



GUIDE TO

# Legislative Procedural Rules in the U.S. House of Representatives

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## I. INTRODUCTION

This manual summarizes the major procedural rules and precedents that govern consideration of legislation in committees of the House of Representatives. It also discusses methods for asserting procedural rights and maintaining decorum during Committee proceedings. (For a one-page summary of the major components of a legislative markup, *see* Appendix A.)

The primary source of procedural rules is the Rules of the House of Representatives. Under House rule XI clause 1(a)(1), the House rules are binding on all House committees. Specifically, this rule provides that “the Rules of the House are the rules of its committees and subcommittees so far as applicable.”

Committee rules form a second important source of guidance. House rule XI clause 2(a)(1) provides that standing committees must adopt written rules governing their procedure, provided that such rules “may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of the Rules of the House.” Committee customs and practice -- which may or may not be in written format -- also may provide a valuable source of guidance.

The House Rules and Manual (hereafter “Manual”) provides the principal source of information on the rules of the House. In addition to the House rules, the volume contains the Constitution of the United States, the text of various important rule-making statutes, and voluminous annotations throughout. *Jefferson’s Manual of Parliamentary Practice* (hereafter “Jefferson’s Manual”), written by Thomas Jefferson to apply to the Senate, is also included in the *Manual* and is another source of information on interpreting House procedure. Under House rule XXIX, the practices prescribed in *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.”

Other important sources of House procedure are the numerous volumes describing the precedents of the House: Hinds’ Precedents, Cannon’s Precedents, and Deschler’s Precedents. In 2018, the House Parliamentarians began compiling these precedents in a new series called Precedents of the U.S. House of Representatives, the first volume of which was released in 2018. In addition, a valuable summary of the rules of the House

is the volume entitled *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, most recently updated in 2017, by the House Parliamentarian's office.

The interrelationships between the House and Committee rules can be complex; specific questions can be addressed to the House Parliamentarian for an authoritative response.[1]

## **II. PROCEDURE REGARDING CONSIDERATION OF LEGISLATION**

### **A. General Procedures**

#### 1. Notice

House rule XI clause 2(b) requires that each committee by rule fix a regular meeting day at least once each month. Committee rules differ regarding the specific day set for this meeting. In some committees, the rules provide the chair discretion to cancel, delay, or defer the required meeting (e.g., rules of the Committee on Financial Services, rules of the Committee on Energy and Commerce) or state that meetings will be canceled if they conflict with caucus meetings of either party (e.g., rules of the Committee on the Budget).

Under House rule XI clause 2(c)(1), the chair has authority to call additional meetings as he or she deems necessary. "Meetings" encompass any committee session to conduct business other than receiving testimony; they include meetings to mark up legislation, as well as meetings to approve investigative reports, to issue subpoenas, or to conduct internal committee business. The House rules provide that these meetings cannot occur "earlier than the third calendar day" on which the members have notice, excluding weekend days and legal holidays except when the House is in session on such days. House Rule XI clause 2(g)(3)(A)(ii). The parliamentarians have interpreted this wording to include the date on which the notice issues, so that notice on Monday would allow a meeting on Wednesday.

Committee rules may provide additional specificity in their notice requirements for these business meetings, with some requiring 48 hours' notice (e.g., rules of the Committee on Rules), and others requiring at least 36 hours' notice (e.g. rules of the Committee on Energy and Commerce). Notice requirements generally exclude weekend days and legal holidays except when the House is in session on such days. Some committees allow for waiver of notice requirements by majority vote of the committee or by the chair with the concurrence of the ranking minority member (e.g., rules of the Committee on Energy and Commerce).

## 2. Agenda and Availability of Text

Committee rules generally provide that an agenda for each committee or subcommittee meeting setting out all items of business to be considered must be issued in advance of such meetings, with variation among committees on the required timeframe (e.g., 36 hours under the rules of the Committee on Energy and Commerce; three calendar days--excluding Saturdays, Sundays, and Holidays, except when the House is in session--under the rules of the Committee on Financial Services).

Committee rules also generally provide that the text of bills and other reported materials to be considered at a business meeting, along with an accompanying explanation of the text, must be available to members in advance of a committee markup, with variation on the required timeframe (e.g., 24 hours under the rules of the Committee on Foreign Affairs; 48 hours under the rules of the Committee on Homeland Security). Some committees permit waiver of these requirements by (a) agreement between the chair and ranking member or (b) majority committee vote (e.g., rules of the Committee on Energy and Commerce). Others permit waiver by (a) agreement between the chair and ranking member or (b) two-thirds committee vote (e.g., rules of the Committee on Financial Services).

## 3. Options for Base Text

There are several options regarding the base text for subcommittee and full committee markups. One option is to use the text of a bill that has already been

introduced in the House and referred to a committee. A second option is to use the text of an introduced bill, but to begin the markup by introducing an amendment in the nature of a substitute that will serve as base text for purposes of the markup (see part II.B.2 for additional discussion of amendments in the nature of a substitute). A third option is to mark up a “committee print” of text that has not yet been introduced and referred.[2] A committee print is typically legislative language, but it can also take other forms, such as recommendations to the House Rules Committee on amendments that should be made in order.[3]

Different consequences result from these options. When a committee considers referred text, objections that an amendment exceeds the scope of the committee’s referral under House rule X are available,[4] whereas such objections are not available with respect to text that has not yet been referred (see part II.B.8).

A committee cannot report legislation to the House that has not yet been introduced and referred. One way to report a marked up committee print is by calling up a separate previously introduced bill (which can be introduced during the markup of the print) and obtaining unanimous consent to strike the text of that bill and replace it with the text of the print the committee has marked up. Another approach that committees have used on occasion is to begin at the subcommittee markup with a committee print as base text, introduce the product of the subcommittee markup as a bill, then take up the introduced bill as base text at the full committee markup.

#### 4. Member Attendance and Participation

The House rules do not provide non-committee or non-subcommittee members with the right to attend or participate in committee or subcommittee business meetings. Committee chairs generally limit attendance at and participation in committee markups to committee members. Subcommittee chairs have followed the same practice.

#### 5. Opening Statements

In general, the House rules do not address the practice of opening statements by members at hearings and business meetings. The exception is House rule XI clause 2(k)(1), which provides that “[t]he chair at a hearing shall announce in an opening statement the subject of the investigation.” Opening statements are a matter of recognition and chair decisions on recognition are not appealable. *Manual* § 629.

Committee rules and practices vary regarding the right of members to make opening statements. In some committees, the rules entitle only the chair and ranking member to make opening statements, but permit them to agree to extend that opportunity to other members (e.g., rules of the Committee on Homeland Security). In others, the rules allow all members to make opening statements, but permit the chair to shorten these opening statements to one minute (e.g., rules of the Committee on Energy and Commerce). Other committees’ rules are silent as to opening statements (e.g., rules of the Committee on Appropriations).

*Practice Note:* Where a committee faces the potential for a lengthy markup or other timing challenges, one option chairs may consider is to set aside time for opening statements in the afternoon before the day the consideration of amendments is slated to commence. It is also common practice for chairs to make a few preliminary administrative announcements and unanimous consent requests in advance of any opening statements. For example, to avoid the need for individual unanimous consent requests for recesses throughout a markup, a chair may consider stating at the outset of the markup that “without objection, the chair is authorized to declare a recess of the committee at any time.”

