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The Amending Process in the House of Representatives

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Summary

Most amendments that Representatives propose to legislation on the House floor are offered in Committee of the Whole. Measures considered under suspension of the rules are not amendable on the floor, and few amendments are proposed to bills and resolutions considered in the House, in the House as in Committee of the Whole, or under the Corrections Calendar procedures.

The House's procedures recognize distinctions between first and second-degree amendments, between perfecting and substitute amendments, and among amendments in the forms of motions to strike, to insert, and to strike out and insert. An amendment in the nature of a substitute proposes to replace the entire text of a bill or resolution. All amendments must be germane to the text they would amend, and they are subject to other general prohibitions such as that against proposing only to re-amend language that already has been fully amended. Additional restrictions apply to appropriations and tax amendments, and the budget process creates various other points of order that Members may make against certain amendments. In general, a Member must make a point of order against an amendment before debate on it begins, unless that point of order is waived by a special rule.

In Committee of the Whole, measures usually are considered for amendment one section or title at a time. Members must offer their amendments to appropriate parts of a bill when it has been read or designated. Each amendment is debated under the five-minute rule. After the first 10 minutes of debate, Members obtain additional time for debate by offering pro forma amendments in the form of motions to strike the last word. Each amendment in Committee of the Whole may be amended by a perfecting amendment or a substitute amendment or both. A substitute for an amendment also is amendable. After the Committee of the Whole disposes of the last amendment to be offered to the bill, it rises and the House then votes again on all the amendments the Committee has approved. A recommittal motion usually offers a final opportunity to amend the bill before the House votes on passing it.

Contents

The Amending Process in the House of Representatives

Introduction

The amending process on the floor of the House of Representatives gives Members an opportunity to change the provisions of the bills and resolutions on which they are going to vote. This report summarizes many of the procedures and practices affecting this process, which can be among the most complex as well as the most important stages of legislative consideration.[1] The discussion that follows is intended to be a useful introduction; however, it is not exhaustive and it cannot substitute for a careful examination of the House's rules and precedents themselves, for close observation of the House in daily session, and for consultation with the parliamentarian and his associates on specific procedural problems and opportunities.

The way in which the House considers each measure affects Members' opportunities for amending it and the procedures that govern the amending process. There are essentially five alternative sets of procedures, or modes of consideration, by which the House considers public bills and resolutions on the floor: (1) under suspension of the rules, (2) by call of the Corrections Calendar, (3) in the House, under the hour rule, (4) in Committee of the Whole and the House, and (5) in the House as in Committee of the Whole.[2]

The overwhelming majority of the amendments on which Representatives vote are offered while measures are being considered in Committee of the Whole, before being reported back to the House for votes on final passage. Under two of the other

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[1] This report only addresses the amending process that may take place on the floor before the House first votes on passing a measure. It assumes a basic familiarity with some of the other stages of the legislative process, such as committee hearings, markups, and reports, the manner in which measures reach the House floor for consideration, and the general purposes and uses of special rules. CRS reports that discuss some of these and related subjects are listed at the end of this report.

[2] Clause 5 of Rule XV provides procedures for considering private bills and resolutions. All citations in this report, which necessarily are selective, are to the rules of the 106th Congress, the annotations to the rules appearing in the *House Rules and Manual* for each Congress, and the recent precedents compiled and published in *Procedure in the U.S. House of Representatives* and the 1985 and 1987 *Supplements* (cited as *House Procedure, House Procedure, 1985 Supplement*, and *House Procedure, 1987 Supplement*). (See "Sources of Additional Information" for more complete references to these volumes.) The amendment process also is the subject of volume 9 of *Deschler's Precedents of the U.S. House of Representatives*, published in 1991.

modes of consideration, suspension of the rules and the Corrections Calendar, most floor amendments are prohibited; under the remaining procedures, floor amendments are in order but they are much less likely to be offered, either because of the procedures involved or because of the nature of the measures being considered.

There are several distinctions among different kinds of amendments as well as some general principles and prohibitions governing the amendments that Members and committees can offer. These distinctions, principles, and prohibitions can be important, whatever set of procedures the House is following, although they are more likely to matter when measures are considered in Committee of the Whole than under other circumstances.

This report begins, therefore, with a discussion of distinctions among amendments, followed by some observations on drafting amendments and on several general principles and prohibitions affecting the amending process. Next we examine the specific possibilities and procedures for offering and debating amendments under each of the five sets of procedures, beginning with measures that are debated and amended in the House, under the hour rule, and then those that are considered first in Committee of the Whole and then in the House. We next consider the possible "amendment trees" that may develop. The report also discusses several other elements of the amending process: the special procedures and rules governing appropriations and tax amendments and amendments affecting federal spending programs; the procedures for making points of order against amendments; and the effects of special rules on the amending process. At the end of the report is a list of sources of additional information.

This report concentrates on amendment procedures under the House's standing rules and precedents. It does not address the various ways in which special rules can affect the amending process, nor does it discuss the points of order that Members may make against amendments under the Congressional Budget and Impoundment Control Act of 1974 and subsequent laws, especially the Gramm-Rudman-Hollings Act of 1985 as amended and the Budget Enforcement Act of 1990. On these subjects, see two other CRS reports: CRS Report 96-938, *Special Rules in the House of Representatives* and CRS Report 97-865, *Points of Order in the Congressional Budget Process*.

Distinctions Among Amendments

Amendments are not all the same. We can distinguish among amendments in terms of their degree, their form, and their effects. Moreover, these are not merely analytical distinctions; they can help us understand what amendments Members may offer, under what circumstances, and with what consequences.

Degrees of Amendments

Whenever a bill or resolution can be amended on the House floor, it is subject to amendments in two degrees. An amendment in the *first degree* proposes to change the text of the measure itself. After a Representative offers a first-degree amendment

but before the House votes on it, another Member may propose an amendment to that amendment.[3] An amendment to a first-degree amendment is an amendment in the *second degree*. The House then debates and votes on the second-degree amendment before voting on the first-degree amendment, which now may have been amended. As a general rule, third degree amendments (amendments to second-degree amendments) are not in order.[4]

Forms of Amendments

We also may distinguish among amendments in terms of their form.

First, an amendment may propose only to *insert* something into a bill or resolution (or first-degree amendment) without changing the provisions already in it. For example, the amendment may propose to insert a new section or title without affecting the existing sections and titles.

Second, the amendment may propose only to *strike out* something from a measure (or first-degree amendment) without inserting anything in its place. For example, the amendment may propose to strike out as little as one word or as much as one or more titles of a bill.

Third, and finally, an amendment may propose to both *strike out and insert* by replacing something that is already in the measure (or first-degree amendment) with something else. For example, the amendment may propose only to change a dollar amount, or it may replace a section or title of a bill with an entirely different version of that section or title.

Members sometimes refer to their amendments in terms of these effects; for instance, Representatives may state that they wish to offer a motion to strike out a particular section or that their amendment is a motion to strike out and insert. As this indicates, amendments are a special kind of motion.

Effects of Amendments

A third way of distinguishing among amendments is in terms of their effects.

With respect to first-degree amendments, an amendment may propose only to make some change in the portion of the bill or resolution being considered for amendment without affecting the rest of it. Such an amendment is a *perfecting amendment*; it proposes to change—and, therefore, presumably perfect—that portion of the bill without replacing it altogether. For instance, a section of a bill may authorize an amount of money to be appropriated for certain purposes. An

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[3] Unless otherwise noted, references throughout this report to the House also apply to the Committee of the Whole. Clause 12 of Rule XVIII states that "[t]he Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable."

[4] *House Procedure*, ch. 27, sec. 6, p. 502-504. When the amendment to an amendment is a substitute, the substitute may be amended. See the section on "The Amendment Trees."

amendment to change only the dollar figure, but not the purposes for which that amount is authorized, would be a perfecting amendment.

On the other hand, an amendment may propose to strike out the entire pending portion of a bill—whether it be a paragraph, section, or title—and replace it completely. For instance, the amendment could propose to strike out a section of an authorization bill and replace it with a new section that changes both the amount that is authorized and the purposes for which it is authorized. Such an amendment may be designated an *amendment in the nature of a substitute*, although Members typically do not do so.[5]

Of greater practical importance are the differences in effects among amendments to amendments. An amendment proposing to make some change in the text of a first-degree amendment, without replacing it completely, is a *perfecting amendment*. By contrast, an amendment to replace the entire text of a first-degree amendment is a *substitute amendment*. The significance of this distinction will emerge from the discussion of the "amendment trees."

The difference between perfecting amendments and substitute amendments depends primarily on the way in which they are drafted and not on the magnitude of the policy changes they would make. A perfecting amendment may replace all but the first word, line, or sentence of a section of a bill (or a first-degree amendment) and so entirely change its substantive effect. Conversely, a substitute for a first-degree amendment would amend the text completely but might make only one minor substantive change and replace the remainder with precisely the same language.

A perfecting amendment may take any one of the three possible forms; it may propose to strike out, to insert, or to strike out and insert. On the other hand, a substitute amendment is a proposal to replace one thing with another, and so it always takes the form of a motion to strike out and insert.

Amendments in the Nature of Substitutes for Measures

Finally, a special kind of amendment, known as an *amendment in the nature of a substitute*, always proposes to replace the entire text of a bill or resolution, not some lesser portion of the measure. This amendment strikes out everything after the enacting clause of a bill, or the resolving clause of a resolution, and replaces the entire text of the measure with a different text.[6]

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[5] "While an amendment in the nature of a substitute is in every instance a "motion to strike out and insert," the term "amendment in the nature of a substitute" applies only to those motions which propose to strike out an entire pending text and to insert new matter and is not used to describe those motions to strike out and insert which may be properly characterized as "perfecting amendments" and which go only to a portion of the pending text." *House Procedure*, ch. 27, sec. 23.1, p. 525.

[6] The enacting clause reads "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled," and is followed by the text of the bill. There is a different resolving clause for each kind of resolution (simple, concurrent, and joint)

(continued...)

If a majority of Members vote for such an amendment, Representatives cannot offer any additional amendments to the measure because it has been amended in its entirety. When Members refer to an amendment in the nature of a substitute, they almost always have this kind of amendment in mind, although, as noted above, the same phrase can be applied to an amendment that proposes to replace whatever portion of the measure is then being considered for amendment.

There are several unique characteristics about the way in which the House considers amendments in the nature of substitutes for the entire text of measures.

First, most often this kind of amendment is recommended by a committee at the same time it reports the measure itself. And in practice, Members almost always want to devote far more of their time and attention on the floor to this committee alternative than to the text of the bill as introduced. For this reason, special rules reported by the Rules Committee usually give a committee substitute special standing during the amending process in Committee of the Whole by providing for Members to offer their amendments to that substitute rather than to the bill itself. The committee substitute is considered "as an original bill for the purpose of amendment," meaning that it is not treated as a first-degree amendment. Instead, it is amendable in two degrees as if it were the text of a measure.[7]

Second, if an amendment in the nature of a substitute for a bill or resolution is not given this special standing, a Member can propose it as a first-degree amendment at only two points during the amending process in Committee of the Whole. The amendment is in order either at the very beginning of the process or at the very end, after the Committee has voted on all other amendments to the text of the measure.[8] But even if a Member or committee offers an amendment in the nature of a substitute at the beginning of the amending process, the Committee of the Whole typically does not vote on it until the end of the process because Members will direct most—usually all—of their amendments to it.

Finally, when an amendment in the nature of a substitute for everything after the enacting or resolving clause is proposed at the beginning of the amending process, other Members can propose amendments to the pending portion of the measure as

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[6](...continued)
that also precedes the text of the resolution.

[7] Special rules sometimes give the same special standing to such an amendment in the nature of a substitute that has been printed in a report of the Rules Committee or the *Congressional Record* or that is embodied as the text of another bill.

[8] "An amendment in the nature of a substitute for a bill is in order after the first section of the bill has been read for amendment...or following the reading of the final section of the bill....However, an amendment in the nature of a substitute for a bill is not in order at an intermediate stage of the reading.... Of course, if the bill is considered as having been read for amendment, then an amendment in the nature of a substitute may be offered at any time during consideration of the bill. An amendment in the nature of a substitute may ordinarily be offered after the reading of the first section of a bill being read by sections notwithstanding the pendency of committee amendments adding new sections to the bill." *House Procedure,* ch. 27, sec. 12.1, p. 510-511.

well as to the complete substitute; if so, they vote on any and all such amendments before voting on the amendment in the nature of a substitute. (This possibility, which rarely arises in practice, is discussed at the end of the section on "The Amendment Trees.")

Drafting Amendments

Clause 1 of Rule XVI requires that every amendment offered on the House floor must be in writing, and it must be drafted accurately to achieve its intended procedural and policy effects.[9] Each amendment must state precisely where and how it would amend the measure or other amendment, identifying the specific pages, lines, and words it would affect.[10] The text of every amendment reveals its form (whether it inserts, strikes out, or strikes out and inserts), and also may identify it as a perfecting or substitute amendment. The following examples illustrate some of the ways in which various kinds of amendments may be drafted.

Amendments to a measure:

To insert:

After line 8 on page 23, insert the following:

At the end of Title III, insert the following new section:

To strike out:

Beginning on page 3, strike out line 1 and all that follows through line 14 on page 4.

To strike out and insert:

On line 10 of page 7, strike out "$100" and insert in lieu thereof "$50".

To strike out all after the enacting (or resolving) clause and insert:

Strike out all after the enacting (or resolving) clause and insert in lieu thereof the following:

Amendments to an amendment:

Perfecting amendment—to insert:

At the end of the amendment offered by the gentleman from New York, insert the following:

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[9] *House Procedure*, ch. 27, sec. 1.4, p. 489.

[10] *House Procedure*, ch. 27, sec. 1.7, p. 489-490.

Perfecting amendment—to strike out:

In the amendment offered by the gentlewoman from California, strike out Section 2.

Perfecting amendment—to strike out and insert:

In the amendment offered by the gentleman from Wisconsin, strike out "$100" and insert in lieu thereof "$50".

Strike out Section 1 of the pending amendment and insert in lieu thereof the following:

Substitute amendment:

In lieu of the matter proposed to be inserted by the gentleman from Texas, insert the following:

It is sometimes possible to draft an amendment in more than one way. It bears emphasizing that the distinction between perfecting and substitute amendments generally is a matter of drafting style, not substantive effect. For example, imagine an appropriations bill that includes the following on lines 6 and 7 of page 12:

> For the salaries and expenses of the Congressional Research Service of the Library of Congress, $500.

