has the right to close debate thereon (Oct. 15, 1986, p. 31502).

Once a motion to reject a nongermane portion has been adopted by the House and the Speaker has recognized a Member to offer a motion comprising the pending question under this clause, the report is rejected and it is too late to make a point of order against the entire conference report under clause 9 (former clause 3) of this rule (Speaker Albert, Dec. 15, 1975, p. 40671).

Where possible, the Speaker rules on points of order against conference reports which if sustained will vitiate the entire conference report (as under clause 9 of this rule or under the Congressional Budget Act) before entertaining points of order under this clause (Speaker Albert, Sept. 23, 1976, p. 32099).

The provisions of this clause addressing nongermane matter in amendments in disagreement was first utilized on July 31, 1974 (p. 26083), when the Chair sustained a point of order against a portion of a motion to recede and concur in a Senate amendment (reported from conference in disagreement) with a further amendment, on the ground that that portion of the Senate amendment contained in the motion was not germane to the House-passed measure, and a motion rejecting that portion of the motion to recede and concur with an amendment was offered and defeated. This clause is not applicable to a provision contained in a motion to recede and concur with an amendment which was not contained in any form in the Senate version and which is not therefore a modification of the Senate provision, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under clause 7 of rule XVI (Oct. 4, 1978, p. 33502; June 30, 1987, p. 18294). A point of order under clause 4 (former clause 5(a)) of rule XXI (appropriations on a legislative bill) against a motion to dispose of a Senate amendment in disagreement which, if sustained, would vitiate the entire motion, must be disposed of prior to a point of order against a nongermane amendment in disagreement under this clause which, if sustained, would merely permit a separate vote on rejection of that portion of the motion (Oct. 1, 1980, pp. 28638–42).

§ 1091. Nongermane matter in amendments in disagreement.

11. It shall not be in order to consider a conference report to accompany a bill or joint resolution that proposes to amend the Internal Revenue Code of 1986 unless—

(a) the joint explanatory statement of the managers includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or

(b) the chairman of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the conference report.

§ 1092. Tax complexity analysis.

The Internal Revenue Service Restructuring and Form Act of 1998 (sec. 4022, P.L. 105–206) added this provision as a new clause 7 of rule XXVIII.

When the House recodified its rules in the 106th Congress, this provision was transferred to clause 11 of rule XXII (H. Res. 5, Jan. 6, 1999, p. ——).

§ 1093. Open conference meetings.

12. (a)(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by a record vote.

(b) A point of order that a conference committee failed to comply with paragraph (a) may be raised immediately after the conference report is read or considered as read. If such a point of order is sustained, the conference report shall be considered as rejected, the House shall be considered to have insisted on its amendments or on disagreement to the Senate amendments, as the case may be, and to have requested a further conference with the Senate, and the Speaker may appoint new conferees without intervening motion.

This clause as originally added to former rule XXVIII on January 14, 1975 (H. Res. 5, 94th Cong., p. 20) provided that conference committee meetings be open except where a majority of the managers of the House or Senate voted to close the meeting, and provided that the clause not become effective until the Senate adopted a similar rule. The Senate adopted an identical rule on November 5, 1975 (p. 35203). The clause was substantially changed on January 4, 1977 (H. Res. 5, 95th Cong., pp. 53–70) to require that conference meetings be open except where the House by record vote determines that a meeting may be closed, to allow a point of order against a conference report where the conferees have violated this clause, and to provide for subsequent disposition of the matter reported from conference should such a point of order be sustained. It was further amended in the 96th Congress (H. Res. 5, Jan. 5, 1979, pp. 7–16) to provide that if the conference report is considered read under this rule, a point

of order under this clause must be made immediately upon consideration of the conference report. Before the House recodified its rules in the 106th Congress, this provision was found in former clause 6 of rule XXVIII (H. Res. 5, Jan. 6, 1999, p. ——).

At any time after a bill has been sent to conference, a motion pursuant to this clause authorizing a conference committee to close its meetings to the public is privileged for consideration in the House, is debatable for one hour within the control of the Member offering the motion, and must be voted on by a record vote (Speaker O'Neill, May 23, 1977, pp. 15880–84; Apr. 13, 1978, p. 10128). Although a motion to close a conference committee meeting "to the public" would, under the precedents (see V, 6254, fn.), exclude Members who were not conferees, a motion may be offered as privileged under this clause to authorize a conference committee to close its meetings to the public, except to Members of Congress (Speaker O'Neill, May 23, 1977, pp. 15880–84).

While the Chair does not normally look behind signatures of conferees to determine the propriety of conference procedure, if proposed conferees have signed a conference report before they have been formally appointed in both Houses and do not meet formally in open session after such appointment, the conference report is subject to a point of order under this clause resulting in an automatic request for a further conference (Dec. 20, 1982, p. 32896). Conferees on the part of the House are entitled to reasonable notice of and opportunity to attend a meeting of the conference committee; however, such point of order will not lie against a conference report called up under an order of the House that has waived all points of order against consideration of the conference report (July 20, 2000, p. ——).

Clause 11(k) of rule X provides that this provision does not apply to conference committee meetings respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

§ 1094. Former rule on public debt limit.

The rule "Statutory Limit on Public Debt" (formerly rule XLIX, later changed to rule XXIII) was repealed in the 107th Congress (H. Res. 5, Jan. 3, 2001, p. ——). For the text of the former rule, and a recitation of its history, see § 1094 of the House Rules and Manual for the 106th Congress (H. Doc. 105–358).

RULE XXIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House the following code of conduct, to be known as the "Code of Official Conduct":