## 6. Reading of the Bill by the Clerk

Section 412 of *Jefferson’s Manual* provides that any bill must be read aloud by the clerk before it may be opened for amendment. This is commonly referred to as the “first reading.” House rule XI clause 1(a)(2) modifies this first-reading requirement by providing that if “printed” copies are available, a privileged motion can be made to dispense with the reading of the bill. According to the parliamentarians, the requirement that “printed” copies be available is satisfied by official Government Printing Office (GPO) copies, not xerox copies. The “printed copies” requirement is considered met if GPO copies are available at GPO distribution points. While such copies do not actually need to be in a committee’s meeting room, the best practice is

to have a copy of the measure in front of each member. If a motion to dispense with the first reading is not in order, the first reading may be dispensed with only by unanimous consent.

*Practice Note:* It is generally advisable to allow for at least 24 hours between when a bill is dropped and when GPO prints can be expected to be available. GPO's turnaround will depend on factors including the size of the bill and other documents in the queue. To request expedited GPO printing, committee staff should notify the parliamentarians and the bill clerk that a bill is going to be introduced for which the committee seeks expedited GPO printing for a committee markup.

## 7. Reading of the Bill for Amendment

Section 980 of the *Manual* provides that a bill must be read for amendment section-by-section, unless there is unanimous consent that the bill be read for amendment in some other manner (such as by title) or that the bill be considered as open for amendment at any point. This reading is commonly referred to as the "second reading." The chair opens each section for amendment by requesting that the clerk read the title of the section. The section is considered complete once all amendments to that section have been disposed of. *Deschler's Precedents*, ch. 27, § 7.3.

*Practice Note:* The manner in which the second reading of a bill occurs has several important ramifications. First, if the bill is read section-by-section, motions to amend can amend only the section that is open for amendment, not previous or later sections, unless there is unanimous consent. In contrast, if the bill is considered as read and open to amendment at any point, motions to amend can amend any part of the bill. *House Practice*, Amendments §§16-18.

Second, if a bill is read section-by-section, an amendment in the nature of a substitute for the entire bill may be introduced only after when the first section has been opened for amendment or after the final section has been read for amendment. This is relevant to control of the markup because when an amendment in the nature of a substitute is pending a vote on final passage of the bill could be forced with two motions. The first motion would be to consider the previous question on the amendment in the nature of a substitute. This motion would terminate debate on the amendment and require a vote on the amendment (and any pending amendments to

the amendment in the nature of the substitute). If the committee then adopted this amendment, the bill would be considered to be amended in full because the amendment was a substitute for the entire bill, the chair would not be required to recognize any more members to offer amendments, and the chair could move to report the bill to the full House. Amendments in the nature of a substitute are discussed in greater detail in part II.B.2.

In contrast, if a bill is open for amendment at any point, an amendment in the nature of a substitute can be offered at any time.

Third, if the bill is read section-by-section, a motion to limit debate under House rule XVIII clause 8 can close off debate under the five-minute rule only on the pending amendment or the pending section, not on subsequent sections of the bill. In contrast, if the bill is considered as read and open for amendment at any point, a motion to limit debate can close off debate on the entire bill.

## 8. Debate under the Five-Minute Rule

House rule XVIII clause 5 provides that when a measure is being read for amendment, there is five minutes each of debate time on each amendment for the proponent and an opponent. Members also have the right to offer a “pro forma” amendment to the pending bill or amendment to “strike the last word” for purposes of debate and to speak for five minutes. *Manual* § 981. Under this “five-minute rule,” each member has the opportunity to speak for five minutes on any bill, amendment, or debatable motion. Generally a member may speak only once for five minutes on a pending matter.

Members recognized for debate have the floor. They may not be deprived of the floor or interrupted by the chair, except for the chair to respond to a point of order (e.g., the chair may not interrupt a member to recognize another member to move the previous question, to make other motions, or to make unanimous consent requests or parliamentary inquiries). Commonly, the give-and-take of debate is handled informally, though any member may make a point of order if the rules are being ignored or unduly abused.

The use of the five-minute rule does not always mean that each member will have an opportunity to speak, because the adoption of certain motions (such as a motion to order the previous question) can cut off debate.

*Practice Note:* Where a member seeks to speak more than once on a measure, he or she may ask another member who has not yet spoken to move to strike the last word then yield their time to the member who already spoke.

## 9. Quorum Requirements

A quorum must be present in order for a committee to conduct business at a meeting. Any member can make a point of order that a quorum is not present at any time during committee proceedings, not just when a vote is about to occur. If a point of no quorum is raised, the chair must determine whether a quorum is present through a count or a call of the roll. The count of the chair is not appealable.

The number of members required to constitute a quorum differs, depending on the type of action being taken. Two types of quorums are relevant at business meetings: (1) the “working quorum” and (2) the majority quorum.

“Working Quorum.” Most standing committees are permitted by House Rule XI clause 2(h)(3) to constitute a quorum of not less than one-third of the membership to take any action except actions that are required to be taken by a majority quorum. Committees vary regarding the minimum requirements under this rule (e.g., majority under the rules of the Committee on Veterans Affairs; one third under the rules of the Committee on Agriculture and the rules of the Committee on Education and Labor.)

Majority Quorum. A “majority quorum” means that a majority of a committee’s total membership is present. A majority quorum is required by the rules of the House to deal with certain matters, including:

1. to report a measure or recommendation (rule XI clause 2(h)(1));
2. to adopt committee rules (since any lesser “working quorum” becomes effective only if authorized in the committee rules);
3. to authorize and issue a subpoena by vote of a committee (rule XI clause 2(m)(3)(A));
4. to close a meeting (rule XI clause 2(g)(1)); and

5. to release or make public evidence taken in executive session (rule XI clause 2(k)(7)).

Ex Officio Members. Committees vary in how they treat ex officio members for purposes of establishing a quorum. For example, under the rules of the Committee on Energy and Commerce, the full Committee chair and the ranking minority member have been designated as ex officio members of all the subcommittees. Under this rule, they are counted in determining whether a quorum of a subcommittee is present. On the other hand, under the rules of the Committee on Veterans Affairs, ex officio members are not considered when determining the existence of a quorum in subcommittee.

## **B. The Amendment Process**

### 1. Forms of Amendments

Under House rule XVI clause 4, any member may move to amend a bill. House rule XVI clause 6 specifies the four forms of amendment that are permitted. They are (1) an amendment to the pending proposition; (2) an amendment to the amendment; (3) a substitute to the amendment; and (4) an amendment to the substitute. "Third-degree" amendments (an amendment to the amendment to the amendment) are not permitted. The order of consideration of the permissible amendments is displayed in the amendment tree in Figure 1. The general principle is that members should be permitted to perfect an amendment (through moving to amend the amendment) before they are required to vote on the amendment.