A Member who wishes to amend this appropriation to increase it to $1,000 could draft the amendment in at least two different ways:

> On line 7 of page 12, strike out "$500" and insert in lieu thereof "$1,000", or
>
> Strike out lines 6 and 7 on page 12 and insert in lieu thereof the following: "For the salaries and expenses of the Congressional Research Service of the Library of Congress, $1,000."

These two amendments would have precisely the same substantive effect, even though they are drafted differently. Representatives sometimes find it advisable to have amendments (and especially amendments to amendments) drafted in more than one way, especially when a bill or resolution is considered in Committee of the Whole, because the development of an "amendment tree" may permit or encourage a Member to propose an amendment in one form, but not in another.

The examples offered above are illustrative only. In drafting amendments, it is desirable to consult, whenever possible, with attorneys in the House's Office of Legislative Counsel for their expert advice and assistance. Under some circumstances, it also is advisable to consult with the House parliamentarian to ensure that an amendment meets the procedural requirements that will apply when the amendment is going to be proposed. When an amendment must be drafted on the floor, committee staff may be able to provide assistance.

Principles and Prohibitions

A number of general principles and prohibitions govern the amending process and restrict the amendments that committees and individual Representatives may propose on the floor. Many of these principles and prohibitions derive from House precedents, but the best known restriction on amendments—the germaneness requirement—is embodied in the House rules themselves. Like most other House procedures, Members generally must enforce these principles and prohibitions, and thereby protect their own rights and interests, by making appropriate points of order. The procedures for doing so are discussed in a later section of this report.

In General

The House's published precedents are the source for many of the principles and restrictions affecting the amending process. For example, the prohibition against third degree amendments is one of the most basic limitations on the amendments that Members may offer, but it is not stated explicitly in the standing rules.[11] Precedents govern the amending process in several other important respects.

Committee Amendments. Standing committees do not actually amend measures during their markups; instead, a committee votes on what amendments it wishes to recommend to the House. These amendments then have the status of committee amendments. If the committee reports a measure with one or more amendments, they receive priority consideration on the floor and they are considered automatically.[12] The House considers each of them at the appropriate time; it is not necessary for a committee member to offer them from the floor. When and how the committee amendments are considered depends on the set of procedures under which the bill or resolution itself is being considered.

Under several possible procedures for considering amendments to a measure, it is "open to amendment at any point"—that is, amendments can be offered to any part of the bill in any order. In such a case, the Speaker directs the clerk to read the first committee amendment as soon as the bill is considered for amendment. After the House votes on this amendment, it considers any additional committee amendments in turn.[13] Members may be able to offer their own amendments to each committee amendment, but they generally may not propose amendments to the text of the bill itself until the House has completed action on the committee amendments. The amending process under these procedures usually is routine; typically, no more than one committee amendment is to be considered.

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[11] In Section XXXIII of his *Manual of Parliamentary Practice*, Jefferson held third degree amendments to be out of order, and Rule XXVIII states in part that the "rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House."

[12] *House Procedure*, ch. 27, sec. 10.1, p. 508.

[13] *House Procedure*, ch. 27, sec. 11.5, p. 509-510.

On the other hand, the particularly important procedures governing the amending process in Committee of the Whole usually are governed by the principle that a measure is to be "read for amendment"—that is, only one paragraph, section, or title of the measure is open to amendment at a time. In this case, the Committee of the Whole automatically considers any committee amendment(s) to each part of the bill as soon as it is read.[14] Again, Representatives may propose amendments to each committee amendment, but the Members must dispose of the committee amendments to each part of the measure before they can offer other amendments to that part of it.[15]

An exception to this principle arises whenever the committee amendment takes the form of a motion to strike out some language or provision of the bill. While such a committee amendment is pending, a Member may offer an amendment to change the part of the bill that the committee proposes to strike out altogether. This possibility is considered in more detail during the discussion of the "amendment trees."

Also, the committee's recommendations for changes in a bill or resolution often are embodied in a single amendment in the nature of a substitute. As already noted, the special rules for considering measures often make special arrangements for Members to consider a committee substitute in Committee of the Whole by designating it as a proposal that Members may amend in two degrees.

General Principles. Several other general principles govern the amending process.

First, clause 2 of Rule XVI requires that the clerk is to read each amendment when it is offered and before debate on it begins, whether it is a committee amendment or one proposed by an individual Member.[16] The sponsor or principal proponent of the amendment very often asks unanimous consent that the amendment be considered as read, and there usually is no objection unless an interested Member is not familiar with it and wants time to examine the amendment before it is debated. In addition, a Member may move to dispense with the reading, under circumstances discussed in a later section, but only if Members already have access to a printed copy of the amendment.

Second, an amendment should not affect the measure in more than one place. This principle protects the House against having to cast one vote on two or more propositions that may be unrelated. Thus, an amendment to replace the text of Section 201 and add a new sentence at the end of Section 203 is subject to a point of order if the bill is being read by sections. Instead, the sponsor of the amendment could offer each part of it as a separate amendment, or the sponsor could ask

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[14] *House Procedure*, ch. 27, sec. 9.1, p. 506-507.

[15] "While committee amendments to a pending section are normally considered prior to amendments offered from the floor, a floor amendment to the text of a pending section is considered before a committee amendment adding a new section at the end of the pending section." *House Procedure*, ch 27, sec. 24.1, p. 526.

[16] *House Procedure*, ch. 27, sec. 20.1, p. 521.

unanimous consent that the two amendments be considered en bloc—that is, as if they were one amendment.[17] There often is no objection to such a request if both amendments are necessary to achieve a single purpose. Alternatively, if the title containing Sections 201 and 203 has been read for amendment, or if the bill is open to amendment at any point, the sponsor could avoid a point of order by drafting a single amendment to strike out Sections 201-203 and replace them with the preferred provisions.[18]

Third, any Member may demand, as a matter of right, the *division* of an amendment proposing to insert additional provisions into (or strike provisions from) a measure or first-degree amendment, but only if the amendment to be divided (or the matter to be stricken) consists of two or more parts that, in the judgment of the chair, could stand as independent propositions. When an amendment is divided, the House considers each division of the amendment in turn, as if each were a separate amendment. This right, which also protects the House against having to cast a single vote on two or more separable proposals, is conveyed by clause 5(a) of Rule XVI; however, clause 5(c) of the same rule states in part that a motion to strike out and insert is not divisible.

Fourth, the same amendment may not be offered more than once. If the House has considered and rejected an amendment, it may not be offered again unless it has been changed substantively.[19] Otherwise, the House could not be sure of its ability to dispose of questions conclusively. However, a part of a rejected amendment may be offered as a separate amendment, and the entire text of the rejected amendment may be included as part of a larger amendment.[20] In addition, it is sometimes possible to offer two amendments that are substantively identical. For example, a Member may propose to add a new title to the text of a bill, and also move to insert the same new title into the text of an amendment in the nature of a substitute for the bill. These amendments are different procedurally because each seeks to amend a different text.

Fifth, it is not in order for a Representative to offer an amendment that proposes only to amend language that already has been amended.[21] If not for this principle also, the House would have difficulty resolving issues once and for all. Thus, if a dollar number in an appropriations bill has been amended, another amendment that would only change the same number again is subject to a point of order. Or if the House agrees to a substitute for a section or title of a bill, no further amendments only to that section or title are in order because it has been fully amended.[22] Any further amendment to it would constitute a prohibited attempt to re-amend. An important implication of this principle is that adoption of an amendment in the nature of a

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[17] *House Procedure*, ch. 27, sec. 9.4, p. 507.

[18] If so, the text of Section 202 proposed in the amendment would be identical to the text of Section 202 already in the bill.

[19] *House Procedure*, ch. 27, secs. 33.1-33.2, p. 537.

[20] *House Procedure, 1985 Supplement*, ch. 27, sec. 33.5, p. 72.

[21] Annotations to Section XXXV of *Jefferson's Manual* in *House Rules and Manual*.

[22] *House Procedure*, ch. 27, sec. 27.1, p. 529.

substitute precludes all further amendments to the measure. This complete substitute replaces the entire text of the bill or resolution, so any new amendment would propose to re-amend something that already has been fully amended.

An exception to the prohibition against re-amendment is what is sometimes called the principle of "the bigger bite." Representatives may seek to amend something already amended if they do so as part of an amendment to change a larger part of the text.[23] For example, a Member may re-amend a dollar figure in an appropriations bill by offering a substitute for the paragraph containing that number, so long as the amendment also makes some other substantive change in the paragraph. Similarly, after the House has agreed to a substitute for a section of a bill, a Member may propose a substitute for the title containing that section, and thereby re-amend the section in the process of amending other sections of the same title. Each of these amendments takes a bigger bite out of the text than the amendment the House already has considered and adopted.

The Germaneness Rule

Clause 7 of Rule XVI states in part that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

This brief and somewhat obscure clause constitutes the germaneness rule—a rule that is simple and straightforward in principle, but complex and sometimes difficult to apply in practice. Indeed, determining whether or not an amendment is germane can be the most challenging, and even perplexing, task in interpreting the House's legislative procedures. The four-line rule is accompanied by 26 pages of commentary and explanation in the *House Rules and Manual* for the 106th Congress, and discussions of precedents on this subject consume all the 1,957 pages of volumes 10 and 11 of *Deschler's Precedents of the House of Representatives*.[24]

The principle underlying the germaneness rule is that the House should consider one subject at a time. While debating authorizations for military weapons systems, for example, the House should not be distracted by amendments concerning food stamps, mass transit, or other unrelated subjects. The object of the rule is not simply orderliness. If not for the germaneness requirement, Members could offer amendments on subjects of their choice, thereby bypassing the standing committee system and depriving the House of the committees' expert appraisals, recommendations, and reports. Furthermore, Members could be compelled to vote on unanticipated questions without adequate time for preparation. In sum, the germaneness rule is designed to encourage systematic and thoughtful legislative decisions.

Germaneness is a requirement that applies to all amendments originating in the House, whether proposed by individual Representatives or recommended by House

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[23] Annotations to Section XXXV of *Jefferson's Manual* in *House Rules and Manual*; *House Procedure*, ch. 27, secs. 27.3-27.10, p. 529-531.

[24] For a more digestable selection of recent precedents on germaneness, see *House Procedure*, ch. 28, p. 543-625, and *House Procedure, 1985 Supplement*, ch. 28, p. 73-82.

committees. It does not apply to provisions of measures; anything contained in a bill or resolution is immune to challenge on grounds of germaneness. Also, Members generally may not make points of order against nongermane Senate amendments until the House has reached the stage of disagreement with the Senate over a measure—and usually when the House begins to consider a conference report.[25]

In determining whether an amendment proposed on the House floor is germane, the chair normally is concerned with the relationship between the amendment and the text it proposes to amend. In general, a second-perfecting amendment or a substitute for an amendment must be germane to the amendment it would affect. So it may be ruled nongermane even though it could be germane to the underlying text of the measure. And a first-degree amendment to a section or title of a bill must be germane to that section or title; the chair may rule it nongermane even though it might be germane to some other portion of the bill.[26] On the other hand, an amendment proposing to add a new section or title at the end of a measure may be subjected to a broader test: whether it is germane to the text of the measure as a whole.

Also, an amendment must be germane to the text it would amend as that text reads at the time the amendment is proposed. Thus, it is not sufficient that an amendment be germane to the bill as originally introduced (or to the first-degree amendment as originally proposed). Instead, the amendment must be germane to the bill (or amendment) as it already may have been amended. By its votes on amendments offered earlier, the House may have broadened or narrowed a bill (or amendment) in ways that affect the germaneness of other amendments that Members then propose. This situation adds to the difficulty of anticipating, evaluating, and protecting against germaneness challenges. The parliamentarian and his associates can offer a Representative expert advice on the germaneness of a prospective amendment. But by the time the Representative actually offers the amendment on the floor, the House may have amended the bill (or amendment) in ways that change the relationship on which the germaneness ruling is based—the relationship between the proposed amendment and the text it proposes to amend.

The concept of germaneness is akin to that of relevance or pertinence, but more restrictive. The mere fact that the House is considering a tax bill, for instance, does not necessarily mean that any amendment affecting federal taxes is germane. Instead, case by case, the House has gradually developed an elaborate body of precedents to assist and guide the chair in ruling on points of order that particular amendments are not germane. No other question of order arises so often, and no other rulings can be as difficult for Members and staff to predict. The precedents on germaneness are

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[25] The standing rules of the Senate do not require floor amendments to be germane except when proposed to general appropriations or budget measures or to matters on which the Senate has invoked cloture. On the other hand, the Senate sometimes imposes a germaneness requirement on itself, by unanimous consent, during consideration of individual measures. House procedures for dealing with nongermane Senate amendments appear in clauses 4 and 5 of Rule XXVIII. See also "Sources of Additional Information," and Stanley Bach, "Germaneness Rules and Bicameral Relations in the U.S. Congress," *Legislative Studies Quarterly*, v. VII, n. 3, August 1982, pp. 341-357.

[26] *House Procedure, 1985 Supplement*, ch. 28, sec. 16, p. 77.

voluminous and often based on rather fine distinctions, distinctions that the chair explains in making rulings but that are not always obvious from the concise way in which the rulings have been summarized in print.

Thus, although new rulings are always based on earlier ones, it is often possible to develop from the precedents plausible arguments both for and against the same point of order on germaneness. However, while germaneness decisions may appear to be contradictory if only the published headnotes are studied, there is more apparent consistency if the factual situations are carefully reviewed.

To help Members and staff understand how the germaneness rule has been interpreted and applied, the parliamentarian's commentary in the *House Rules and Manual* identifies three tests of germaneness: subject matter, fundamental purpose, and committee jurisdiction.

First, to be germane, "[a]n amendment must relate to the subject matter under consideration." For example, "[t]o a bill seeking to eliminate wage discrimination based on the sex of the employee, an amendment to make the provisions of the bill applicable to discrimination based on race...." was ruled to be nongermane. In this case, the chair evidently held that the subject matter of the bill was not wage discrimination in general, but sex discrimination in particular.[27] Thus, the amendment to extend the coverage of the bill to race discrimination proposed to raise a different subject and, therefore, was nongermane.

Second, "[t]he fundamental purpose of an amendment must be germane to the fundamental purpose of the bill." More specifically, "an amendment must not only have the same end as the matter sought to be amended, but must contemplate a method of achieving that end that is closely allied to the method encompassed in the bill or other matter sought to be amended...." Among amendments that have met this test, the commentary cites the following example: "to a proposition to accomplish a result through regulation by a governmental agency, an amendment to accomplish the same fundamental purpose through regulation by another governmental agency...." was held germane. On the other hand, "to a bill to aid in the control of crime through research and training an amendment to accomplish that result through regulation of the sale of firearms...." was held not germane. In the first case, the method of action proposed by the amendment was "closely allied" to that of the bill; in the second case, it was not.

Third, "[a]n amendment when considered as a whole should be within the jurisdiction of the committee reporting the bill...." This test is most likely to be applied when the jurisdictional issues are clear—when the pending text is entirely within one committee's jurisdiction and the amendment offered to that text falls entirely within another committee's jurisdiction. For instance, "[t]o a bill reported by the Committee on Government Operations (now Government Reform) creating an executive agency to protect consumers, an amendment conferring on congressional committees with oversight over consumer protection the authority to intervene in

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[27] The remaining quotations in this section are taken from the annotations to Rule XVI, clause 7 in the *House Rules and Manual* for the 106th Congress.

judicial and administrative proceedings (a rule-making provision within the jurisdiction of the Committee on Rules)...." was ruled not germane. But committee jurisdiction is not the sole or exclusive test of germaneness, especially in cases in which "the proposition to which the amendment is offered is so comprehensive (overlapping several committees' jurisdictions) as to diminish the pertinency of that test" or "the amendment does not demonstrably affect a law within another committee's jurisdiction...," or "where the portion of the bill also contains language, related to the amendment, not within the jurisdiction of the committee reporting the bill. . . ."

As this last statement suggests, no one of these three tests is always conclusive, nor is one of them necessarily more controlling than the others. An amendment may satisfy one test but not one or both of the others, so the chair must look to the particular case in deciding how much weight to give to each of them. Moreover, even when these three tests are taken together, they do not constitute a complete standard of germaneness. "[A]n amendment and the matter to which offered may be related to some degree under the tests of subject matter, purpose, and jurisdiction, and still not be considered germane under the precedents."

To help understand this conclusion, the parliamentarian's commentary on the rule elaborates other principles of germaneness, of which three are particularly clear and explicit. The essence of these three principles turns on the relationship between the scope of the amendment and the scope of the matter to be amended.

First, "[o]ne individual proposition may not be amended by another individual proposition even though the two belong to the same class...." For example, "[t]o a bill proposing the admission of one territory into the Union, an amendment for admission of another territory" was not germane. Similarly, "to a proposition to appropriate or to authorize appropriations for only one year (and containing no provisions extending beyond that year), an amendment to extend the authorization or appropriation to another year...." was not germane. The first bill applied to only one territory; the second concerned only one fiscal year. Extending either bill to another item in the same class—a second territory or a second fiscal year—violated the prohibition against amending one individual proposition with another, even though the amendments may have met one or more of the three tests discussed above.

Second, "[a] specific subject may not be amended by a provision general in nature, even when of the class of the specific subject...." Under this principle, which applies to amendments that would expand the general applicability of measures that are limited in scope, the following illustrate the kinds of amendments that would not be germane: "to a bill relating to all corporations engaged in interstate commerce, an amendment relating to all corporations...; to a bill proscribing certain picketing in the District of Columbia, an amendment making the provisions thereof applicable throughout the United States...; and to a bill authorizing funds for radio broadcasting to Cuba, an amendment broadening the bill to include broadcasting to all dictatorships in the Caribbean Basin...."

These two principles limit the amendments that satisfy the germaneness rule; the third, related principle, on the other hand, provides a basis for holding amendments germane. "A general subject may be amended by specific propositions of the same class...." "Thus, the following have been held to be germane: To a bill admitting

several territories into the Union, an amendment adding another territory...; to a bill providing for the construction of buildings in each of two cities, an amendment providing for similar buildings in several other cities...;" and "to an amendment prohibiting indirect assistance to several countries, an amendment to include additional countries within that prohibition...." Generally, if a bill already deals with several items in a class, amendments to add additional items in the same class may be germane under this principle.

Germaneness rulings may be based on a combination of two or more of these tests and principles, or perhaps others. And their application and the relationships among them cannot be reduced to a formula or obviously predictable standard. Furthermore, the illustrative examples quoted above are quite clear and simple ones; they do not fully reflect the difficulties and subtleties that can arise in applying these six tests and principles. A bill may amend so many provisions of an existing law, for example, that an amendment affecting any other provision of that law may be germane, but there is no simple test to determine when this point is reached. Thus, germaneness determinations often are difficult to make and even more difficult to anticipate.

Offering and Debating Amendments

In the House

We naturally think of all legislative action that occurs on the House floor as taking place "in the House." In the conventional language of the legislative process, however, this phrase refers to one of the five modes of consideration by which the House may act on a public bill or resolution. A bill considered "in the House" is not debated and amended in the same way as it would be if considered in Committee of the Whole or under suspension of the rules, for example. And for reasons that will become evident, only a few kinds of bills and resolutions—most notably, the special rules reported by the Rules Committee to affect the order of business—usually are considered "in the House." One of the most important reasons is the difficulty Members have in proposing amendments under this set of procedures.

The essential rule governing debate on the House floor is the "*hour rule*"—the provision of clause 2 of Rule XVII which states that "[a] Member, Delegate, or Resident Commissioner may not occupy more than one hour in debate on a question in the House...." A Representative who has been recognized to speak may not hold the floor for more than an hour, under normal House rules, without the unanimous consent of all colleagues who are present. Equally important, under this rule, each Member may speak for an hour on each debatable question; and a bill or resolution and each amendment to it are different debatable questions, as are a variety of motions that Members may make. A Representative can offer an amendment only when the

Speaker has recognized him to control the floor for an hour, or when another Member who controls the floor has yielded to him for that purpose.[28]

A measure considered in the House, under the hour rule, is "open to amendment at any point." If a Member controls the floor and chooses to offer an amendment, that amendment may propose to affect any part of the bill. And if another Member were to offer a second amendment at a later time, that amendment also could address any part of the bill that has not already been amended. For instance, if the first amendment changes Section 3 of the measure, a second amendment could propose to change Section 1. In other words, the order in which Members offer amendments "in the House" generally is not determined by where or how the amendments would affect the measure.

Most measures that the House considers under the hour rule are "*privileged*." Clause 5(a) of Rule XIII grants certain committees "leave to report" measures on certain subjects or for certain purposes "at any time." For example, this authority extends to general appropriations bills reported by the Appropriations Committee, to budget resolutions and reconciliation measures reported by the Budget Committee, to committee funding resolutions reported by the Committee on House Oversight, and to amendments to House rules reported by the Rules Committee. Other measures are privileged under other rules—for instance, resolutions approved by the Republican Conference or Democratic Caucus to appoint members to House committees are privileged under clause 5(a)(1) of Rule X.

There are two differences between the treatment of privileged measures and the treatment of other bills and resolutions. First, a committee chair filing a report on a measure normally does so without comment, by merely submitting the report to the appropriate clerk on the floor while the House is in session. In the case of reports on privileged measures, however, the chair announces his action and files the report from the floor, and the Speaker refers it to the appropriate calendar. More important, when a committee reports a nonprivileged bill or resolution, it is referred to either the Union or the House Calendar, where it remains until it can be made in order for floor consideration.[29] On the other hand, once a privileged measure has been reported and placed on one of the same two calendars, and the one- or three-day layover requirement has been met,[30] the committee (or subcommittee) chair may call it up for consideration at any time that another matter is not already pending.[31]

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[28] *House Procedure*, ch. 27, secs. 4.2-4.4, p. 499.

[29] On the various calendars, see *House Procedure*, ch. 22, sec. 1.1, p. 339.

[30] Clause 4(a)(1) of Rule XIII generally requires that the House may not consider a measure until the accompanying report has been available to Members for at least three calendar days, excluding Saturdays, Sundays, and legal holidays. Clause 6(a) of the same rule imposes only a one-day layover requirement for most special rules reported by the Rules Committee, and the House may waive this requirement by a two-thirds vote.

[31] A privileged matter may interrupt the daily order of business specified in clause 1 of Rule XIV.

When the Speaker recognizes a chair (or another Member) to call up a privileged measure, at the direction of her committee, the chair is recognized to control the first hour of debate. The chair is certain to yield to other Members to participate in debate during this hour, but only the chair may offer an amendment or make any other motion during the hour she controls, unless she chooses to yield to another Member to do so.[32] At the end of the first hour, another Representative (usually the ranking minority member of the reporting committee) would be recognized to control the second hour of debate, and, if so, this Member becomes the only one with the right to offer an amendment or make another motion during that hour. And so the process could continue. Each Member can debate the measure for an hour, and the Member controlling each hour of debate determines whether an amendment is offered. If an amendment is proposed—whether it be an amendment in the nature of a substitute for the measure or a perfecting amendment to any part of it—each Representative then may debate the amendment for an hour.[33]

Thus, there could be more than 400 hours of debate on the measure itself and an equally lengthy debate on each amendment to it. In practice, however, when the House considers a bill or resolution "in the House"—and, therefore, under the hour rule—the House usually votes on passing it without considering any amendments except committee amendments, and after no more than a total of one hour of debate. The device for limiting the debate and precluding all floor amendments is the motion to order the *previous question*. A Representative who has been recognized to control the floor for an hour can make this non-debatable motion which immediately stops debate on the measure the House is considering. If a majority of Members vote to order the previous question, the House then proceeds to vote on pending amendments and on final passage of the measure without further debate and without considering any further amendments.[34]

In practice, the committee or subcommittee chair rarely proposes an amendment during the first hour of debate, which she controls, and is even less likely to yield to another Member to do so. As the majority floor manager, the chair typically supports the measure as it was reported by committee. But she always moves the previous question before or when her hour expires, and the House normally votes for this motion.[35] Thus, a Representative wishing to offer an amendment must obtain part of

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[32] The majority floor manager often yields control of half of the first hour to the minority floor manager, but "for purposes of debate only." If the committee has reported an amendment to the measure, it is automatically presented to the House for consideration when the measure is called up.

[33] The sponsor of the amendment may withdraw it at any time, as a matter of right, before the House amends it, orders the previous question on it, or votes on it.

[34] After the House orders the previous question but before it votes on final passage, one Member usually has an opportunity to move to refer or recommit the measure to committee, with or without instructions. *House Procedure*, ch. 23, sec. 7.7, p. 355.

[35] In practice, measures considered under the hour rule often tend to divide the House along party lines, so a majority usually supports ordering the previous question. Bills and resolutions that many Representatives are eager to amend are unlikely to be considered in this

(continued...)

the first hour of debate and convince the House to vote against ordering the previous question when that motion is made. Only if the previous question is not ordered is a second Member—almost always a minority party Member—recognized for an hour, during which he may propose an amendment.[36]

If the previous question is not ordered (or in the very unlikely event it is not even moved) and a second hour of debate begins, the Member controlling it then may propose an amendment and debate on that amendment proceeds under the hour rule.[37] But the Representative offering the amendment is almost certain to move the previous question, on both the measure and the amendment thereto, before or at the end of the hour she controls. And if the House votes for this motion, it then votes without further debate on the amendment and finally on the measure as it may have been amended.[38]

In daily practice, therefore, the hour rule does not operate to permit one hour of debate per Member on each measure considered "in the House," and another hour of debate per Member on each amendment to the measure. Instead, because the previous question is routinely moved and normally ordered, there is only one hour of debate in total on the bill and no floor amendments may be offered, unless the floor manager yields for this purpose. The House must vote against ordering the previous question before there can be a second hour of debate, when the Member controlling that second hour can propose an amendment.[39] And then the House is virtually certain to order the previous question on both the bill and the amendment during the second hour, precluding still more debate and still other amendments.

In short, the procedures governing consideration of measures in the House, under the hour rule, are not well suited—in theory or in practice—for permitting many Members to participate in debate and offer their amendments. It is largely because of this problem that the House considers most major bills instead in Committee of the Whole.

In Committee of the Whole and the House

The Committee of the Whole House on the State of the Union is a committee on which all Representatives serve and which meets on the House floor. The House resolves itself into Committee of the Whole to consider a particular measure and amendments to it. Then it transforms itself back into the House, and the House proceeds to vote on whatever amendments the Committee of the Whole has recommended and then votes on final passage of the bill or resolution itself. The

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[35](...continued)
way.

[36] *House Procedure,* ch. 29, sec. 5.7, p. 637; *House Procedure, 1985 Supplement,* ch. 23, sec. 10.6, p. 45.

[37] *House Procedure,* ch. 29, sec. 20.5, p. 650.

[38] *House Procedure,* ch. 27, sec. 4.6, p. 499.

[39] *House Procedure,* ch. 23, secs. 8-10, p. 356-358.

House uses the device of the Committee of the Whole largely because it provides a set of procedures for debating measures and for offering and debating amendments that are more flexible and accommodating than the procedures that govern the four other modes of consideration.

Because of these advantages, the House first considers most major bills and resolutions in Committee of the Whole before voting on them in the House. Clause 3 of Rule XVIII requires that certain kinds of measures be considered in this way; these are essentially the authorization, appropriations, and tax measures that are placed on the Union Calendar after being reported from committee. In addition, most other important and controversial measures are called up on the floor only after the House first agrees to a resolution, or special rule, reported by the Rules Committee, that makes the measure in order for consideration and provides for debating and amending it in Committee of the Whole.[40]

Considering a bill in Committee of the Whole involves a four-stage process. First, the House resolves itself into Committee of the Whole for the sole purpose of considering the bill. Second, there is a period of time for general debate. Third, the bill is considered for amendment; the Committee of the Whole votes on whatever amendments are proposed, and then it "rises" and reports the bill back to the House with the amendments the Committee has adopted. Fourth, the House votes on these amendments and, shortly thereafter, votes on passing the bill. The following discussion concentrates on the latter two stages during which Members consider and vote on amendments.

There are two ways in which the House resolves itself into Committee of the Whole to consider a measure. A special rule typically authorizes the Speaker, pursuant to clause 2(b) of Rule XVIII, to declare the House resolved into Committee of the Whole for that purpose at any time after the House adopts the resolution. On the other hand, the special rule governing consideration of a general appropriations bill need not include such a provision; its sole or primary purpose often is to waive points of order against the bill or amendments or both.[41] Instead, the chair of the Appropriations Committee makes a non-debatable motion that the House resolve into Committee of the Whole to consider a measure his committee has reported. In either case, the Speaker designates another majority party Member to serve as chair of the Committee of the Whole during its consideration of that measure.[42] The chair then directs the clerk to report the bill by title before general debate begins.[43]

General Debate. The special rule governing consideration of the measure normally specifies the length of general debate. Typically it is one hour though there may be more time provided for debating particularly important and controversial bills. In other instances, the amount of time is controlled by a unanimous consent

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[40] *House Procedure*, ch. 17, sec. 34.1, p. 240.