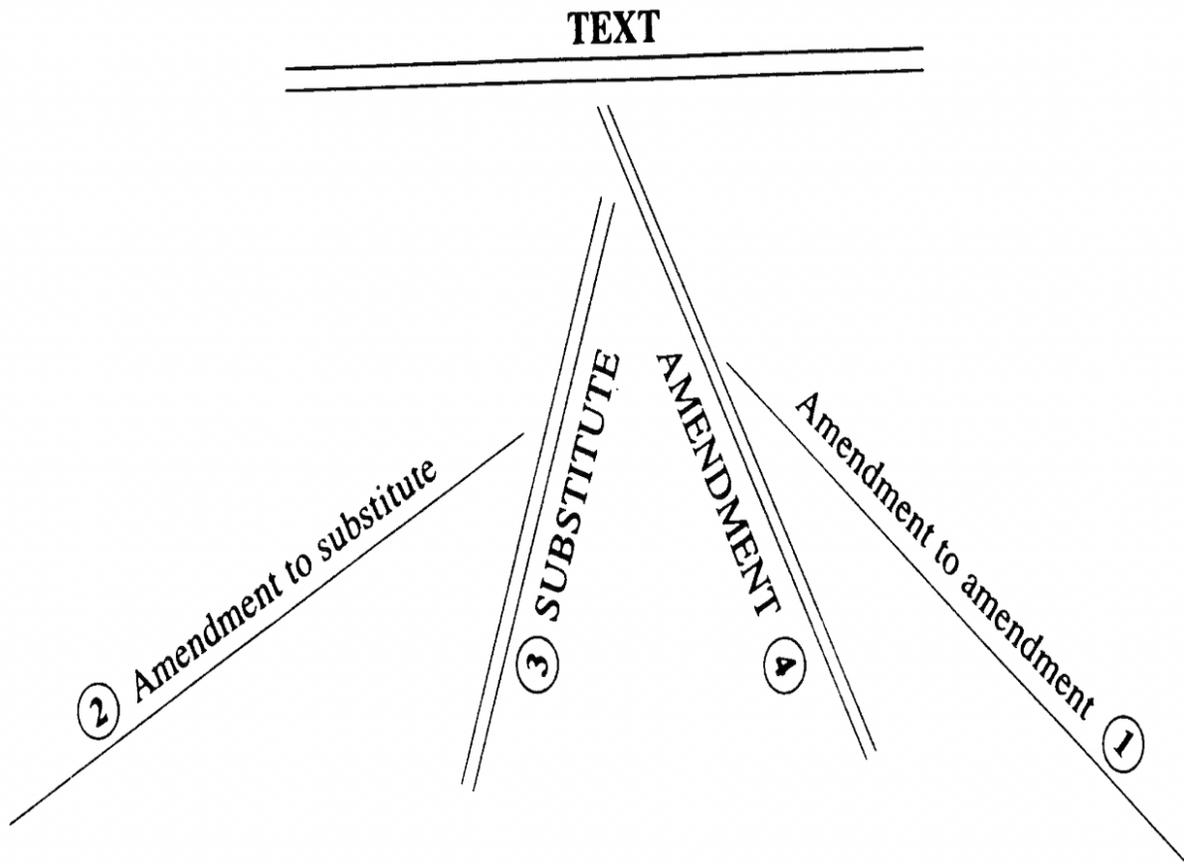


Figure 1 (source: *House Practice*, Amendments § 13)]

A member may not amend the member's own amendment, but the member may seek unanimous consent to modify the amendment. In committee proceedings, a member may withdraw an amendment at any time before the amendment is amended or voted on, and unanimous consent is not required to do so. *House Practice*, Amendments §§ 36, 37.

## 2. Amendment in the Nature of a Substitute

A special type of amendment permitted under the House rules is an amendment in the nature of a substitute (ANS), which is a substitute for the entire bill. If a bill is read section-by-section, an ANS is in order only during consideration of the first section or after the reading of the final section of the bill. *House Practice*, Amendments § 19. If a bill is considered as read and open to amendment at any point, an ANS can be offered

at any time. An ANS is open to amendment at any point. *House Practice*, Amendments § 27.

If there are perfecting amendments to the first section of the bill, these must be disposed of before the ANS is disposed of. *House Practice*, Amendments § 21. However, a motion for the previous question has a higher privilege than a motion to amend. If such a motion were offered on a pending ANS, the chair would have to recognize that motion before any motion to amend. Approval of that previous question motion and adoption of the ANS would preclude further amendment of the bill.

At the conclusion of consideration of an ANS, two votes are needed to order the underlying bill reported: (1) a vote on the ANS (as amended) and (2) a vote to order reported the bill as amended.

When the amendment pending is an ANS, the amendment tree is potentially more complex. In this situation, there theoretically could be eight separate amendments pending that relate to the underlying text: (1) an ANS to the underlying text, (2) a substitute to that amendment, (3) an amendment to that substitute amendment, (4) a perfecting amendment to the ANS, (5) a perfecting amendment to the underlying text, (6) a substitute to the perfecting amendment, (7) an amendment to that substitute, and (8) an amendment to the perfecting amendment. The order in which these amendments would be disposed would be from (8) to (1). Figure 2 below shows this amendment tree, with numbers showing the order of voting on the pending amendments. In practice, it would be highly unusual to encounter an amendment tree this complex.

# The Amendment Tree When an "Amendment in the Nature of a Substitute" Is Pending.

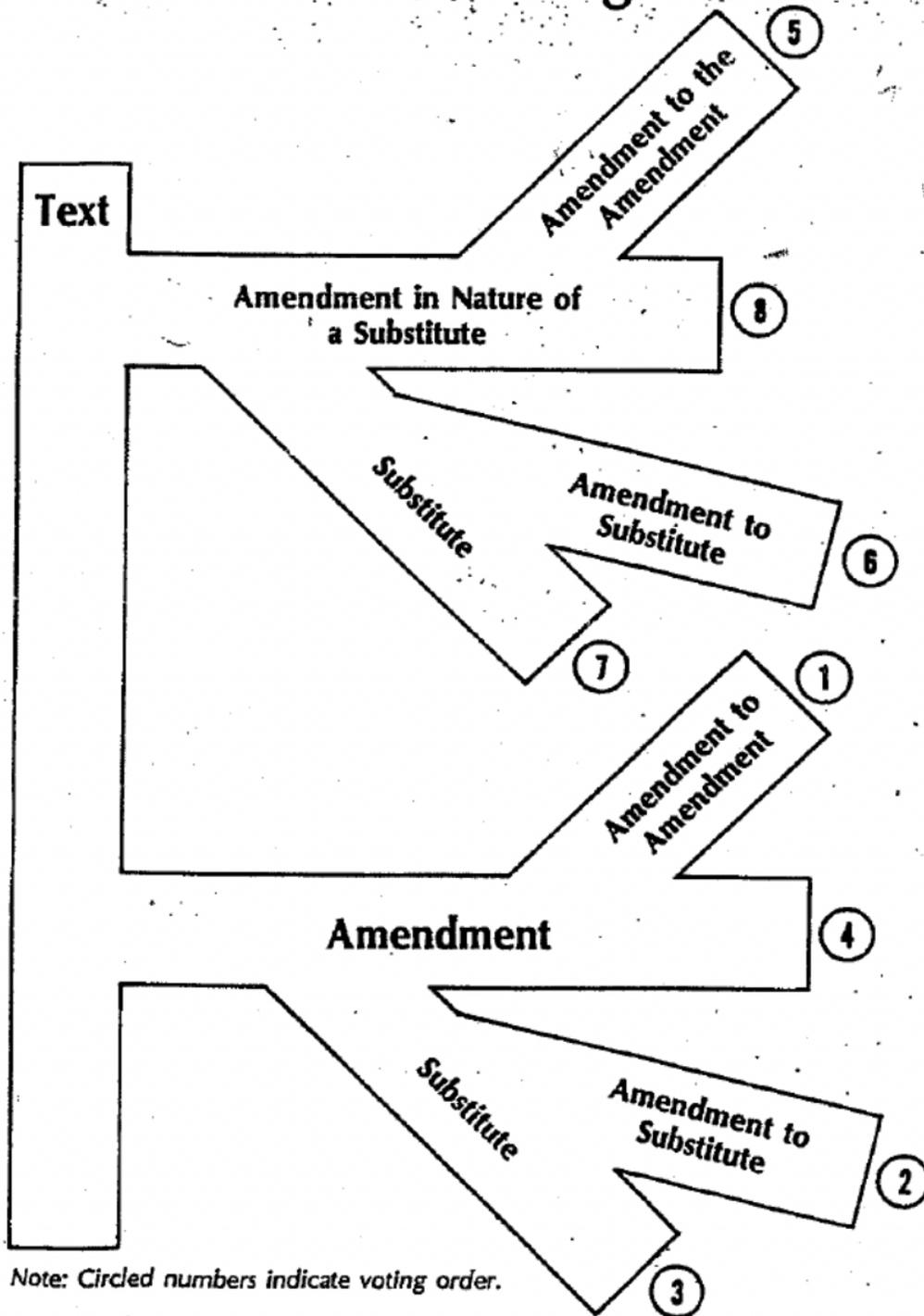


Figure 2.