[41] *House Procedure*, ch. 25, sec. 23, p. 435-438.

[42] Clause 1 of Rule XVIII.

[43] The bill is to be read at this point, but this reading is routinely waived by the terms of the special rule or by unanimous consent.

agreement (in the case of a general appropriations bill), or it may be governed by a provision of a rule-making statute (for example, in the case of a budget resolution or reconciliation measure). Control of the time usually is divided equally between the chair and ranking minority member of the committee of jurisdiction, each of whom yields part of her time to other Members during the course of the debate. When a bill had been referred to two or more committees, there often is a longer period for general debate, with part of it controlled by each committee chair and ranking member. In unusual circumstances, a special rule also may allocate control of some general debate time to other, individually named Members who oppose the committee's position in an important respect.[44]

The Committee of the Whole does not consider and act on any amendments during general debate. This period is reserved for discussions of the state of existing law, the conditions stimulating new legislation, the provisions of the measure, and the advisability of enacting it. Members may debate the merits of committee amendments and the amendments individual Representatives intend to propose, but the amendments are not formally proposed or considered during this time. At the conclusion of general debate, the Committee of the Whole may vote to rise, which temporarily concludes its business and transforms the Committee back into the House. Then the House may resolve back into Committee of the Whole at some later hour or date to resume consideration of the measure. Alternatively, the Committee may move directly from general debate to the third stage of consideration, during which the amending process takes place.

During this third stage, the Committee of the Whole considers and votes on amendments to the measure and on amendments to those amendments. The Committee never votes directly on any section or title of the measure itself or on the measure as a whole. This amending process is somewhat akin to the markup of a bill that has been reported by one committee and then referred sequentially to another. After a standing committee reports the bill, it is referred sequentially to this unique committee on which all Members serve. The Committee of the Whole debates and votes on all the amendments recommended by the standing committee and then on whatever additional amendments individual Members offer. But neither a standing committee nor the Committee of the Whole actually has the authority to amend the bill; that is the exclusive power of the House. Both committees only recommend amendments for the House to consider.

The text that Members can attempt to amend usually is the text of the bill as it was introduced. However, the special rule for considering it may provide instead for amendments to be directed to an amendment in the nature of a substitute that is to be considered "an original bill for the purpose of amendment." Typically, this is a committee substitute, though it may be an amendment in the nature of a substitute printed in the Rules Committee's report on the rule or in the *Congressional Record*, or it may even be the text of another measure on the same subject. Whatever form it may take, an amendment in the nature of a substitute considered in this way almost always reflects the position of the committee or committees of jurisdiction, or at least their leading majority party members.

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[44] *House Procedure*, ch. 29, sec. 7.5, p. 640.

Reading Measures For Amendment. The flow of the amending process is governed by the requirement that a measure considered in Committee of the Whole is to be read for amendment. Members may propose amendments only to the part of the bill that the clerk has read, and they may no longer offer amendments to it (except by unanimous consent) after the clerk has read the next part.[45] The typical procedure is for a bill or resolution to be read for amendment section by section (or paragraph by paragraph, in the case of a general appropriations bill). When a special rule states that a measure shall be "read for amendment under the five-minute rule," it is to be read by sections. Alternatively, the special rule may specify that the measure is to be read by titles. And especially when a special rule prohibits most or all floor amendments, it may state that each section shall be considered as having been read or that the entire measure "shall be considered as having been read for amendment." There would be no point in the clerk reading each section or title in turn if Members may not offer amendments to it after it is read.

These alternatives affect what kinds of amendments Members can propose, and when. If a measure is being read or considered for amendment by sections, Representatives may offer amendments only to each section when the clerk has read or designated it. It is no longer in order to propose an amendment to a section that had been read previously, and it is premature to offer an amendment to a section not yet reached, unless the Members agree by unanimous consent to consider such an amendment. Thus, after the clerk reads or designates Section 4, only amendments to Section 4 are in order. It is now too late to offer an amendment to Section 3, and it is not yet appropriate to amend Section 5.[46] Furthermore, an amendment affecting Sections 4 and 5 would not be in order because the bill is being considered for amendment one section at a time.[47]

Thus, Members must accommodate themselves to the pace of the amending process in Committee of the Whole, protecting their own rights to propose amendments by being on the floor and by seeking recognition at the appropriate times. The same procedures govern a measure being considered for amendment by titles; amendments are in order only to the title that the clerk has read or designated most recently. Considering a measure by titles gives Members somewhat more latitude, because they can offer amendments that span more than one section of the title or that

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[45] *House Procedure*, ch. 27, sec. 8.1, p. 505-506.

[46] *House Procedure*, ch. 27, sec. 10.3, p. 508. "When it is proposed to offer a single amendment in the nature of a substitute for several paragraphs of a bill which is being considered by paragraphs, the substitute may be offered to the first paragraph provided that notice is given that if it be agreed to, motions will be made to strike out the remaining paragraphs." *House Procedure*, ch. 27, sec. 12.4, p. 512.

[47] *House Procedure*, ch. 27, secs. 9-10, p. 506-509. "The Chair inquires whether any Member seeks to offer an amendment to the pending portion of a bill before recognizing a Member to offer an amendment inserting a new section or title thereafter....An amendment adding a new section at the end of a bill is in order when the last section of the bill has been read for amendment and no amendments to that section are offered....Where an amendment adding a new title to a bill has been adopted, an amendment to the title of the bill that was pending when the amendment was offered comes too late and may be offered only by unanimous consent...." *House Procedure, 1985 Supplement*, ch. 27, sec. 8.4, p. 68.

propose to strike or replace the entire title. Thus, when a bill is divided into titles, which in turn are subdivided into sections, a special rule frequently provides for it to be considered for amendment title by title.

The one exception to these procedures concerns amendments in the nature of substitutes. A Member can offer this kind of amendment after the clerk reads or designates the first section of the measure, even though the amendment also would affect all its other sections or titles. But once this opportunity passes, an amendment in the nature of a substitute is not in order again until the Committee has acted on all amendments to the last section or title of the bill. On the other hand, when a measure is open to amendment at any point, Members may propose amendments to any part of it in any order, so long as the amendments meet the other requirements of House rules and precedents and are not prohibited by a special rule.

The Committee of the Whole sometimes expedites consideration of amendments by adjusting the process of reading for amendment.[48] If a bill containing several titles is being read section by section, the majority floor manager may ask unanimous consent that a title be considered as read and open to amendment at any point.[49] Or the manager may extend this request to cover several titles or the entire measure. The manager is most likely to make such a request when few amendments are anticipated and no useful purpose is served by having the clerk read each section or title individually.

Offering Amendments. After the clerk reads or designates the first section, the chair directs the clerk to read the first of any committee amendments to it. The majority floor manager typically asks unanimous consent that the reading be dispensed with. The Committee of the Whole debates and votes on this amendment, and any floor amendments to it, after which the clerk reads and the Committee acts in turn on any other committee amendments to that section. Individual Members then may propose their own amendments to the section.[50] After the Committee debates and votes on all of them, the clerk reads or designates the next section and the process is repeated. When a bill is being considered by titles, a comparable process occurs, as the Committee first considers and acts on each committee amendment (and amendments to it) to a title before individual Representatives' amendments to the title are in order. When a bill is open to amendment at any point, on the other hand, the Committee first considers and acts on all the committee amendments, in the order in which they would affect the measure, before Members propose their own amendments to the measure.

Beginning in the late 1990s, special rules began to include provisions under which the Committee did not always vote on one first-degree amendment before considering the next one. These provisions were incorporated into the House's standing rules at the beginning of the 107th Congress in January 2001. Clause 6 of Rule XXVII now provides that:

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[48] *House Procedure,* ch. 27, sec. 7.1, p. 504.

[49] *House Procedure,* ch. 27, sec. 11, p. 509-510.

[50] *House Procedure,* ch. 27, secs. 3.7-3.8, p. 498.

> The Chairman may postpone a request for a recorded vote on any amendment. The Chairman may resume proceedings on a postponed request at any time. The Chairman may reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes.

In most cases, there are not very many committee amendments to a measure. If the committee wishes to amend a measure extensively, it may report the bill or resolution with a long series of amendments. However, it is more likely to recommend an amendment in the nature of a substitute by which the committee incorporates all its proposed changes to the measure in a single amendment. Or the committee may propose a "clean" measure, carrying a different bill or resolution number, that addresses the same subject in the way the committee prefers.

When the Committee of the Whole has disposed of all committee amendments to the section or title being considered (or to the entire bill, if it is open to amendment at any point), the chair looks to the majority and minority tables on the floor for Members seeking recognition to offer amendments of their own. It is the responsibility of a Member wishing to offer an amendment to seek recognition for that purpose.[51] If two or more Members are seeking recognition, the chair has the discretionary authority to recognize one or the other.[52] However, the chair is guided in decisions regarding recognition by practices that are very well-established, if not actually binding as precedent.[53]

The chair almost always gives preference in recognition to members of the committee and subcommittee that reported the measure, in approximate order of seniority, alternating between Democrats and Republicans.[54] Thus, the majority floor manager is recognized in preference to anyone else, followed by the minority floor manager. If neither of the managers seeks recognition, the chair tends to recognize a senior committee member before a more junior member, and any committee member before another Representative. The chair also attempts to give Members of both parties a roughly equal opportunity to propose amendments.[55] These practices promote fairness, and also focus the attention of the Committee of the Whole first on amendments sponsored by Members who are presumed to have an expert knowledge of the subject.

Every amendment offered must be in writing. In addition, clause 5(b) of Rule XVIII states:

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[51] "In order to obtain recognition to offer an amendment, a Member must not only be standing but must also actively seek recognition by addressing the Chair at the appropriate time." *House Procedure, 1985 Supplement*, ch. 29, sec. 4.1, p. 83.

[52] *House Procedure*, ch. 29, sec. 4, p. 634-635.

[53] *House Procedure*, ch. 27, sec. 3.5, p. 498; ch. 29, sec. 5, p. 635-638.

[54] *House Procedure*, ch. 27, sec. 3.1, p. 497.

[55] *House Procedure*, ch. 29, secs. 5.1-5.5, p. 635-637.

> When a Member, Delegate, or Resident Commissioner offers an amendment in the Committee of the Whole House on the state of the Union, the Clerk shall promptly transmit five copies of the amendment to the majority committee table and five copies to the minority committee table. The Clerk also shall deliver at least one copy of the amendment to the majority cloak room and at least one copy to the minority cloak room.

Although this rule places the responsibility on the clerk, it is good practice for Members to bring multiple copies of amendments with them to the floor, or to arrange for copies to be made of amendments they or their staff prepare on the floor during debate. This permits the sponsor of an amendment to distribute copies of it to colleagues who want to examine it. In most cases, Representatives find it advisable to alert the majority and minority floor managers of the measure, and other interested Members, of the amendments they plan to offer. This is not done only as a matter of courtesy. Floor managers who support the bill often are inclined to oppose amendments that they have not had an opportunity to study. But if the floor managers have copies of an amendment in advance, they may decide to support it or at least discuss possible changes that would make it acceptable to them.

Clause 8 of Rule XVIII also provide for Members to submit their amendments in advance for printing in the *Congressional Record*. Under clause 8(c),

> Material submitted for printing in the Congressional Record under this rule shall indicate the full text of the proposed amendment, the name of the Member, Delegate or Resident Commissioner proposing it, the number of the bill or resolution to which it will be offered, and the point in the bill or resolution or amendment thereto where the amendment is intended to be offered. The amendment shall appear in a portion of the Record designated for that purpose. Amendments to a specified measure submitted for printing in that portion of the Record shall be numbered in the order printed.

And clause 7 permits a non-debatable motion to dispense with the normal requirement that an amendment be read before it is debated, but only if the amendment has been printed in the *Record* in this way or printed in a measure as reported from committee:

> It shall be in order in the Committee of the Whole House on the state of the Union to move that the Committee of the Whole dispense with the reading of an amendment that has been printed in the bill or resolution as reported from a committee, or an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record. Such a motion shall be decided without debate.

House rules do not accord any special priority for consideration on the floor to an amendment that has been printed in the *Record*; the rules do not require, for example, that a Member with a printed amendment be recognized to offer it before another Representative whose amendment is merely handwritten. As we shall see, however, Members who submit their amendments for printing in the *Record* do gain some assurance of time for debate when they actually propose the amendments in Committee of the Whole. Also, recent special rules sometimes have authorized the chair to give priority in recognition for offering amendments in Committee of the Whole to Members who did submit them in advance for printing.

Special rules for considering particularly complicated or technical measures, such as tax bills, sometimes permit consideration of only those amendments that have been printed in the *Record* by a date certain or at least one day before they are offered. This requirement gives committee members and others an opportunity to study the amendments in advance and evaluate their implications. More generally, the Rules Committee may ask Members to submit to it copies of the floor amendments they want to offer to a bill. Amendments not submitted in response to such a request are very unlikely to be made in order under the special rule for that bill.

Debating Amendments. The essential rule governing debate on amendments in Committee of the Whole is the *five-minute rule*, contained in clause 5(a) of Rule XVIII:

> A Member, Delegate, or Resident Commissioner who offers an amendment shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioenr who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. 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. An amendment or an amendment to an amendment may be withdrawn by its proponent only by the unanimous consent of the Committee of the Whole.

The five minutes for opposing a first-degree amendment often are claimed by one of the floor managers who supports the measure in its present form; in turn, the sponsor of a first-degree amendment often seeks recognition for the five minutes to speak against an amendment to her amendment.

This rule clearly states that there shall be only 10 minutes for debating each amendment. Yet debate on an amendment often continues for much longer, sometimes for hours at a time. The explanation for this apparent contradiction lies in the use of *pro forma amendments*.

A Representative offers a pro forma amendment when he or she *moves to strike the last word*. In theory, this motion is an amendment that proposes to strike out the last word of whatever the Committee of the Whole is then considering—a measure or a portion of it, a first-degree amendment, or an amendment to an amendment. In practice, however, the Committee recognizes pro forma amendments to be only a well-accepted device by which Members secure time for debate.

After two Representatives have consumed the 10 minutes provided by Rule XVIII for debating an amendment, any other Member whom the chair recognizes can obtain five minutes to speak simply by moving to strike the last word. A Member also can move to strike the last word when no amendment is pending, if the Member wishes to discuss the measure itself. Technically, the next Member wishing to speak for five minutes should move to strike the last two words because the same amendment cannot be proposed more than once. This leads some Members to move to strike "the requisite number of words," in order to make certain that they are not offering an amendment for the second time. However, the Committee recognizes that there is no point in prohibiting Members from offering the same pro forma amendment

more than once because these amendments are not substantive. Thus, many Representatives may move to strike the last word.

Because a pro forma amendment is not substantive, no Member claims five minutes to speak against it, and the Committee does not vote on it. When a Member who has made such a motion has used her five minutes or has yielded back the balance of her time, the amendment is deemed to have been withdrawn by unanimous consent.

The time for debating any amendment, whether substantive or pro forma, may be extended by unanimous consent. When offering an amendment, for example, a Member may expect that five minutes will not be sufficient to explain it. So even before beginning the statement, the Member may ask unanimous consent that an additional five minutes or more be granted. Alternatively, when the chair informs the Member that the five minutes have expired, the Member then may ask unanimous consent to proceed for an additional minute or more. The one who has the floor may yield to others who want to speak; and in turn, a Representative to whom the Member has yielded may ask unanimous consent that the Member be granted additional time so they may continue their exchange.[56] Representatives usually do not object to such unanimous consent requests, but they can do so.

At any time after the sponsor of an amendment has consumed or yielded back the balance of his five minutes for debate, other Members may seek recognition either to propose a substantive amendment that is in order or to offer a pro forma amendment (even instead of seeking recognition for the five minutes provided by Rule XVIII to speak against the amendment).[57] However, a Representative who has been recognized for one of these purposes may not use it for another; thus, a Member who has been recognized to speak against the amendment under Rule XVIII, or who has moved to strike the last word, may not offer a substantive amendment during that five-minute period.

In Committee of the Whole, the chair must recognize a Representative before he or she can propose an amendment or control five minutes for debate. The chair's exercise of the power of recognition is not subject to challenge or appeal, but normally the same priorities are followed in recognizing Members to move to strike the last word as in recognizing them to offer substantive amendments. Committee members are recognized before others, and the chair usually recognizes them in an order consistent with their committee or subcommittee seniority. The chair also makes an effort to assure that Members of both parties have roughly the same opportunities to offer amendments and to speak. But it is each Member's responsibility to seek recognition at the appropriate time; the chair cannot protect Members' rights unless he knows that they wish to exercise them.

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[56] During general debate in Committee of the Whole, and during debate in the House under the hour rule, a Member controlling time may yield a specific number of minutes to a colleague or he may yield such time as the other Member may consume. During debate under the five-minute rule, however, the Member controlling the floor may yield but not for a specified period of time. However, a Member who has been recognized for five minutes and then yields to another may reclaim his time whenever he chooses.

[57] *House Procedure*, ch. 27, sec. 16.10, p. 518; ch. 29, sec. 5.10, p. 637.

Pro forma amendments permit each Representative to speak for five minutes on each portion of the measure as it is considered for amendment and on each amendment that Members propose. If every Member took advantage of this opportunity, there could be more than 36 hours of debate per amendment, which would make it impossible for the House to conduct its legislative business in a timely way.[58] However, the rules and practices of the House protect against this possibility through a device for bringing debate under the five-minute rule to an end. This device can effectively prevent a minority from filibustering in Committee of the Whole by debating amendments at great length.

By unanimous consent or by motion, the Committee may decide to conclude the debate on (1) an amendment, (2) an amendment and all amendments thereto, or (3) the measure, or a portion of it, and all amendments thereto. In the last case, however, the Committee can close debate only on whatever part of the measure has been read or designated for amendment. If a bill is being considered by sections or titles, the Committee can end debate only on each section or title as it is considered.[59] But if the measure is open to amendment at any point, the Committee may close debate on it as a whole, as well as on any amendments that are pending at the time and all other amendments that Members intend to offer.

After a Representative has proposed an amendment and concluded his five minutes for debate, and at any time that another Member does not control the floor, the majority floor manager may ask unanimous consent that all debate on that amendment (and any amendments to it) be brought to an end. He may request that the debate end immediately, or at a certain hour, or at the expiration of a specified additional period of time. While any Representative may make such a request, it is unusual for anyone other than the majority floor manager to do so. If another Member objects, or reserves the right to object, that Member and the floor manager may discuss whether the amendment and the issues it raises have been fully argued, and they attempt to find a mutually acceptable accommodation. If the floor manager cannot obtain unanimous consent to his request, he then may make a non-debatable motion to close the debate—immediately, at a time certain, or after a specified period of time.[60] The Committee agrees or disagrees to the motion by simple majority vote. Again, any Member whom the chair recognizes may make such a motion, but this is a prerogative normally exercised only by the majority floor manager.[61]

If the Committee agrees to a unanimous consent request or votes for a motion that leaves some time remaining for debate, the chair may continue recognizing Members for five minutes each but also has the authority to dispense with the five-

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[58] Pro forma amendments are not in order when a measure or amendment is being considered under a closed or restrictive rule that does not explicitly provide for them. *House Procedure*, ch. 27, sec. 2.7, p. 491.

[59] *House Procedure*, ch. 29, sec. 27.1, p. 656-657.

[60] Clause 8(a) of Rule XVIII.

[61] *House Procedure*, ch. 29, sec. 27.5, p. 657.

minute rule.[62] Instead, the chair may divide the remaining time between the control of two Members (for example, the sponsor of a pending amendment and the majority floor manager) and allow them to yield part of their time to others as they choose. Or the chair may divide the remaining time equally among the Members who stand to indicate their desire to be recognized. Thus, if the Committee agrees to a motion that permits thirty minutes more for debate and fifteen Members still want to be recognized, the chair has at least three options: to recognize each of the 15 Members for two minutes each, to recognize only six of the Members for five minutes each, or to recognize only two Members to control 15 minutes each.[63]

When all the time for debate has expired, pursuant to a motion or unanimous consent agreement, Members may continue to offer amendments that are otherwise in order but they have no time to explain their amendments, which obviously puts them and their amendments at a significant disadvantage.[64] Anticipating this potential problem, clause 8(b) of Rule XVIII offers Members some protection by reserving five minutes for one of them to explain, and then five minutes for another to oppose, any amendment that has been printed in advance in the *Congressional Record*:[65]

> If the Committee of the Whole House on the state of the Union closes debate on any portion of a bill or resolution before there has been debate on an amendment that a Member, Delegate, or Resident Commissioner has caused to be printed in the Congressional Record at least one day before its consideration, the Member, Delegate, or Resident Commissioner who caused the amendment to be printed in the Record shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon.

This rule permits only 10 minutes of debate on each amendment; Members cannot extend the debate through pro forma amendments.[66] Furthermore, clause 6 may be superseded by the special rule for considering a bill if, for example, that resolution prohibits consideration of all but certain specified amendments.

From time to time, a Member who is opposed to a bill or pending amendment secures time for debating it that otherwise would not be available by moving that the Committee rise and report the measure back to the House with the recommendation that the *enacting (or resolving) clause be stricken*. When a Representative makes this motion, the chair recognizes him and another Member to debate it for five minutes each, after which the Committee votes without further debate.[67] If the Committee agrees to the motion and the House then concurs, the bill is thereby rejected because striking the enacting clause removes from it the language required by law that would

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[62] *House Procedure*, ch. 29, sec. 31, p. 661-665.

[63] *House Procedure*, ch. 29, sec. 6.6, p. 638.

[64] *House Procedure*, ch. 29, sec. 33.1, p. 667.

[65] *House Procedure*, ch. 27, sec. 1.9, p. 490.

[66] *House Procedure*, ch. 27, sec. 4.7, p. 499-500.

[67] *House Procedure*, ch. 19, sec. 12, p. 279.

be necessary to give the bill statutory force.[68] However, Members rarely make this motion with any serious expectation that it will carry. Instead, it is another device to obtain five minutes for debate.

The motion proposing that the enacting clause of a bill be stricken is in order in Committee of the Whole only once each legislative day, unless the bill has been materially changed. And it is in order only so long as there remains time for debating the measure itself. If the Committee has agreed to limit further debate on an amendment, for example, and all that time has expired, a Member can still debate the amendment and the bill for five minutes by making this motion.[69] On the other hand, the motion is no longer in order once the Committee has concluded debate on the bill and all amendments thereto.

After The Committee Rises and Reports. When the Committee of the Whole has acted on the last amendment to be proposed, the Committee rises and reports the bill or resolution back to the House with whatever amendments to the measure it has agreed to. Most special rules provide for the Committee to rise and report automatically; in the case of general appropriations measures, the majority floor manager makes a non-debatable motion that the Committee rise and report.[70] Once the Committee rises, the Speaker again presides over the House, and the chair reports to him that the Committee has had the bill under consideration and now reports it back to the House, usually with an amendment or several ("sundry") amendments. The Committee also recommends that the House agree to the amendment or amendments and then pass the bill as amended.

The Committee of the Whole only reports the amendments to the measure that it adopted. It does not report any amendments that it rejected nor does it report any amendments to amendments. Thus, if the Committee perfects and then adopts a first-degree amendment, it reports only the perfected first-degree amendment. And if the Committee concludes the amending process by agreeing to an amendment in the nature of a substitute, as amended, it reports only that amended substitute.[71]

The House then must vote on the amendments recommended by the Committee of the Whole because only the House itself actually has the authority to amend the bill. More often than not, the House agrees to all these amendments "en gros," by one single voice vote. If Members wanted a record vote on one or more of them, they probably obtained it when the Committee of the Whole voted on each amendment. However, any Member has a right to demand a separate vote in the House on any amendment the Committee has recommended, and this is very likely to be a roll call vote.[72] The goal is to reverse the result of the earlier vote in favor of the amendment. If the Committee agreed to an amendment by a very narrow margin, an

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[68] Clause 9 of Rule XVIII.

[69] *House Procedure,* ch. 19, secs. 12.9-12.10, p. 280.

[70] *House Procedure,* ch. 19, sec. 9, p. 276-278.

[71] Annotations to Section XII of *Jefferson's Manual* in *House Rules and Manual*.

[72] *Ibid*.

opponent may believe that a second, and later, roll call vote will produce the opposite result and defeat the amendment. When Members demand one or more separate votes, the House first agrees to the other amendments en gros by voice vote, and then acts on each of the amendments that require separate votes.

Members normally may demand separate votes in the House only on the amendments proposed by the Committee of the Whole to the bill or resolution itself, not on any amendments to those amendments that the Committee may have adopted.[73] But this right to vote a second time on the Committee's proposals could be effectively nullified when the Committee recommends an amendment in the nature of a substitute. In this situation, the Committee reports the bill back to the House with only that one amendment, even though most or all of the other amendments on which the Committee voted probably were amendments to the substitute. There are no separate amendments on which Members could demand separate votes in the House. For this reason, whenever a special rule anticipates or provides that the Committee of the Whole is to consider an amendment in the nature of a substitute, it also permits Members to demand separate votes in the House on amendments to the bill itself or to that substitute.

When the Committee of the Whole has reported a bill or resolution and the House acts on the Committee's recommended amendments, the measure and the amendments are considered under the set of procedures that govern consideration in the House, especially the hour rule. In theory, therefore, the amending process that took place in Committee of the Whole could be repeated under the hour rule. Each amendment the Committee of the Whole reported could be debated for one hour or more and perhaps even amended, depending on when and if the House orders the previous question on the bill and all amendments to it. Then, if the House failed to order the previous question after acting on all the Committee's amendments, Members could offer their own amendments, each of which would be debatable for at least an hour. But this would not only be repetitious; it would effectively nullify the value of having already considered the bill and amendments to it in Committee of the Whole.

To avoid this situation, the special rules for considering measures typically provide that, after the Committee of the Whole rises, "the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit." The effect of the previous question is to preclude further debate and amendments. Thus, ordering the previous question in advance requires the House to vote on each Committee amendment without debate or amendment and precludes Members from proposing additional amendments.[74] In addition, this provision prevents consideration of any other motion except one motion to recommit (to be discussed shortly).

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[73] *House Procedure*, ch. 27, sec. 34.1, p. 537-538.

[74] If a special rule governing consideration of a general appropriations bill only waives points of order, it does not include this provision. Instead, the House orders the previous question, on motion of the bill's majority floor manager, as soon as the Committee of the Whole reports the bill.

Consequently, after the House votes on the Committee's amendments—usually en gros, but with the possibility of one or more separate votes on individual amendments—it votes on engrossment and third reading, and the clerk then reads the title of the measure. This vote, which is never contested, also directs the clerk to engross the bill: to have it printed as the House has amended it.[75] After acting on a motion to recommit, if one is made, the House then completes action on the bill by voting to pass or defeat it. A motion to reconsider that vote is routinely tabled, making the vote on final passage conclusive.[76]

The Motion To Recommit. Under clause 6(c)(2) of Rule XIII, not even a special rule may prevent a *motion to recommit* from being made after engrossment and third reading and before the vote on final passage. This motion almost always proposes to recommit the bill or resolution to the committee that reported it. In practice, however, the motion takes one of two forms; one is designed to reject the measure, the other to amend it.

A simple or "straight" motion to recommit only proposes to send the bill back to committee. This motion is not debatable.[77] If a majority of the House votes for it, the bill is considered as having been rejected. In other words, this motion offers Members an indirect opportunity to defeat the bill, and the opportunity arises immediately before they would vote directly on final passage. For these reasons, simple motions to recommit are not made frequently and they rarely succeed.

The alternative is a motion to recommit the bill to committee "with instructions." These instructions may take various forms. For example, they may direct the committee to hold additional hearings on some issue relating to the bill before reporting it back to the House.[78] Almost always, however, the instructions direct the committee to report the bill back to the House immediately ("forthwith") with one or more amendments stated in the motion. Clause 2 of Rule XIX provides for ten minutes of debate on a motion to recommit with instructions, but also permits the majority floor manager to demand that the debate be extended to an hour. In either case, the time for debate is divided between the Representative making the motion and the majority floor manager or another Member opposing it.[79]

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[75] *House Procedure*, ch. 24, sec. 5, p. 375.