*Practice Note:* The use of an ANS is common practice among many committees. To facilitate consideration of amendments to an ANS, a chair may consider stating at the outset of debate on the ANS that amendments that have been drafted to conform to the underlying text will be considered to conform to the ANS. Chairs also often establish by unanimous consent at the outset of debate on the ANS that the ANS will be treated as base text for the purpose of amendment.

### 3. Second Degree Versus Substitute Amendments

If a member offers a first degree amendment to the underlying bill, another member may attempt to block a vote on the first degree amendment by offering a second amendment. This amendment would take either the form of a perfecting, or “second degree” amendment, or a substitute amendment. A substitute amendment is subject to additional perfecting amendments whereas a second degree amendment cannot be amended further.

According to the parliamentarians, when the text of an amendment does not retain some part of the underlying amendment, it is in effect a substitute amendment, not a “second degree” perfecting amendment.[5] If a member attempts to amend a first degree amendment by striking the entirety of the underlying amendment, the member is in effect offering a substitute amendment that is further amendable. In these circumstances, a member could offer an amendment to the substitute to obtain a vote on the issue presented in the first degree amendment.

If the amendment offered is a second degree perfecting amendment instead of a substitute and that second degree amendment is approved, there may still be opportunity to obtain a vote on the issue presented by the first degree amendment. In these circumstances, the underlying first degree amendment, as amended by the second degree amendment, would still be pending, and any member could offer another second degree amendment to that amendment.

## 4. Recognition for Offering Amendments

Under the House rules, members have the right to offer amendments to legislation until the bill has been amended in full. However, the chair has the power of recognition that allows the chair to choose the order in which members will be recognized to offer amendments. House rule XVII, clause 2; *Manual* § 949. In practice, the chair alternates recognition between majority and minority members seeking to offer amendments. For additional discussion of the chair's powers of recognition, see Part III.A below.

*Practice note:* To ensure that committee members have had sufficient time to review and understand amendments before they are offered, some chairs have applied a policy of giving priority in recognition to members offering amendments when they have shared copies of their amendment with the other committee members before offering them. In some committees, this policy has been codified in the committee rules. In the Committee on the Judiciary, for example, Committee rule 11(f) provides the chair discretion to give priority to amendments submitted in advance. (See also Committee on Education and Labor, Committee rule 12(e)(2), and Committee on Oversight and Reform, Committee rule 2 (providing the chair discretion to prioritize those amendments submitted 24 hours in advance of a meeting).)

Chairs may use the power of recognition to make the consideration of complex legislation more orderly through policies such as recognizing amendments in order of title when a multiple-title bill (or substitute for such bill) is open for amendment at any point. Chairs also may find it constructive to give priority to amendments with bipartisan support. Advising Committee members of such practices in advance of the markup also may create additional order in the proceeding.

## 5. Reading Amendments

Under section 412 of *Jefferson's Manual*, amendments to a bill must be read in full before they are open to debate. This reading requirement may be dispensed with only by unanimous consent. *House Practice*, Amendments § 27. The requirement that amendments be read in full applies even if the time for debate has expired. Thus, even

if a motion to limit debate on a section has been adopted, amendments can be offered, read, and voted upon after the limit for debate has expired. *House Practice, Amendments § 26.*

*Practice note:* A chair facing the prospect of lengthy or multiple amendments on a measure may want to consider facilitating consideration of amendments by obtaining unanimous consent at the outset of a markup to dispense with the reading of amendments at any time. Such a UC leaves the chair the option of allowing the reading of an amendment but provides the option of terminating the reading of an amendment at the chair's discretion. The chair also may want to consider a policy of dispensing with the reading of pre-filed amendments but requiring the reading of amendments filed after the markup commences.

## 6. Debate on Amendments

After an amendment is read, debate on the amendment proceeds under the five-minute rule, as described in part II.A.8.

## 7. Germaneness

House rule XVI clause 7 provides that “no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.” This is the basis for the rule that amendments must be “germane” to the bill being considered. Any member may make a point of order objecting to the consideration of non-germane amendments. After this point of order is made, the burden of demonstrating germaneness belongs to the proponent of the amendment.

The point of order that an amendment is not germane should be raised before debate on the amendment begins. *House Practice, Amendments § 34.* A member who is in doubt about whether to raise a point of order before debate begins may seek to reserve the point of order and hear debate on the amendment. *House Practice, Amendments § 33.*

There are a number of different tests for determining germaneness. In practice, germaneness debates generally have focused on the following two tests: (1) whether the amendment is related to the fundamental purpose of the bill and (2) whether the amendment invokes the jurisdiction of a committee beyond those already invoked by the text of the underlying bill.

## 8. Point of Order Based on Rule X Jurisdiction

When a bill has been referred to a committee, another point of order is available if an amendment lies outside the scope of the committee's jurisdiction under House rule X. This point of order is not applicable, however, when the text under consideration has not yet been introduced as a bill referred to the committee.

## 9. Prohibition on Amending a Previously Amended Section

It is generally not in order to amend an amendment that has already been agreed to. *House Practice*, Amendments § 38. A similar rule is that it is not in order to offer an amendment identical to one previously rejected. *House Practice*, Amendments § 44. As in the case of germaneness objections, these objections should be raised in a point of order before debate on the amendment begins. *House Practice*, Amendments § 34.

The rule against "plowing old ground" is modified by the "bigger bite of the apple" rule, which allows amendments that change a more comprehensive portion of the pending text that encompasses the section already amended. *House Practice*, Amendments § 38. Other acceptable approaches would be to offer a new amendment that has language that reiterates the original language of the amendment with an addition or to amend a different part of the bill with language introduced by "Notwithstanding section \_\_," referring to the section already amended, which effectively supersedes the language but does not amend it. *House Practice*, Amendments § 38.

## C. Motions during Markups

Under the House rules, a number of motions are permissible during consideration of legislation. Under House rule XVI clause 1, any motion must be reduced to writing upon the demand of any member. In practice, this writing requirement is most often applied to motions to amend. The chair must recognize members seeking to make motions according to their privilege and consider the motions in such order. Privileged motions are not subject to debate.

According to the House parliamentarians, there is no requirement under the rules for a chair to recognize an invalid motion. To prevent motions that are not in order, the chair should ask the member seeking recognition to state his or her purpose in seeking recognition. If the member fails to state a proper motion, the chair can decline to recognize the member.

Cognizable motions include:

- Motion to recess (not debatable)
- Motion to adjourn (not debatable)
- Motion for the previous question (not debatable)
- Motion to limit or close debate (amendable and tableable, but not debatable)
- Motion to reconsider (if made by a member who voted in favor of the measure) (debatable and tableable)
- Motion to lay on the table (not debatable)
- Motion to commit to a subcommittee (debatable and tableable)
- Motion to postpone (debatable and tableable)

This section discusses each of those motions and the question of consideration.

### 1. Motion to Recess

House rule XI clause 1(a)(1) provides for a motion to recess from day to day and a motion to recess subject to the call of the chair. These motions, which are not

debatable and of high privilege, may be offered by any member. The motion to recess from day to day would carry pending business over until the next day. A working quorum is required to vote on a motion to recess.

In practice, chairs generally recesses committee meetings after consulting with the ranking member without objection from committee members. The chair usually states a specific time that the committee will reconvene or states the committee will reconvene after a series of House floor votes has concluded.