[76] Clause 3 of Rule XIX provides one opportunity for a Member to move to reconsider the vote on final passage or on most other motions and questions decided in the House, but not in Committee of the Whole. The motion to reconsider must be made on the same day as the vote or on the following day, and by a Member who voted on the prevailing side. In the overwhelming majority of cases, the motion is made and routinely tabled, thereby disposing of it adversely. (Normally, the Speaker merely states that, "without objection, a motion to reconsider is laid on the table," and no Member objects.) Rollcall votes on reconsideration motions are rare because few votes are decided by such narrow margins that a sufficient number of Members actually might change their positions and reverse the outcome.

[77] *House Procedure*, ch. 23, sec. 16.5, p. 366.

[78] *House Procedure*, ch. 23, secs. 14.8-14.11, p. 363.

[79] The instructions are amendable if the House votes against ordering the previous question (continued...)

A motion to recommit with instructions usually constitutes one last attempt to amend the bill before the House votes on passing it. The instructions typically direct the committee to report the bill back to the House "forthwith" with a certain amendment. When the House votes for such a motion, it is telling one of its committees exactly what it must do, and it also is requiring the committee to act immediately. Under these circumstances, there is no point in the committee actually meeting to comply with the instructions because it has been given no time or discretion. Instead, the committee chair immediately rises on the floor and states that, pursuant to the motion and on behalf of the committee, the bill is reported back to the House with the amendment. The House then votes on the amendment itself, normally agreeing to it by voice vote because the amendment presents the same policy choice as the motion to recommit on which the House just voted. Finally, the House votes on passage of the bill as it now has been amended by the motion to recommit with instructions.

Only one motion to recommit is in order; but if one is ruled out of order, another can be proposed.[80] In addition, two other important kinds of constraints on the recommittal motion affect who may make it and what instructions it may contain.

First, a Representative who makes a recommittal motion must be opposed to the measure, at least in "its present form." Equally important, this motion is the prerogative of the minority party; the Speaker recognizes any Member of the minority to make it before recognizing any Member of his own party. The Speaker also gives preference in recognition to a minority party Representative who serves on the committee that reported the bill. If the ranking minority member of the committee wishes to make a recommittal motion, therefore, the Speaker is most likely to recognize him.

Second, when the instructions contain an amendment, that amendment must comply with the principles and prohibitions that apply to amendments under other circumstances. Members may not propose as instructions anything that they could not have proposed directly as amendments. For instance, a Member may make a point of order against a motion to recommit with instructions if the instructions require the committee to report the bill back with an amendment that is not germane. Similarly, a recommittal motion may not propose instructions to amend a part of the bill that the House already amended when it agreed to the amendments recommended by the Committee of the Whole.

Once again, a special problem could arise when the Committee reports a bill or resolution back to the House with a single amendment in the nature of a substitute. When the House agrees to this amendment, it thereby amends every part and provision of the measure. This common occurrence could preclude any recommittal motion with instructions containing an amendment, because such a motion would be subject to the point of order that it violates the prohibition against amending

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[79](...continued)
on the motion.

[80] *House Procedure*, ch. 23, sec. 14.4, p. 362.

something that already has been amended.[81] With this potential problem in mind, when a special rule anticipates or provides that the Committee of the Whole is to consider an amendment in the nature of a substitute, it normally provides explicitly for a motion to recommit "with or without instructions." This additional phrase permits the instructions to contain an amendment, even if the effect of agreeing to the recommittal motion would be to re-amend the text of the measure.[82]

In the House as in Committee of the Whole

As its name implies, "the House as in Committee of the Whole" is a hybrid set of procedures, involving some of the characteristics of consideration under the hour rule in the House and some of those applicable to consideration under the five-minute rule in Committee of the Whole. These procedures are not used very often, except for acting on measures concerning the District of Columbia, reported by the Committee on Government Reform. When the chair of this committee calls up a measure, which is privileged on the second and fourth Mondays of each month under clause 4 of Rule XV, he may ask unanimous consent that it be considered in the House as in Committee of the Whole. The House occasionally acts on other public bills and resolutions under these procedures, either by unanimous consent or pursuant to a special rule.[83]

When the House acts on a measure in this way, the Speaker continues to preside over the House. There is no general debate and the bill or resolution is considered as having been read for amendment. It is immediately open to amendment at any point and all debate is governed by the five-minute rule.[84] Thus, the majority and minority floor managers secure time for making their opening statements by moving to strike the last word. Other Members then may offer substantive or pro forma amendments, the Speaker normally following the same priorities for recognition as does the Chair of the Committee of the Whole. In general, the same rules, principles, and practices governing the amending process in Committee of the Whole also apply in the House as in Committee of the Whole, except that measures are not read for amendment.

There is one other important exception. In the House as in Committee of the Whole, a Member may move the previous question on an amendment (and all amendments thereto) or on the measure as a whole (and all amendments thereto), just as in the House.[85] This motion, which is invariably made by the majority floor manager, permits the House to decide by majority vote whether it wishes to consider amendments and how long it wishes to debate the bill and any amendments that

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[81] *House Procedure*, ch. 27, sec. 30.3, p. 534-535.

[82] *House Procedure*, ch. 23, sec. 15.3, p. 364.

[83] "Where the House grants unanimous consent for the immediate consideration of a bill on the Union Calendar, or which would belong on the Union Calendar if reported, the bill is considered in the House as in Committee of the Whole...." Annotations to Section XXX of *Jefferson's Manual* in *House Rules and Manual*.

[84] *Ibid*.; *House Procedure*, ch. 27, sec. 11.6, p. 510.

[85] *House Procedure*, ch. 23, sec. 6.3, p. 354.

Members do offer. After the House orders the previous question, or if no one seeks recognition, the House votes on engrossment and third reading of the measure, then on a recommittal motion if offered, and finally on passing the bill.[86]

By Call of the Corrections Calendar

There is only one opportunity for a Member to offer a floor amendment to a bill called from the Corrections Calendar.

After a committee has reported a bill and it has been placed on the House or Union Calendar, the Speaker may have it placed on the Corrections Calendar as well. On the second and fourth Tuesdays of each month, the Speaker may direct that any bill on this special calendar shall be called up for consideration on the floor.[87]

A bill called up in this way is considered in the House, under the hour rule, and is debated for no more than one hour. Clause 6(b) of Rule XV provides for the previous question to be considered as ordered after the first hour of debate. The same rule also prohibits all amendments to the bill except amendments proposed by the primary committee of jurisdiction or its chair, but the rule does permit a motion to recommit, with or without instructions. In other words, bills called up from the Corrections Calendar are protected against all floor amendments that other Members might want to offer, except whatever amendment might be included in a motion to recommit with instructions. It requires a three-fifths vote to pass a bill under this procedure.

Under Suspension of the Rules

Individual Representatives may not offer floor amendments to a measure considered under suspension of the rules.[88]

However, amendments to the measure may be included as part of the motion itself. A Member often moves to suspend the rules and pass a certain bill "as amended." After the 40 minutes of debate permitted on a suspension motion, the House then casts one vote on suspending the rules and passing the bill as proposed to be amended under the terms of the motion. No separate vote on the amendments, individually or collectively, is in order.[89] Support by two-thirds of the Members present and voting is required to pass a measure under suspension of the rules.

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[86] Also, "a motion is in order in the House as in Committee of the Whole to close debate on the bill or on an amendment...." Annotations to Section XXX of *Jefferson's Manual* in *House Rules and Manual*. However, the previous question is used more often than the motion to close debate because the latter does not preclude Members from proposing additional amendments.

[87] Clause 6 of Rule XV governs the Corrections Calendar and its use.

[88] Clause 1 of Rule XV addresses suspension of the rules.

[89] *House Procedure*, ch. 21, sec. 17.3, p. 320.

A suspension motion typically is made by a committee or subcommittee chair. Consequently, the amendments proposed as part of the motion usually are committee amendments, or at least amendments supported by the chair of the committee or subcommittee of jurisdiction. The amendments also enjoy the support or acquiescence of the Speaker, because the Speaker has discretion in deciding whether or not to recognize a Member to offer a suspension motion.

The Amendment Trees

The amending process on the House floor normally does not become very complicated. Amendments usually are not proposed to measures considered in the House, under the hour rule, because the House precludes them by voting to order the previous question. Members are somewhat more likely to propose amendments to bills and resolutions considered in the House as in Committee of the Whole, but they do not do so with great frequency and the amendments offered usually do not generate very much controversy. When a bill is called from the Corrections Calendar, the only amendments in order are those proposed by the primary committee of jurisdiction or its chair. Finally, the House acts on more measures under suspension of the rules than under most other procedures, and no floor amendments are in order at all under the suspension procedure.

It is when the House has resolved into Committee of the Whole to consider a measure that Representatives are most likely to offer amendments, some of which Members may debate at length. More often than not, however, there are few, if any, procedural complications. A Member proposes an amendment and other Members join her in debating it; the Committee of the Whole eventually votes on the amendment and proceeds to consider the next one to be proposed. Alternatively, another Member may offer a second-degree amendment to the amendment, and the Committee then votes on the second-degree amendment before voting on the first-degree amendment, as it may have been amended.

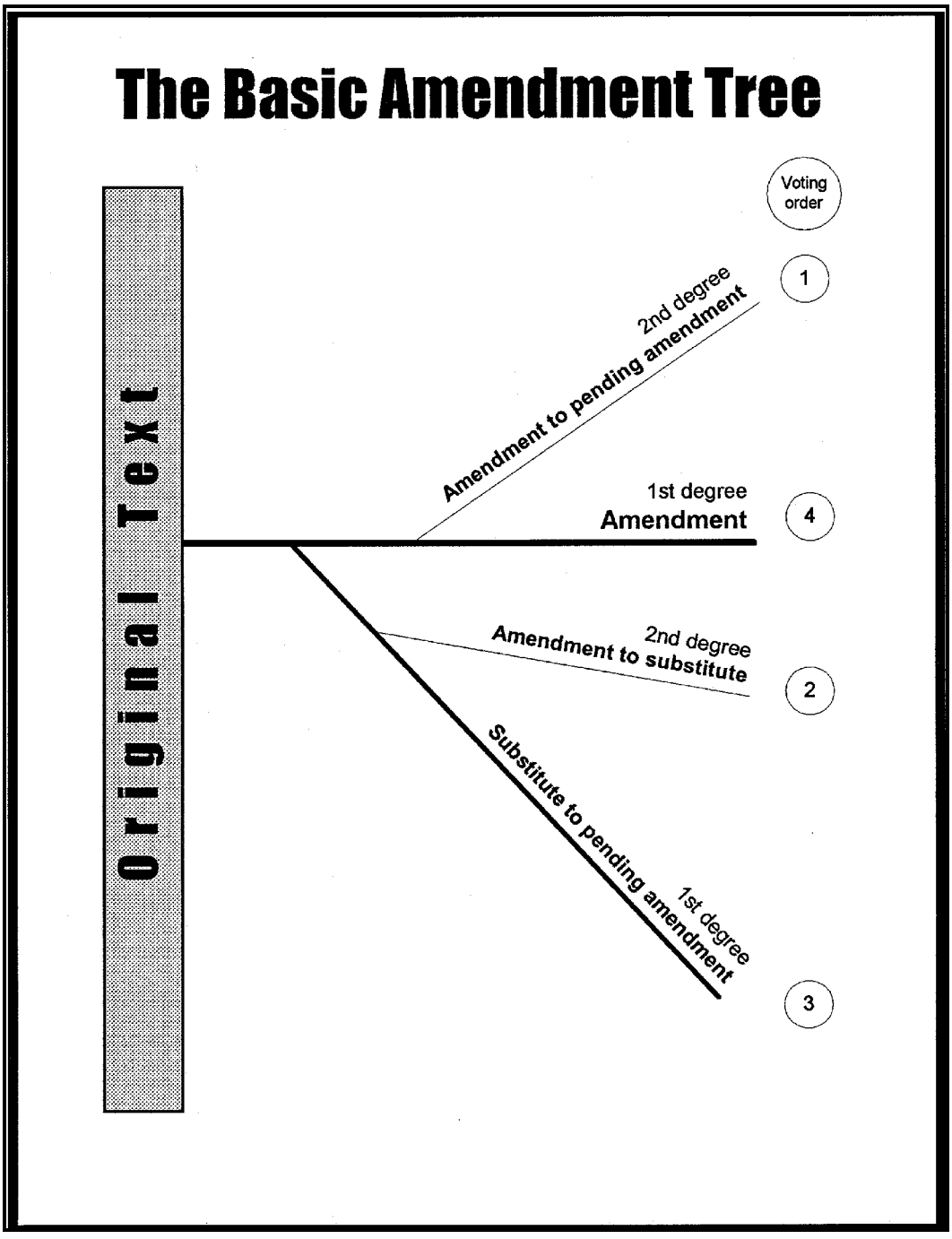
Yet from time to time, the amending process does become complicated, as Members take advantage of the opportunities afforded by clause 6 of House Rule XVI:

> When an amendable proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order, and it also shall be in order to offer a further amendment by way of substitute for the original motion to amend, to which one amendment may be offered but which shall not be voted on until the original amendment is perfected. An amendment may be withdrawn in the House at any time before a decision or amendment thereon. An amendment to the title of a bill or resolution shall not be in order until after its passage or adoption and shall be decided without debate.

This rule creates the possibility for as many as four (and sometimes even five or more) amendments to be proposed before Members must vote on any of them. It would be extraordinary for such a situation to develop when bills are considered in the House or in the House as in Committee of the Whole, and it arises infrequently in Committee of the Whole. Nonetheless, Rule XVI, clause 6, creates a number of

strategic possibilities that Members can employ when they believe it to be in their interests to do so. The situation that may result can be depicted graphically and is often described as the "*amendment tree*."

The amending situations that may develop depend primarily on the form of the first-degree amendments that Representatives offer. If a Member proposes a first-degree amendment in the form of a *motion to insert* or, in most cases, in the form of a *motion to strike out and insert*, this amendment tree depicts the kinds of amendments, and the maximum number of amendments, that Representatives may propose before the Committee of the Whole (or the House) must vote on any one of them. Somewhat different situations, to be discussed later, may arise if the first-degree amendment is a *motion to strike out* or if it is an *amendment in the nature of a substitute* proposing to replace the entire text of the measure.