## 2. Motion to Adjourn

A motion to adjourn differs from a motion to recess in that it terminates the pending proceeding. The motion to adjourn derives from the Constitution, is highly privileged in the House under rule XVI clause 4; is not debatable; and takes precedence over all other motions. The Constitution provides that while a quorum in the House is required to conduct business, “a smaller [n]umber may adjourn from day to day.” Therefore, an affirmative vote on the motion to adjourn does not require the presence of any type of quorum and can be accomplished by the members who may be present.

According to the parliamentarians, a working quorum is required to defeat a motion to adjourn during a business meeting in a committee that has adopted a one-third quorum requirement. If a motion to adjourn is defeated, another motion to adjourn can be made after any intervening business or debate (such as a statement by a member under the five-minute rule) occurs. A motion to adjourn may be made while an amendment is pending.

In practice, chairs typically order a business meeting adjourned at the conclusion of the meeting without objection from committee members.

## 3. Motion for the Previous Question

Any member can make a motion for the previous question under House rule XVI clause 4(a) and House rule XIX clause 1. A motion for the previous question is not debatable. If there are multiple amendments pending, such as an amendment, a

perfecting amendment, and a substitute, the motion for the previous question can specify what pending question it is addressing or address all of the pending questions. Adoption of a motion for the previous question brings to an end all debate on a pending amendment or amendments and forces an immediate vote. *House Practice*, Previous Question § 1.

Under House Rule XII clause 1, the motion for the previous question can address all pending questions up to the point of final passage, but not final passage itself. If the previous question is on an amendment in the nature of a substitute, moving the previous question and adopting the amendment in the nature of the substitute will set up the final passage vote because the text having been amended in full, no further amendments are in order. If the motion for the previous question is not on an amendment in the nature of a substitute, additional amendments may be in order.

#### 4. Motion to Limit or Close Debate

Any member can make a motion to limit or close debate under House rule XVIII clause 8. Motions to limit or close debate can be offered on a pending amendment (and amendments thereto) or to the pending section (and amendments thereto). The motion can be made after the first five-minute speech or thereafter. *Manual* § 987. If a bill is being read section by section, the motion cannot be made to close debate on the bill itself until the reading of the entire bill for amendment has been completed. The motion can end debate at a specific future time (e.g., at 4:15 p.m. or in 30 minutes) or immediately. The motion is amendable and tableable, but not debatable. Adoption of the motion does not preclude the continued offering of amendments, but the amendments are not debatable.

#### 5. Motion to Reconsider a Bill or Amendment

House rule XIX clause 3 provides that “[w]hen a motion has been carried or lost, it shall be in order on the same or succeeding day for a Member on the prevailing side of the question to enter a motion for the reconsideration thereof.” Under this rule, the motion to reconsider is in order in a standing committee on the same day on which the vote to which it is being applied is taken; it is also in order on the next day the

committee meets with a quorum present. 8 Cannon Sec. 2213; *House Practice*, Reconsideration § 6.

The motion to reconsider may be made by any member of the prevailing side if a recorded vote has been conducted. If the original vote was by voice, any member who was present may move to reconsider. In the case of a tie vote, any member who voted in the negative may make the motion to reconsider. *House Practice*, Reconsideration § 4.

The motion to reconsider can be applied to amendments, to bills, and to most other motions as well; however, it is not in order to move to reconsider a vote rejecting or adopting a motion to adjourn or recess from day to day. *House Practice*, Reconsideration §§ 12-13. The motion to reconsider is debatable if the action proposed to be reconsidered is debatable. *House Practice*, Reconsideration § 11.

A member moves to reconsider a vote by citing the specific matter on which he or she is seeking reconsideration. A majority vote is required to win on such a motion. If such a motion succeeds, the chair then puts the matter on which reconsideration was sought to another vote.<sup>1</sup>

## 6. Motion to Lay on the Table

Any member can make a motion to lay a pending matter upon the table under House rule XVI clause 4(a). A motion to lay on the table is not debatable. Adoption of a motion to lay on the table is equivalent to a final adverse disposition, because a matter laid upon the table can be taken from the table only by unanimous consent. In the case of an amendment, adoption of a motion to table carries with it not only the amendment, but also the underlying bill. *House Practice*, Lay on the Table §§ 7, 8.

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<sup>1</sup> One example of a motion to reconsider that changed the result of a vote on an amendment occurred during consideration of the Affordable Care Act (ACA) by the House Committee on Energy and Commerce in July 2009. Rep. Pitts (R-PA) offered an amendment stating that the ACA did not require providers to cover abortions. When it appeared that the Pitt Amendment was going to narrowly pass, Rep. Waxman voted for the amendment and the [amendment passed 31-27](#). But when Rep. Waxman moved to reconsider, he had sufficient votes to defeat the amendment and the [amendment failed 30-29](#). See Transcript of Business Meeting, Markup on H.R. 3200, House Committee on Energy and Commerce, pp. 290-312, 388-402 (July 30, 2009).

*Practice Note:* Because tabling an amendment has the effect of bringing down the underlying legislation, motions to table generally are used only during deliberation over other motions.

## 7. Motion to Refer

During a committee markup, any member can make a motion to refer the pending bill to a subcommittee under House rule XVI clause 4(a). The motion is debatable and may include instructions to the subcommittee (such as to hold additional hearings). *House Practice*, Refer and Recommit §§ 7, 17. Approval of such a motion results in removal of the bill from the agenda of that committee meeting.

## 8. Motion to Postpone

Any member can make a motion to postpone consideration of a matter to a day certain or indefinitely under Rule XVI clause 4(a). Both versions of this motion are debatable under the 5-minute rule, subject to the ordering of the previous question on the motion. Debate on a motion to postpone to a day certain is confined to the advisability of postponing, while debate on a motion to postpone indefinitely may range to the merits of the bill. The motion is subject to a motion to table. According to the parliamentarians, the quorum requirement for this motion is a working quorum.

## 9. Question of Consideration

House rule XVI clause 3 provides that when any motion or proposition is made, any member may demand a vote on the question “[w]ill the House now consider it?” In committees, the question of consideration is raised by saying, “Mr./Madame Chair, I raise the question of consideration of \_\_\_\_.” At a markup, the question of consideration should be raised after the first reading of the bill by the clerk and before debate begins. The question is not debatable or tableable. *House Practice*, Question of Consideration § 1.

## D. The Voting Process

### 1. Voting Quorums

A working quorum is required for votes on amendments. As discussed in part II.A.9, a majority quorum is required by the rules of the House to deal with certain other legislative actions, including reporting a measure or recommendation and adopting committee rules.

### 2. Voting Mechanics

In a committee, it is possible to have several types of votes consecutively on the same matter. Under House rule I clause 6, votes in committee are first conducted by voice. Under House rule XX clause 1(a), any member may then demand a “division,” which in committee means a show of hands, although it is rare for members to demand this step.

Any member may also request the yeas and nays. The chair then typically requests that the clerk call the roll of committee members, and members indicate their vote for the record. A record vote is required when a sufficient percentage of committee members demand it, but committee rules differ regarding the baseline required. For example, under Committee on Energy and Commerce rule 7(a)(2) and Committee on Agriculture rule III(i)(1), a record vote is required when 1/5 of the members present demand one. (See also, Committee on Science, Space, and Technology, rule II(g) (requiring a record vote if three or more members request one); Committee on Small Business, rule 10(A) (requiring a record vote if any member asks for one).) If the chair seeks to establish whether a sufficient percentage of the members present support a record vote, he or she says: “As many as are in favor of taking this vote by a recorded vote will indicate until counted.” If a sufficient percentage of the members present do not support a vote by the yeas and nays, the chair does not need to proceed with a vote by the yeas and nays. Committee rules also may specify that a record vote is required when any member demands the yeas and nays in the apparent absence of a quorum (e.g., rules of the Committee on Science, Space, and Technology).

House rule XI clause 2(h)(4) provides that committees may adopt a rule authorizing the chair of the committee or subcommittees to postpone proceedings when a record vote is ordered on the question of approving a measure or matter or adopting an amendment, and to resume proceedings on the postponed question at any time after reasonable notice. Several committees have adopted such a rule in the 116th Congress, including the Committee on Oversight and Reform, the Committee on the Judiciary, and the Committee on Science, Space, and Technology. Without such a rule, a chair would need unanimous consent to postpone votes.

Under the rules of some committees, the result of any record vote in any meeting of the committee and its subcommittees is made available in the committee offices for inspection by the public and on the Committee's website within soon after such vote is taken. (See rules of the Committee on Foreign Affairs (within 48 hours); rules of the Committee on Financial Services (within one business day).)

### 3. Demand for a Division of Distinct Proportions

Under House rule XVI clause 5, any member can demand that a matter containing two or more separable propositions be divided for separate votes. Some matters are not subject to division, however, such as votes on final passage of bills and joint resolutions. *See House Practice*, Division of the Question § 4. Amendments in the nature of a substitute also are not subject to division.

## **E. Reporting a Bill**

### 1. Ordering a Bill Reported

At the conclusion of committee consideration of a bill, any member may move that the committee report the bill to the full House with a recommendation. Such a motion requires a majority quorum.

## 2. Filing a Legislative Report

After a committee has ordered a bill reported, the committee generally files a report on the bill with the clerk of the House. There are several requirements for such reports set forth under the House rules and in statute. Legislation that has been reported in violation of the House rules may be subject to points of order on the House floor.

Under House rule XIII, each legislative report must include (1) with respect to each record vote, the total number of votes cast for and against the amendment or bill and the names of members voting (clause 2(b)); (2) committee oversight findings and recommendations (clause 3(c)(1)); (3) a statement required by the Congressional Budget Act regarding whether the legislation contains new budget authority, budget outlays, revenues, or tax expenditures (clause 3(c)(2)); (4) an estimate of the legislation's costs prepared by the Congressional Budget Office (clause 3(c)(3)); (5) a statement of general performance goals and objectives (clause 3(c)(4)); (6) a committee estimate of the costs of the bill, a comparison of the estimate with any such estimate of costs submitted by a government agency to the committee, and a comparison of the total estimated funding level for relevant programs with appropriate levels under current law (clause 3(d)) (the CBO cost estimate can be used to meet this requirement); and (7) the text of any statute proposed to be repealed and a comparison of any part of the bill proposing to amend the statute (clause 3(e)(1)). Under House rule XXI, clause 9, the report also must state whether the bill contains any congressional earmarks, limited tax benefits, or limited tariff benefits.

In addition, the report must include a statement of whether any advisory committees were created by the bill within the meaning of section 5(b) of the Federal Advisory Committee Act; a statement regarding whether the bill relates to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act; and an estimate of federal mandates created by the bill pursuant to section 423 of the Unfunded Mandate Reform Act (the CBO cost estimate can be used to meet this requirement).

### 3. Supplemental, Minority, and Additional Views

Under House rule XI clause 2(l), all committee members have two additional days after a bill is ordered reported to file any supplemental, minority, or additional views. Saturdays, Sundays, and legal holidays are not counted as one of these days unless the House is in session on such a day. To preserve the right to file such views, a member must give the committee notice of the member's intention to file such views at the time the committee orders the bill reported. This is usually done by the ranking minority member, who requests time for all members to file supplemental, minority, or additional views, at the conclusion of the markup. The ranking member can request unanimous consent for additional time to file such views.

### 4. Technical and Conforming Corrections

The recordkeeping requirements imposed on committees under House rule XI clause 2(e)(1) provide that transcripts of committee markups are subject to technical, grammatical, and typographical corrections authorized by the person making the remarks involved. House rule XIII clause 3(a)(2) further provides that committees may file a supplemental report to make technical corrections to a report on a measure. While there is no House rule expressly providing for technical and conforming corrections to the text of a measure that has been marked up by a committee without a supplemental report, the practice of some committee chairs is to seek unanimous consent for such corrections at the conclusion of committee markups to ensure that staff preparing the report can make changes such as grammatical fixes or renumbering misnumbered amendment subsections without the need to convene the committee for approval. The Oversight and Reform Committee has codified this practice in its rules. (See rules of the House Committee on Oversight and Reform, 12(i).)

## **F. Other Procedures Relating to the Legislative Process**

### 1. Statement on Earmarks for Legislation Not Reported by Committee

Under House rule XXI clause 9(a)(2), a bill or joint resolution not reported by committee is not in order on the House floor unless the chair of each committee of initial referral has filed a statement in the *Congressional Record* stating that the proposition contains no congressional earmarks, limited tax benefits, or limited tariff benefits or listing all congressional earmarks, limited tax benefits, or limited tariff benefits in the bill.

### 2. Convening a Committee Meeting by Majority

House rule XI clause 2(c)(2) allows a committee majority to convene in the chair's absence. Under this rule, any three members may request a special meeting of the committee on a specific subject in a letter to the chair. If within three calendar days the chair has not called the requested meeting, to be held within seven calendar days after filing of the request, a majority of members of the committee may file a written notice in the committee offices ordering the meeting to occur and specifying the time of the meeting and the subject matter. The committee clerk is then required under the rule to notify all members of the meeting.

### 3. Measures Relating to Oversight and Investigations

Consideration of measures relating to oversight and investigations, such as subpoena resolutions, oversight plans, and investigative reports, are subject to procedural rules discussed above in part II on debate, reading, amendment, and voting.

#### a. Subpoenas

House rule XI clause 2(m)(3) provides standing committees of the House authority to issue subpoenas by majority committee vote and states that committees may also

choose to delegate such authority to the committee chair. Most committees have adopted rules that provide the chair such delegated authority, while a minority (e.g. rules of the House Committee on Armed Services, Rule 12) require a committee vote for all subpoenas. A majority quorum is required for a committee to authorize and issue a subpoena. House rule XI clause 2(m)(3)(A)(i).

#### b. Oversight plans

House rule X clause 2(d) requires all standing committees to adopt by February 15 of the first session of Congress an oversight plan to submit to the House Committee on Oversight and Reform and the House Committee on House Administration. These plans must include a review of rules, regulations, statutes, and court decisions that are “ambiguous, arbitrary, or nonsensical or that impose severe financial burdens on individuals”; prioritize review of laws concerning permanent budget or statutory authority; aim to ensure review of significant laws every 10 years and prevent duplicative, inefficient, or outdated programs; and reflect consultation with committees that share jurisdiction over the subjects of oversight. Some committees convene a business meeting to mark up oversight plans while others use less formal procedures such as circulating copies to committee member offices for approval. The parliamentarians have advised that, when a committee marks up an oversight plan, the document is open for amendment at any point and is not divisible into sections for the purpose of the second reading requirement. A majority quorum is required to report an oversight plan. House rule XI clause 2(h)(1).

#### c. Investigative Reports

A committee may choose to formalize its investigative findings by voting on a report that describes those findings. Committee members may file supplemental, minority, additional, or dissenting views for inclusion in such a report if they provide notice of their intention to file views at the time the committee approves the report. House rule XI clause 2(l). The parliamentarians have advised that, when a committee takes up investigative findings to report to the House, the investigative report is open for amendment at any point and is not divisible into sections for the purpose of the second reading requirement. A majority quorum is required to report investigative findings. House rule XI clause 2(h)(1).