The Basic Amendment Tree
Original Text
Voting order
1
2nd degree
Amendment to pending amendment
1st degree
Amendment
4
2nd degree
Amendment to substitute
2
Substitute to pending amendment
1st degree
3

Motions to Insert and to Strike Out and Insert

Let us assume, then, that a Representative proposes an amendment that would insert something into a measure, or that would replace part but not all of it. No other first-degree amendment may be offered until after the Committee votes on this amendment. And this being a first-degree amendment, it is amendable. The amendment to the amendment may either be a *second-perfecting amendment* that would strike from, add to, or replace something in the first-degree amendment, or it may be a *substitute amendment* that proposes a complete alternative to what the first-degree amendment would insert or strike and insert.

Under Rule XVI, both of these amendments are in order. After one Member proposes a second-perfecting amendment, and before the Committee votes on it, another Representative may offer a substitute for the first-degree amendment. And it is equally possible for Members to propose these two amendments in the opposite order. Thus, Members can offer two different amendments, each directed toward the first-degree amendment, before the Committee votes on either of them. In addition, Rule XVI provides that the substitute for the same first-degree amendment also is amendable. Another Member may propose an amendment to the substitute, either before or after the second-perfecting amendment is offered. And the amendment to the substitute is in order even though it could be construed to be a third degree amendment (an amendment to a substitute amendment for an amendment), which normally is prohibited.[90]

In this way, Members may propose four different amendments before any votes must occur. The Representative offering the first-degree amendment may not propose the perfecting amendment to, or the substitute for, her amendment, because a Member may not amend her own amendment. However, this Member may amend the substitute for her amendment.

After Representatives have offered these four amendments, they and other Members may continue to debate them. When there is no more debate or when the Committee has voted to end the debate, Rule XVI specifies the order in which the Committee votes on the amendments. First Members vote on the second-perfecting amendment, thereby perfecting the first-degree amendment. Next comes the vote on the amendment to the substitute, which perfects the alternative to the first-degree amendment. Third, the Committee votes on the substitute amendment, as it may have been amended. And finally, a vote occurs on the original first-degree amendment, again as it may have been amended.[91]

In this way, the Committee can perfect two alternatives before choosing between them. The substitute for the first-degree amendment presents the Committee with a choice between two alternatives. One alternative, the first-degree amendment, is perfectible by a second-degree amendment. Therefore, Rule XVI also permits the

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[90] For this reason, it is not wholly accurate to characterize each amendment to an amendment as a second-degree amendment. Under Rule XVI, a substitute for a first-degree amendment is also treated as a first-degree amendment in that it is amendable.

[91] *House Procedure*, ch. 27, sec. 21.1, p. 523.

Committee to perfect the other alternative, the substitute amendment.[92] Both alternatives are perfected before the Committee votes on the substitute and thereby chooses between the two of them. If the substitute wins, the last vote—on the first-degree amendment, as amended by the substitute—is nothing more than a second vote on the same substantive proposal made by the substitute. On the other hand, if the substitute loses, the Committee usually ratifies its decision by agreeing to the first-degree amendment (perhaps as perfected). The Committee may reject the first-degree amendment, whatever the outcome of the preceding votes, but the decisive vote more often occurs on the substitute amendment.

By their amendments, Representatives may create only part of this amendment tree. For instance, different Members may offer a perfecting amendment to, and a substitute for, a first-degree amendment, but no amendment to the substitute. Or they may propose a substitute for the first-degree amendment and an amendment to that substitute, but no second-perfecting amendment. In any event, the order in which the Committee votes on the amendments that Members do offer remains the same: the first votes are to perfect either or both alternatives before the Committee votes on a substitute, if any.

Furthermore, the situation depicted by the amendment tree is not necessarily a static one. There may only be one amendment on each "branch" of the amendment tree at a time.[93] But after the Committee votes on each amendment, a Member can offer a different amendment on the same branch, subject to the prohibition against attempting only to re-amend matter that already has been amended.[94] A Member who seeks recognition may offer an amendment on any unoccupied branch of the tree, if it is otherwise in order, and no Member can claim a right to be recognized before another because of the nature of the amendment he wishes to offer.

After the Committee votes on a second-perfecting amendment, for example, it does not necessarily proceed to act immediately on the next amendment in the voting order. Instead, a Member may propose another second-perfecting amendment, so long as it would not only re-amend something already amended.[95] The Committee then debates and votes on this new amendment, and any other subsequent perfecting amendments, even if a substitute amendment and an amendment to it had been offered previously. In other words, Members may offer a series of second-perfecting amendments, each addressed to matter in the first-degree amendment that has not yet been fully amended, and the Committee acts on each of these amendments in turn before voting on the amendment to the substitute and the substitute itself.

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[92] "While a perfecting amendment to a pending substitute should retain some portion of the substitute so as not to be in effect a substitute in the third degree, the Chair does not look behind the form of the amendment absent a timely point of order from the floor to determine whether it is a proper perfecting amendment.... *House Procedure, 1985 Supplement*, ch. 27, sec. 6.7.

[93] *House Procedure*, ch. 27, secs. 5.1-5.4, p. 500-501.

[94] *House Procedure*, ch. 27, sec. 21.2, p. 523.

[95] *House Procedure*, ch. 27, sec. 27.9, p. 530.

If no Member seeks recognition to offer another second-perfecting amendment, the Committee votes on the amendment to the substitute, after which a Representative may propose a different amendment either to the substitute or to the first-degree amendment. The vote on an amendment to the substitute does not preclude additional perfecting amendments to the first-degree amendment. And should the Committee eventually reject the substitute, the first-degree amendment remains open to another substitute and to other perfecting amendments. The amending process may continue until the first-degree amendment has been fully amended or until Members have no further amendments they wish to offer.[96]

The opportunities that Rule XVI offers suggest several strategic considerations. If Member A plans to offer an amendment to a bill and knows that Member B is likely to have a different amendment on the same subject, it is not necessarily advantageous for Member A to offer his proposal as a first-degree amendment. Member B then can offer her amendment either as a perfecting amendment or as a substitute, and should it win, there will be no "clean," direct vote on the unamended version of Member A's original first-degree amendment.

If Member A does offer his amendment as a first-degree amendment to the bill, Member B may decide to propose her amendment as a second-perfecting amendment (if that can be done in a way that makes substantive sense), so that the Committee of the Whole will first vote on Member B's position. But if Member B adopts this strategy, Member A can attempt to re-coup the situation by having Member C offer a slightly changed version of Member A's amendment as a substitute for that amendment. Thus, even if the Committee votes for Member B's second-perfecting amendment, it could vote for Member A's basic position as well by adopting Member C's substitute. And if the Committee votes for both amendments, it is Member C's amendment that ultimately prevails, because the effect of adopting a substitute for an amendment is to fully replace the text of that amendment as it already may have been amended by one or more perfecting amendments.

Of course, Member C's substitute also is amendable. So Member B or a colleague could offer the substance of her proposal a second time, as an amendment to the substitute. Although a Member may not offer the same amendment twice, Member B may propose equivalent amendments to both the first-degree amendment and the substitute for it, because each of her amendments would amend a different text. Anticipating this development, Member A or another ally could seek recognition first to offer an amendment to the substitute that is consistent with Member A's original proposal. Finally, after the Committee votes on both perfecting amendments—one to the first-degree amendment, the other to the substitute—Members might still be able to offer additional perfecting amendments to either.

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[96] "Under the five-minute rule, no debate may intervene after a substitute for an amendment has been adopted and before the vote on the amendment, as amended, except by unanimous consent (since the amendment has been amended in its entirety and no further amendments including pro forma amendments are in order)." *House Procedure, 1985 Supplement*, ch. 27, sec. 27.18, p. 71.

Alternatively, Member B could propose a substitute for Member A's first-degree amendment. To ensure that the eventual vote on the substitute would not preclude a vote on Member A's position, an ally of his could offer a second-perfecting amendment on which the Committee will vote first. If the Committee votes for this perfecting amendment, it may be unwilling to vote also for a substitute that is inconsistent with the amendment already adopted. But if the substitute prevails, the victory achieved by the second-perfecting amendment is lost, because the substitute will replace the text of the first-degree amendment as perfected. Member A's ally also has the option of amending Member B's substitute; if the Committee supports that amendment, there will be no "clean" vote on the substitute. In response, however, Member B or an ally might obtain a vote on the essence of their position in the form of a second-perfecting amendment to Member A's original amendment.

As these possibilities suggest, there is no ideal strategy for Representatives to adopt when they anticipate the development of an amendment tree. A Member's preferred strategy can depend on such considerations as the amount and intensity of the support for the Member's position and the importance of having the Committee vote first on that position. The nature of the issue also may matter. In some cases, Members may be inclined to vote for more than one approach to responding to a widely shared concern; in others, Members are less likely to vote for one approach and then to vote as well for a second, inconsistent approach. In addition, the positions of the Representatives offering the amendments can make a difference. The sequence in which the amendments actually are offered depends on the order in which the chair recognizes Members to propose them. And the chair traditionally gives preference in recognition to the senior members of the committee that reported the bill being considered.

Another implication of these possibilities is that the way in which an amendment is drafted—whether as a perfecting or a substitute amendment—depends not only on the nature of the proposal but also on the parliamentary circumstances under which it is likely to be offered. This is particularly true of amendments to amendments, which Members and staff may have to prepare after the floor debate has begun. It sometimes is advisable to draft the same amendment in several different forms, to preserve procedural flexibility and to maximize the likelihood that the Member actually will have an opportunity to offer it. Even then, the amendment's sponsor may have to complete the drafting process on the floor by "keying" it to the appropriate page and line numbers of the text she intends to amend.

Thus far, this discussion of the amendment tree has assumed that the first-degree amendment from which the tree "grows" is either (1) a motion to insert or (2) a motion to strike out and insert which affects only part of the measure's text. Somewhat different opportunities arise if, instead, the first-degree amendment is a motion to strike out or an amendment in the nature of a substitute (proposing to strike out the entire text of the measure and insert a different version in its place).

Motion to Strike Out

A motion to strike out usually is not amendable; in the conventional practice of the House, Members do not offer perfecting amendments to, or substitutes for, such motions. However, House precedents do permit Members to propose amendments

to the part of the measure that the motion would strike. In other words, the House can perfect a part of a bill or resolution before deciding whether to strike it.[97] In this case, therefore, two Members can propose first-degree amendments to the text of a measure before the Committee of the Whole votes on either of them—the amendment to strike and the amendment to change the text proposed to be stricken. The latter amendment can be a perfecting amendment—replacing, striking, or adding to part of the language to which the motion to strike is directed.[98] Or the amendment may be a substitute for whatever the first amendment offered would strike.

In either case, the amendment to the text proposed to be stricken is a first-degree amendment that is amendable, and the other three branches of the amendment tree may "grow" on this amendment. Thus, five amendments may be offered before any votes occur: first, the motion to strike; second, an amendment to the text proposed to be stricken; and then, a perfecting amendment to the second amendment, a substitute for it, and an amendment to the substitute.[99]

All of the preceding discussion of the amendment tree applies to this situation, with one exception. After the Committee votes on all the other amendments, there also may be a final vote on the original motion to strike. If the amendment that comes behind the motion to strike is a perfecting amendment, the Committee votes on the perfecting amendment and then on the motion to strike.[100] But if the amendment proposes to replace the whole text at which the motion to strike is directed, and if it attracts a majority vote on the floor, no vote occurs on the motion to strike. The matter proposed to be stricken has been completely amended, so the motion to strike becomes an attempt to re-amend something that the Committee already has amended. The chair announces that the motion to strike "falls" without the need for a vote because the motion is no longer in order.[101]

Amendment in the Nature of a Substitute for a Measure

Finally, a considerably more elaborate amendment tree can develop when a Member offers an amendment in the nature of a substitute for the entire text of a bill or resolution, though there are procedural reasons why this rarely occurs.

Such an amendment in the nature of a substitute presents the Committee of the Whole with a choice between two versions of the bill: the version embodied in the bill as it was introduced and brought to the floor, and the version embodied in the complete substitute. The amendment in the nature of a substitute is a first-degree amendment, and so it is amendable to the same extent as any other first-degree amendment. The amendment is perfectible; in addition, it is subject to a substitute (in effect, a third version of the bill) which also is amendable. After the Committee votes

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[97] *House Procedure*, ch. 27, secs. 13.1-13.3, p. 513-514.

[98] *House Procedure*, ch. 27, sec. 22.3, p. 524.

[99] *House Procedure*, ch. 27, sec. 5.14, p. 502; ch. 27, sec. 13.12, p. 515.

[100] *House Procedure*, ch. 27, sec. 5.17, p. 502.

[101] Annotations to Section XXXV of *Jefferson's Manual* in *House Rules and Manual*.

on all amendments to the amendment in the nature of a substitute, it then votes on that complete substitute as it may have been amended. If the Committee adopts the amendment in the nature of a substitute, it replaces the entire text of the measure, amending it fully. This precludes any further amendments to the bill because of the prohibition against re-amendment.[102]

If this were the extent of the amendments in order, the Committee of the Whole would be able to perfect one version of the bill but not the other. It could vote on amendments to the amendment in the nature of a substitute before voting on it, and thereby choosing between it and the other version, the text of the bill. But it could not perfect the text of the bill itself before making this choice. For this reason, House precedents allow Members to offer amendments to the bill itself as well as to the complete substitute for it.[103] The result is the potential for Members to offer eight amendments before the Committee begins to vote: the amendment in the nature of a substitute and three amendments relating to it, and four amendments relating to the original text of the bill.

After a Representative proposes the complete substitute, another Member may offer an amendment to the substitute or a first-degree amendment to perfect the pending part of the original version of the bill. If the latter is offered, it is subject to the same amendment tree as any other first-degree amendment (unless, of course, it is a motion to strike).[104] If any or all of this two-trunk tree develops, the Committee votes first on amendments to the perfecting amendment and then on the perfecting amendment (perhaps as amended), before it acts on amendments relating to the amendment in the nature of a substitute. And after the vote on the perfecting amendment to the bill, Members may propose additional perfecting amendments, one at a time, and amend and vote on them, while the complete substitute and any amendments to it remain pending.

Fortunately, there are at least two reasons why such extremely complicated situations rarely develop.

Most amendments in the nature of substitutes for measures are committee amendments (or substitutes supported by committee chairmen) which special rules regularly make in order as the original text to be amended. Under such a rule, it is the substitute, not the bill, that is read for amendment and may be amended in two degrees.[105] Members may not offer amendments to the text of the bill as introduced until after voting on all amendments to the amendment in the nature of a substitute and on the substitute itself, and then only if the Committee rejects it. Because the Committee of the Whole rarely, if ever, rejects an amended committee substitute, it rarely reaches the original text of the bill. And even if this were to happen, both versions would not be open to amendment at the same time. First the Committee

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[102] *House Procedure*, ch. 27, sec. 30.1, p. 534.