## III. MAINTAINING ORDER AND DECORUM IN COMMITTEE MARKUPS

### A. The Chair's Powers of Recognition

The chair's powers of recognition provide a means for promoting civil and orderly committee proceedings. The chair has broad discretion in recognition. The chair's decisions on recognition are not appealable. *House Practice*, Appeals § 3.

In business meetings, members typically seek recognition for one of four purposes: (1) to make a motion, including a motion to amend; (2) to raise a point of order; (3) to make a parliamentary inquiry; and (4) to seek unanimous consent. The rules of recognition differ depending on the purpose.

A member seeking recognition for a motion, even a privileged one, cannot "take another member off of his or her feet," which means the chair should not recognize the motion until the member controlling the time has finished. When the member controlling the time has finished, the chair is required to recognize privileged motions, such as a motion to adjourn or recess, but has discretion about the timing of recognition of other motions. Motions are decided by the committee by vote; the chair does not rule on them.

The chair has even broader discretion regarding parliamentary inquiries and unanimous consent requests. The chair is not required to recognize either. *House Practice*, Points of Order; Parliamentary Inquiries § 13; Unanimous-Consent Agreements § 2.

The chair's discretion is most limited with respect to points of order. A chair should recognize these when they are raised since they pertain to the order of the proceeding. While not technically a point of order, a demand to take down words should be handled in a similar manner by the chair. Rulings on points of order are appealable. *House Practice*, Points of Order; Parliamentary Inquiries § 12.

Members sometimes seek recognition for motions or points of order that are not permissible under the House rules. In this situation, the chair can decline to recognize the motion or point of order or, if the member has already been recognized, state that

a cognizable motion or point of order has not been made. In these situations, the member has not made a ruling on a permissible point of order, so no appeal of the chair's decision is in order. *House Practice*, Appeals § 3.

Individual motions are discussed in part II.C; individual points of order, the demand to take down words, and parliamentary inquiries and unanimous consent requests are discussed below.

*Practice Note:* Experienced chairs frequently ask members for what purpose recognition is sought before deciding whether to confer recognition on a member. This allows the chair to use the chair's power of recognition to control the flow of the proceeding and to postpone recognizing matters that the chair would prefer to defer.

## **B. Points of Order**

### 1. In General

Points of order are the basic method of enforcing order in the House and in its committees. House Rule I clause 5 requires that the Speaker decide "all questions of order, subject to appeal by a Member." This rule carries over to committee chairs. Under this rule, the chair must recognize any member raising a valid point of order.

Examples of cognizable points of order include:

- A quorum is missing
- An amendment is not germane
- A member is speaking out of order
- A member is violating rules of decorum or another rule of the House
- The markup was not properly noticed

A point of order against consideration of a matter should be raised when the underlying matter is presented to the committee for consideration, not after debate on the matter has begun. Thus, unlike with motions, a committee member may raise a point of order while another committee member controls the time.

Debate on the point of order is permitted in the discretion of the chair. After the point of order is raised, the committee generally cannot proceed to consider the underlying matter until the point of order is disposed of. *House Practice*, Points of Order §§ 4, 8, 9. If the point of order is not essential to the consideration of the underlying matter, however, the chair may take the point of order under advisement.

As an alternative to raising a point of order before debate commences, a member may inform the chair that the member wishes to reserve a point of order. If a point of order is reserved, the member may then raise (or withdraw the reservation of) the point of order after hearing debate on the matter. When a member seeks to reserve a point of order, the chair has the discretion to decide whether to permit the reservation of the point of order or to insist that the member make the point of order. *See House Practice*, Points of Order § 3. If one member reserves a point of order, the reservation “inures” to other members, meaning that any member may raise another point of order on that issue until the reserved point of order is resolved and debate has recommenced. *See House Practice*, Amendments § 33.

Sometimes members use points of order to seek rulings from the chair on matters that are not permissible points of order. A permissible point of order is one that is authorized under the House rules. Other purported points of order are not permissible and may be dismissed as non-cognizable. The decision by the chair that a purported point of order is non-cognizable is not appealable. Only rulings on permissible points of order are appealable.

*Practice Note:* If a chair is uncertain whether a member has stated a valid point of order, he or she may consider asking the member raising the point of order to state the House rule the member believes is being violated. An example of a non-cognizable point of order is a general assertion that the committee procedures are unfair.

## 2. Bases for Recommittal

Certain points of order alleging violations of House rules related to committee procedure can affect the ultimate disposition of a matter in the House, possibly causing a bill or a report to be ordered recommitted to the committee by the Speaker. To raise a point of order on the House floor, the point of order must generally have been raised and improperly rejected in the committee. Thus, House rule XI clause

2(g)(6) provides that on the House floor no point of order may be made against a measure on the grounds that hearings were not properly conducted unless the point of order (1) is made by a member of the committee; (2) was made and was timely in the committee; and (3) was improperly overruled or not properly considered in the committee.

Examples of possible violations of House rules leading to points of order in the House and possible recommittal of a measure to the committee include:

1. failure to give at least one week notice of hearings (rule XI clause 2(g)(3));
2. violation of the rules requiring open hearings and meetings unless properly closed by committee vote (rule XI clause 2(g)(1)&(2));
3. failure to have a majority quorum present when the measure was reported from committee (rule XI clause 2(h)(1));
4. failure to include a proper record of the vote of the committee on bills, amendments, and reports ordered reported by the committee (rule XIII clause 3(b));
5. failure to include in a legislative report oversight findings, a statement of new budget authority, and CBO cost estimates (rule XIII clause 3(c));
6. failure to include in a legislative report the required report showing changes to the text of existing law (rule XIII clause 3(e)); and
7. failure to provide proper notice (rule XI clause 2(g)(3)(A)).

### 3. Appealing a Chair's Ruling on a Point of Order

Under House rule I clause 5, rulings of the chair on points of order are "subject to appeal by [any] member." An appeal of a ruling of the chair is debatable under the five-minute rule. *House Practice, Appeals* § 4; *House Practice, Committees*, § 18. A working quorum must be present to decide the appeal (see part II.A.9). An appeal is subject to a nondebatable motion to table.

## C. Demanding to Take Down Words

Any member may demand to take down a member's words on the grounds that the remarks are unparliamentary in violation of House Rule XVII clause 1, which establishes rules of decorum such as the requirement that remarks made by members in debate

must be “confined to the question under debate” and avoid “personality.” This clause applies to personal remarks regarding the president, vice president, presidential candidate nominees, and members of the House and Senate, but the parliamentarians have not found it applicable to cabinet officials or other witnesses before committees. House Rules and Manual §§ 370-71. A demand to take down words is not in order if there has been intervening business between the allegedly offending remarks and the demand. House Practice, Chapter 16, § 28.

The chair is required to immediately rule on whether the words are in order or out of order. The chair’s ruling on this demand is appealable and debatable under the five-minute rule. Any member may make a motion to table the motion to appeal, which is not debatable. House rule XVI clause 4(b).

If words are taken down during a committee proceeding, the member who spoke the words is prohibited from asking questions or speaking at the remainder of that proceeding. House rule XVII clause 4; *House Rules and Manual* § 961.

*Practice Note:* A chair may be able to head off a vote on a motion to take down words by urging members to resolve their differences or apologize. Sometimes suggesting how a member could reframe a point using other terms can lead to a resolution of the dispute without the need to rule on the demand.

## **D. Parliamentary Inquiries**

The House rules do not require the chair to recognize members for parliamentary inquiries. However, as a matter of practice, the chair generally recognizes members seeking recognition to make a parliamentary inquiry as an initial step in asserting or preserving a right, prerogative, or protection. If recognized by the chair, the member may then ask the chair to clarify to the committee members what the rights of the members are. Parliamentary inquiries that would be considered legitimate rather than dilatory include questions on when the committee will vote on a matter or schedule a meal break during a markup.

*Practice Note:* Sometimes members seek recognition for a parliamentary inquiry that seeks a comment from the chair on a matter other than the proper application of the

House rules. In such a case, the chair can state that the parliamentary inquiry is not a proper one and decline to provide any parliamentary guidance.

## **E. Unanimous Consent Requests**

A chair and any other committee member may seek to waive procedural rights, prerogatives, and protections through unanimous consent (UC) requests. Any member of a committee can block such requests by stating an objection. Members who are not present at the time the request is made have no right to object later. Chairs have discretion whether to recognize a member seeking to propound a UC request.

UC requests are not debatable and must be disposed of immediately once propounded, but the common practice by members wishing to have some discussion before deciding whether to accede to a request is to “reserve the right to object.” A member who reserves the right to object may make a statement on the pending request (and may also yield to other members for discussion). When a member reserves the right to object, any member may demand the “regular order,” ending discussion and requiring the reserving member either to object or to allow the request to be agreed to.

## **F. Raising Questions of Privilege**

### **1. Personal Privilege**

If committee practices affect the “rights, reputation, or conduct” of an individual member, the member may raise a question of personal privilege on the House floor under House rule IX. A question of personal privilege takes precedence over all other matters except a motion to adjourn. On the House floor, the member who raises the question of personal privilege is entitled to speak for an hour to respond to the committee practices affecting the member’s rights, reputation, or conduct. *House Practice*, Questions of Privilege § 22.

There is no requirement in the House rules that a question of personal privilege be recognized in a committee. However, it is likely that any member asserting a question of personal privilege in the committee would be recognized for such purposes.

## 2. Privileges of the House

Another method for raising objections to committee practices that violate the rules of the House or of the committee is to raise a question of the privileges of the House on the House floor under House rule IX. Such questions of privilege can raise matters affecting the rights of the House collectively, its safety, its dignity, and the integrity of its proceedings. To invoke rule IX, a member offers a resolution on the floor describing the matter in controversy and proposing a remedy.

There are elaborate precedents in the *House Rules and Manual* relating to which types of subject matter might qualify as proper questions of the privileges of the House. A resolution offered as a question of privilege is debatable for one hour evenly divided between the two parties. A question of the privileges of the House must be disposed of immediately if raised by the majority or minority leader; if raised by another member, it must be scheduled for consideration within two legislative days. A member opposed to a resolution offered as a question of privilege can move to table the resolution.

There is no requirement in the House rules that a question of privileges of the House be recognized in a committee.

## **G. House and Committee Rules on Decorum**

House Rules require orderly conduct by all present in a committee proceeding, including members, staff, witnesses, media, and the public. Under House Rule XI clause 4(c), "the general conduct of each meeting ... and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with an observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations."

The Capitol Police can be helpful in addressing disruptions by spectators. The Capitol Police are charged with protecting the safety of members and witnesses in the meeting room. At the request of the chair of a committee, they can remove disruptive spectators from the room.

Committee chairs have several mechanisms for maintaining decorum among members. A chair may admonish a member who is engaging in a “verbal outburst,” by informing the member that he or she is violating House rules and asking the member to refrain. In addition, under House Rule XVIII clause 1, any member including a chair may move to “take down” a member’s words if they are unparliamentary. For additional discussion of what is involved with a motion to take down words, see part III.C.

Other measures may be available to the chair, to be employed depending on the severity of the circumstances. For example, a chair may threaten to bring a resolution of “reprimand” before the full House.<sup>2</sup> In an extreme situation, a chair has the authority to ask the Sergeant at Arms to remove a member, but this has never happened in a business meeting.

*Practice Note:* Where the conduct of a member belies intentional disruptiveness, such as repeated interruption of another member’s statement on an amendment with unfounded points of order, the chair may want to consider providing a warning or implementing incrementally punitive measures to attempt de-escalation. One strategy to consider is for the chair to make a general statement, at the outset of a meeting or the beginning of disruptive behavior, noting his or her expectation of order and civility while making clear that he or she is aware of and willing to use the variety of authorities available to address disruption if necessary.

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<sup>2</sup> Constitution, Jefferson’s Manual, and Rules of the House, at §§ 62-68, pp.28-31 (discussing measures established to interpret the provision in the Constitution at Article I, section 5, clause 2, regarding Senate and House discipline and punishment).

[1] This document draws on and updates procedural manuals compiled by the staff of Co-Equal when they served on the House Committee on Oversight and Government Reform and the House Committee on Energy and Commerce under Rep. Henry A. Waxman.

[2] Committees have latitude regarding the content of prints for markups. For example, at the beginning of the 111<sup>th</sup> Congress, the Committee on Energy and Commerce divided its portion of the economic recovery legislation into three separate prints organized by subject matter: health, broadband, and energy. Committee on Energy and Commerce, *Business Meeting to Mark Up Provisions of H.R. 1* (Jan. 22, 2009).

[3] For example, in the 111<sup>th</sup> Congress following the markup by the Energy and Commerce Committee of health reform legislation (H.R. 3200), the Committee held a separate business meeting to consider a motion to instruct the Chairman of the Committee to transmit to the Committee on Rules additional amendments for consideration in connection with the previously reported bill. This text consisted of the language of the motion followed by the text of several amendments that had been filed with the Committee clerk but not considered by the Committee during the markup of H.R. 3200. Committee on Energy and Commerce, *Business Meeting to Mark Up a Motion to Instruct the Chairman* (Sept. 23, 2009).

[4] According to the parliamentarians, limitations based on the referrals under Rule X continue to apply where a full committee is marking up a print of an introduced bill reflecting changes made by subcommittee, because the fact that a subcommittee has recommended changes does not affect the status of the underlying text as a referred bill. If the subcommittee adopted a nongermane amendment, however, the germaneness of the text reported by the subcommittee may not be challenged in the full committee. A point of order that an amendment falls outside the scope of the committee's Rule X jurisdiction is only viable before debate, so if such an amendment is offered and approved without a point of order at the subcommittee level, it is too late to raise the point of order when the full committee takes up base text incorporating that amendment.

[5] The underlying principle is set forth in the *House Practice Manual*, Chapter 2, section 14, which states "a perfecting amendment ... should retain some portion of the substitute so as not to be in effect a substitute in the third degree."

## IV. Summary of Legislative Markups

### Before the Markup

- Give notice of meeting, agenda
- Determine form of base text to be considered (referred bill, report, amendment in the nature of a substitute, committee print)
- Make available legislative and report texts to be considered

### Opening the Markup

- Call committee to order
- Ensure quorum present
- UC that chair may declare recess at any time
- Potential statement that chair may postpone recorded votes
- Any chair/ranking member opening statement on first measure
- Call up first measure
- State it is considered as read
- If there is an amendment in the nature of a substitute (ANS), chair offers ANS, states whether without objection it is considered base text for purposes of amendment

### Consideration of Amendments

- Ensure quorum is present
- Call up amendment (consider reserving a point of order)
- State amendment is considered as read (or have the clerk read)
- Recognize any points of order on germaneness or other issues
- Debate
- Recognize proponent and opponent for five minutes each
- Recognize for five minutes each any other members seeking to strike the last word
- Move to vote
- Announce the ayes/noes
- If member requests recorded vote, ask for sufficient second, then proceed to vote or consider postponing until end of markup

- Where multiple perfecting and substitute amendments pending, order of consideration is perfecting amendments are dispensed with before votes on the underlying amendment

### Concluding Debate

- If using ANS, call vote on the ANS
- Call vote on the underlying measure
- If member requests recorded vote and there is sufficient support for a record vote, hold the vote
- Note that staff is authorized to make technical and conforming changes
- Adjourn the meeting