[103] *House Procedure*, ch. 27, sec. 13.8, p. 514.

[104] *House Procedure, 1985 Supplement*, ch. 27, sec. 13.8, p. 68.

[105] *Ibid*.

would act on the substitute and all amendments to it, and then on amendments to the original version of the bill.

The two-trunk amendment tree is unlikely to develop even if a special rule does not provide for the Committee of the Whole to consider the amendment in the nature of a substitute as original text, and, instead, a Member offers it as a first-degree amendment. The reason lies in two elements of the amending process. First, as already noted, a Representative may propose an amendment in the nature of a substitute at only two points during the amending process in Committee of the Whole: either at the very beginning, after the first section has been read, or at the very end, after the Committee has disposed of all other amendments. Second, Members may only propose amendments to that portion of the measure itself that has been read or designated for amendment, and bills and resolutions typically are considered for amendment section by section or title by title.

If the substitute is offered at the beginning, after the clerk reads or designates the first section of the bill, Members can propose amendments to any part of the substitute but only to the first section of the bill (which often does nothing more than state its short title).[106] The clerk resumes reading the remaining sections or titles of the bill for amendment only after the Committee acts on all amendments to the substitute and then rejects it. Unless the Committee agrees, by unanimous consent, to consider the entire bill as read and open to amendment at any point, this situation effectively precludes substantive amendments to the text of the bill while the amendment in the nature of a substitute is pending. If, on the other hand, a Member proposes the substitute at the end of the process, the Committee already will have considered and voted on whatever amendments to the bill itself Members wished to offer. There is little likelihood that they would want to propose many additional amendments to it after the complete substitute is finally offered.

Except under the most extraordinary circumstances, therefore, only the first of the two amendment trees develops on the House floor. Also, while in theory this tree could grow during consideration of measures in the House or in the House as in Committee of the Whole, this is even more unlikely. In practice, Members do not create amendment trees very often, and then only in Committee of the Whole.

Special Procedures for Tax and Appropriations Measures

In addition to the principles and prohibitions that apply to all amendments, House Rule XXI imposes certain special restrictions and procedures governing floor amendments to tax and appropriations measures.

Clauses 4 and 5 are intended to ensure that Members offer tax and appropriations amendments only to measures on those subjects that have been reported by the appropriate House committees. Clause 4 prohibits consideration of

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[106] *House Procedure, 1985 Supplement*, ch. 27, sec. 7.12, p. 505.

"an amendment proposing an appropriation...during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction"—namely, any committee other than the Appropriations Committee. And similarly, clause 5(a) provides for a point of order against "an amendment in the House or proposed by the Senate carrying a tax or tariff measure...during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction"—namely, any committee other than the Ways and Means Committee.

The same clause contains two other provisions affecting tax measures. First, no amendment, measure, or conference report is in order if it proposes a retroactive increase in federal income tax rates. Second, a three-fifths vote is required to approve any amendment, bill or joint resolution, or conference report that carries a federal income tax rate increase.

Clause 2 also includes provisions, which are invoked more often than those of clause 4 or 5, that restrict amendments to general appropriations measures. Their essential purposes are (1) to enforce the requirement that appropriations are to be authorized by law and (2) to preserve a separation between policy and funding decisions. These restrictions do not apply to continuing appropriations resolutions or to special appropriations bills for one purpose or a very limited number of related purposes.[107]

Clause 2(a)(1) states that almost all appropriations must have been authorized by law before they may be considered on the House floor, whether as provisions of bills and resolutions or as amendments to them:

> An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that already are in progress.

Furthermore, clause 2(c) provides in part that:

> An amendment to a general appropriation bill shall not in order if changing existing law. . . .

Enforcing the second of these prohibitions depends on what constitutes a change in existing law, or "legislation." The House has traditionally distinguished between "legislation" and a "*limitation*," which is an appropriations provision or amendment that restricts the purposes for which or the means by which appropriations may be used. An amendment limiting the availability of appropriations may be in order if it meets the requirements of a complex body of precedents:[108] for example, if it applies only to the funds appropriated by the bill or resolution to which it is offered (and not

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[107] *House Procedure*, ch. 25, secs. 1-2, p. 393-394.

[108] See, for example, *House Procedure*, ch. 25, secs. 9-17, p. 409-427.

to the funds appropriated by "this or any other act"), and if it does not impose any new duty or responsibility on an official of the federal government.[109]

However, clause 2(d) imposes special procedures relating to limitation amendments. A Member wanting to offer a limitation to a certain paragraph of a general appropriations bill may not do so after the clerk has read that paragraph, even though that normally would be the appropriate time for offering an amendment in Committee of the Whole. Instead, as the bill is read for amendment, the Committee of the Whole considers and acts on all amendments except limitations. Then, after the bill has been completely read for amendment and the Committee has voted on the last amendment, a Representative may propose a limitation amendment relating to any paragraph of the bill or to the bill as a whole. But clause 2(d) provides a means by which the House can vote not to consider this or any other limitation.

Either before a Member proposes a limitation amendment, or after she offers it but before debate begins, the majority floor manager can offer a preferential and non-debatable motion that the Committee rise and report the bill back to the House with whatever amendments the Committee already has adopted.[110] The Committee of the Whole normally does not rise and report until after it has considered all the amendments that Members wish to offer. In this case, however, the Committee can vote against considering a limitation amendment by agreeing to a motion to rise and report before the limitation is proposed or before debate on it begins. If the motion is rejected, the limitation amendment is in order. But after the Committee votes on that amendment, the floor manager again may move that the Committee rise and report, and thereby preclude consideration of the next or any subsequent limitation.[111]

Thus, this special procedure under clause 2(d) permits the Committee of the Whole to cast a vote which, in effect, can preclude Members from proposing one or all limitation amendments that otherwise would be in order.

Clause 2(f) of Rule XXI also contains an exception to the general principle that, when a bill is being read amendment in Committee of the Whole, Members may offer amendments only to the part of the bill that has been read (or designated) and is open to amendment. Clause 2(f) permits a Member to offer amendments *en bloc* if the combined effect of the amendments is to "transfer appropriations among objects in the bill without increasing the levels of budget authority or outlays in the bill." Such amendments are in order even if they amend portions of the bill that have not yet been read for amendment, and the amendments are not subject to a demand that they be divided and considered separately.

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[109] Annotations to Rule XXI, clause 2.

[110] *House Procedure, 1985 Supplement*, ch. 25, sec. 22, p. 57.

[111] These same procedures apply to "germane amendments which retrench expenditures by reduction of amounts of money covered by the bill." Annotations to Rule XXI, clause 2.

Making and Reserving Points of Order

Several sections of this report have identified points of order to which amendments may be subject. If a Representative makes a point of order against an amendment and the point of order is sustained, the amendment may not be considered. The Speaker or the chair of the Committee of the Whole usually does not rule an amendment out of order until after a Member makes a point of order against it. It is the responsibility of each Member to enforce the procedures of the House, and thereby protect her own rights, by making appropriate points of order. If no Member makes a point of order, an amendment normally may be considered even though it violates some requirement of the House's legislative procedures.

When a Representative wants to make a point of order against an amendment, she usually does so as soon as the amendment is offered, or she may reserve the point of order before the debate begins and then make it at a later time during debate on the amendment. However, the special rule under which a measure is being considered may waive applicable points of order against specific amendments that Members are expected to propose. Furthermore, no point of order lies against an amendment presented to the House as part of a motion to suspend the rules and pass a measure as amended; the suspension procedure has the effect of waiving all points of order that otherwise might lie against the bill or any amendment incorporated in the motion.

In almost all cases, there is only one appropriate moment for making a point of order against an amendment: after the clerk has finished reading the amendment, or after the reading has been dispensed with by unanimous consent, but before the sponsor of the amendment begins to debate it.[112] In some cases, therefore, a Member may insist on having an amendment read in full to give him time to examine it. Once debate begins on the amendment, in most cases it is too late to make a point of order against it.

The exceptions to this general rule are points of order made under clauses 4 and 5 of Rule XXI, prohibiting an appropriations or tax amendment to a measure that was not reported by the appropriate committee. Such a point of order "may be raised at any time;" a Member may make it at any time that the Committee of the Whole is considering the amendment under the five-minute rule.

Instead of making a point of order against an amendment at the appropriate time—before there has been any debate on it—a Member may seek to "reserve" the point of order, and then make it after there have been five or more minutes of debate on the amendment.[113] There are two primary reasons for doing so. First, the Member may want more time to study the amendment, to decide if it is subject to a point of order and, if so, whether she chooses to make it. Second, the Member may intend to make a point of order but prefers to allow the amendment's sponsor (and perhaps other Members) some time to discuss it. If a Member reserves a point of order and

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[112] *House Procedure*, ch. 31, sec. 5, p. 700-702.

[113] *House Procedure*, ch. 31, sec. 2, p. 698-699.

a colleague then demands "the regular order," the "chair hears and rules on the point of order as expeditiously as possible."[114]

Members do not have any right to debate points of order; instead, the chair has discretion to entertain as much or as little debate for his information as he wishes. Traditionally, the Speaker or the chair recognizes the Member making the point of order to explain the basis for it—identifying the principle, rule, or precedent that the amendment violates—and to argue in favor it. The sponsor of the amendment next has an opportunity to defend it against the point of order, after which the chair may recognize other Members to speak on the procedural question. The Speaker or chair then makes a ruling, with the advice of the parliamentarian, which reflects past interpretations of the applicable rules and precedents.

Any Member may appeal the ruling of the chair on a point of order against an amendment, in which case the House then decides by majority vote whether to sustain or overturn the ruling.[115] But this is rarely done, and virtually never done successfully. The presiding officer of the House has not been overruled against his will in more than fifty years. Thus, rulings of the chair, either in the House or in Committee of the Whole, are conclusive for all practical purposes.

Summary of the Effects of Special Rules

There have been references throughout this report to the usual or possible impact of special rules on the amending process. These effects are summarized here.[116]

First, special rules usually specify the set of procedures under which the House considers a measure. The overwhelming majority of rules provide for consideration in Committee of the Whole, but they may state instead that a bill or resolution is to be considered in the House or in the House as in Committee of the Whole. Special rules concerning general appropriations measures, which are privileged for floor consideration, may only waive points of order against the measure, its provisions, and amendments to it.

Second, special rules specify the length of general debate in Committee of the Whole and allocate it between or among committee chairmen, ranking minority members, and sometimes other Members as well.[117]

Third, special rules may provide for an amendment in the nature of a substitute, usually recommended by the committee that reported the measure, to be considered as an original bill for purpose of amendment. The effect of this provision is to make

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[114] *House Procedure*, ch. 31, sec. 2.5, p. 698.

[115] *House Procedure*, ch. 31, sec. 8, p. 703-704.

[116] See CRS Report 96-938, *Special Rules in the House of Representatives*, and Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives: Adaptation and Innovation in Special Rules*. Washington: The Brookings Institution, 1988.

[117] *House Procedure*, ch. 21, sec. 19.1, p. 324.

the substitute amendable in two degrees and to direct all amendments to it, rather than to the text of the measure as introduced, except in the unlikely event that the Committee ultimately rejects the substitute.[118]

Fourth, special rules may restrict the amendments that Representatives can offer in Committee of the Whole. A "closed rule" precludes all amendments, or all but those offered at the direction of the committee of jurisdiction. A "modified closed" rule or a "modified open" rule is a restrictive special rule that either permits only the amendments identified by the special rule or prohibits amendments on certain subjects or to certain parts of the measure. Special rules also may prohibit amendments to amendments.[119]

Fifth, special rules may waive points of order against one or more committee amendments or amendments that Members intend to offer.[120]

Sixth, and finally, special rules typically provide for the previous question to be considered as ordered when the Committee of the Whole rises and reports the measure back to the House. This provision prohibits debate on the amendments that the Committee has recommended and prevents Members from offering additional amendments at this late stage of the process.

Sources of Additional Information

House of Representatives

The following official publications of the House contain further information on the amending process and related procedures:

Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, published each Congress as a House document. (Cited in the notes as *House Rules and Manual*.)

House Practice: A Guide to the Rules, Precedents and Procedures of the House, by Wm. Holmes Brown. 104th Congress, 2nd Session. Washington, D.C., U.S. Govt. Print. Off., 1996.

Procedure in the U.S. House of Representatives, 97th Congress. Washington, D.C., U.S. Govt. Print. Off., 1982. (Cited in the notes as *House Procedure*.)

Procedure in the U.S. House of Representatives, 1985 and 1987 Supplements. Washington, D.C., U.S. Govt. Print. Off., 1985 and 1987. (Cited in the notes as *House Procedure, 1985 Supplement, House Procedure, 1987 Supplement*.)

Cannon's Procedure in the House of Representatives, 87th Congress, 2nd Session (House Document No. 610). Washington, D.C., U.S. Govt. Print. Off., 1963.

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[118] *House Procedure*, ch. 21, sec. 19.12, p. 326.

[119] *House Procedure*, ch. 21, secs. 19.23-19.46, p. 328-331; ch. 27, sec. 2.33, p. 496.

[120] *House Procedure*, ch. 21, sec. 19.6, p. 325.

Hinds' and Cannon's Precedents of the House of Representatives of the United States (in 11 volumes). Washington, D.C., U.S. Govt. Print. Off., 1907 and 1936.

Deschler's Precedents of the U.S. House of Representatives and *Deschler-Brown Precedents of the U.S. House of Representatives* (in 15 volumes to date), 94th Congress, 2nd Session (House Document No. 94-661). Washington, D.C., U.S. Govt. Print. Off., 1977.

House Parliamentarian

The parliamentarian and his assistants welcome inquiries about House procedures, and offer expert assistance compatible with their other responsibilities.

Congressional Research Service

The Congressional Research Service has prepared various other complementary reports on legislative procedures, all of which are updated periodically. These reports include:

The Amending Process in the Senate. Library of Congress, CRS Report 98-853.

Conference Committee and Related Procedures: An Introduction. Library of Congress, CRS Report 96-708.

The Discharge Rule in the House: Principal Features and Uses. Library of Congress, CRS Report 97-552,.

The House's "Corrections Calendar." Library of Congress, CRS Report 97-301.

Legislative Procedures and the Legislative Agenda in the House of Representatives Library of Congress, CRS Report 98-996,.

The Legislative Process on the House Floor: An Introduction. Library of Congress, CRS Report 95-563,.

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